



CITY OF LAGUNA HILLS CITY COUNCIL/PLANNING AGENCY

REGULAR MEETING AGENDA Tuesday, September 14, 2021 – 7:00 PM (Closed Session at 6:00 PM when scheduled)

Erica Pezold, Mayor

Don Sedgwick, Mayor Pro Tempore
Bill Hunt, Council Member

Janine Heft, Council Member
Dave Wheeler, Council Member

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

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. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten 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: While you may attend this meeting in person, those wishing to make electronic public comments may submit their comments by email to the City Clerk at publiccomments@lagunahillsCA.gov, by 5:00 p.m. on September 14, 2021. 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. If you wish to submit a public comment on more than one agenda item, please send a separate email for each item you are commenting on. All comments received by 5:00 p.m. on the date of the meeting will be provided to the City Council in advance to allow time for the Council Members to read them.

Announcement of Electronic Public Comments: During the applicable agenda item, the City Clerk will announce the name of the sender and subject matter of all email comments received by 5:00 p.m. on September 14, 2021. 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, Twitter, etc.) will not be accepted. The email comments, including your name, will become part of the record of the City Council meeting and will be public information.

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: Mayor Pro Tempore Sedgwick

ROLL CALL OF CITY COUNCIL MEMBERS**1. PRESENTATIONS AND PROCLAMATIONS****1.1 Appointment of Laguna Hills High School Student Liaisons Rena Cohen and Grant Dettman for the Fall 2021 Semester**

Recommendation: That Mayor Pezold present Certificates of Appointment to Laguna Hills High School Student Liaisons Rena Cohen and Grant Dettman.

1.2 Laguna Hills High School Student Liaison

Recommendation: That the City Council receive an oral report from Laguna Hills High School 2021 Fall Student Liaison Rena Cohen.

1.3 MADD Award 2020/2021

Recommendation: That Mayor Pezold present MADD's 2020 Top Arresting Officer for Laguna Hills Police Services Certificate of Recognition and "23152" pin to Deputy Reyna Rivera.

1.4 Proclamation for "Opioid Epidemic Awareness Week"

Recommendation: That the City Council issue a Proclamation declaring September 19 - 25, 2021, as " Opioid Epidemic Awareness Week" and receive a presentation from Curt Fallin, Associate Special Agent in Charge, for the DEA Los Angeles Field Division regarding the issue.

1.5 Fire Prevention Week, October 3, 2021, through October 9, 2021

Recommendation: That the City Council issue a Proclamation declaring October 3, 2021, through October 9, 2021, as "Fire Prevention Week" and that Mayor Pezold present the Proclamation to Michael Contreras, Division Chief, Orange County Fire Authority.

2. SCHEDULE OF FUTURE EVENTS**2.1 Schedule of Future Events**

Recommendation: That the Interim City Manager announce the upcoming City events for the month of September 2021.

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 ten minutes for any one subject, and a total time limit of thirty minutes.

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 August 24, 2021, Regular Meeting

Recommendation: That the City Council approve the Minutes for the August 24, 2021, Regular Meeting.

4.3 Approval of Minutes for September 1, 2021, Special Meeting

Recommendation: That the City Council approve the Minutes for the September 1, 2021, Special Meeting.

4.4 Ratification of September 14, 2021, Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the period from August 13, 2021, to September 2, 2021, in the amount of \$1,072,894.73.

4.5 City Council Review and Confirm the Necessity for Continuing the Local Emergency Related to the On-Going Threat of the Novel COVID-19 Virus and Confirmation of the Interim Director of Emergency Services/Interim City Manager's Executive Orders Related Thereto

Recommendation: That the City Council: 1) Review and confirm the necessity for continuing the local emergency declared in response to the Novel COVID-19 virus; and 2) Confirm the Interim Director of Emergency Services/Interim City Manager's Executive Orders related thereto.

4.6 Award of Retainer Agreement for Special Counsel Legal Services with the Law Firm of Stradling Yocca Carlson & Rauth for Development Agreement Negotiation Services Related to the Proposed Village at Laguna Hills Project

Recommendation: That the City Council approve the award of a special counsel legal services Retainer Agreement with the law firm of Stradling Yocca Carlson & Rauth for development agreement negotiation services related to the proposed Village at Laguna Hills Project, and authorize the Mayor to execute the Retainer Agreement.

4.7 Designation of Voting Delegate for League of California Cities Annual Conference

Recommendation: That the City Council appoint the Mayor as the Voting Delegate and appoint the Mayor Pro Tempore as the Voting Delegate Alternate for the League of California Cities Annual Conference.

4.8 Declaration of September 18, 2021, as the 24TH Annual Inner-Coastal Watershed Cleanup Day

Recommendation: That the City Council support and declare September 18, 2021, as Inner-Coastal Watershed Cleanup Day and encourage volunteer participation in this event.

4.9 Approve a Joint Agreement Between the County of Orange and the City of Laguna Hills for 800MHz Countywide Coordinated Communications System

Recommendation: That the City Council approve a Joint Agreement between the County of Orange and the City of Laguna Hills for 800MHz Countywide Coordinated Emergency Communications System

**4.10 Countywide Emergency Mass Notification System (AlertOC)
Memorandum of Understanding Update with the County of Orange**

Recommendation: That the City Council authorize the Interim City Manager, in his role as Director of Emergency Services, to execute and manage, on behalf of the City of Laguna Hills, a Memorandum of Understanding between the City of Laguna Hills and the County of Orange to allow for the continued use of the County's Countywide Mass Notification System, referred to as AlertOC, under the terms and conditions of the County's Countywide Mass Notification System Operating Guidelines and vendor-provided Agreements, commencing on July 1, 2021, through June 30, 2024.

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**5.3.1 Approval of Minutes for August 24, 2021, Regular Meeting**

Recommendation: That the Planning Agency approve the Minutes for the August 24, 2021, Regular Meeting.

5.4. ADMINISTRATIVE REPORTS**5.5. PLANNING AGENCY PUBLIC HEARINGS****PLANNING AGENCY ADJOURNMENT****6. CITY COUNCIL PUBLIC HEARINGS****6.1 Public Hearing for Zoning Text Amendment No. (RZNE) 0005-2021, an Amendment to Title 9 (Zoning and Subdivisions) of the Laguna Hills Municipal Code to Update Regulations Related to Accessory Dwelling Units in Accordance with State Law**

Recommendation: That the City Council continue the noticed Public Hearing for Zoning Text Amendment No. (RZNE) 0005-2021, an amendment to Title 9 (Zoning and Subdivisions) of the Laguna Hills Municipal Code to update regulations related to Accessory Dwelling Units in accordance with State law to the regular City Council meeting to be held on September 28, 2021, at 7:00 pm, or as soon thereafter as possible.

7. ADMINISTRATIVE REPORTS

7.1. City Manager

7.1.1 Legislative Update for the 2021-2022 Regular Session of the California State Legislature and League of California Cities Recommended Legislation

Recommendation: That the City Council approve the issuance of letters to the Governor in opposition to specified legislation and approve a support letter to the League of California Cities for the equitable distribution of sales tax

7.2. Deputy City Manager/City Clerk

7.2.1 Resignation of Council Member Hunt - Discussion of Filling City Council Vacancy Pursuant to Government Code Section 36512

Recommendation: That the City Council take action by no later than November 13, 2021, to approve one of the following options to fill the vacancy in office created by Council Member Hunt's resignation:

1) Option 1. Appoint a qualified individual to fill the vacancy in office, either through a direct appointment or by following an application and interview process. If the Council fills the vacancy by appointment, the appointed person would serve on an interim basis until the November 2022 General Municipal Election and thereafter until the elected person has been qualified. The person elected to fill the vacancy at the November 2022 General Municipal Election would hold office for the unexpired balance of the term of office. Council Member Hunt was elected in November of 2020 for a four-year term that expires in November 2024. Therefore, following the completion of the appointed person's interim term, the person elected at the November 2022 General Municipal Election to fill the vacancy would serve until November 2024.

2) Option 2. Call for a special election. A special election must be held on the next regularly established election date not less than 114 days from the call of the special election, which is April 12, 2022. Calling for a special election requires the person elected to fill the vacancy to hold office for the remainder of the unexpired term. In this case, the person elected at the special election would hold office until November 2024.

7.3. Deputy City Manager/Community Services Director

7.3.1 Renovation of the "LH" on the Hill Monument

Recommendation: That the City Council provide direction on the final design and renovation of the "LH on the Hill" monument and direct Staff to prepare plans and specifications and a budget amendment to implement the project.

7.4. Finance Director

7.4.1 Utilization of State and Local Fiscal Recovery Funds as Authorized Under the American Rescue Plan Act

Recommendation: That the City Council appropriate the City's full allocation of Coronavirus-related State and Local Fiscal Recovery Funds, as authorized under the American Rescue Plan Act, for: 1) the provision of government services to the full extent of the reduction in revenue (revenue loss) due to the COVID-19 public health emergency; and 2) to respond to the public health emergency caused by COVID-19 or its negative economic impacts.

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS

8.1. Mayor Pezold

8.1.1 Community Safety Standing Agenda Item

Recommendation: Mayor Pezold recommends that the City Council direct Staff to keep the agenda item "Community Safety" on all future agendas to engage with the public and take necessary action to reduce crime. In addition, discuss safety and actions needed to reduce crime and what actions the City has already implemented.

8.1.2 Discussion Regarding Issuing a Request for Proposal for a Planning Firm to Guide the City in Current and Future Development Projects

Recommendation: Mayor Pezold recommends that the City Council direct Staff to issue a Request for Proposal for a planning firm to guide the City for current and future projects.

9. CITY COUNCIL MEMBER COMMITTEE REPORTS**10. CITY COUNCIL MEMBER COMMENTS****ADJOURNMENT**

The next Regular Meeting of the City Council/Planning Agency will be September 28, 2021, in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, Melissa Au-Yeung, 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 September 10, 2021, at 5:00 pm.



City Clerk

September 9, 2021

Date

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should 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.

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: September 14, 2021
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Appointment of Laguna Hills High School Student Liaisons Rena Cohen and Grant Dettman for the Fall 2021 Semester

RECOMMENDATION: That Mayor Pezold present Certificates of Appointment to Laguna Hills High School Student Liaisons Rena Cohen and Grant Dettman.

SUMMARY:

By action of the City Council on July 27, 1993, the City of Laguna Hills and Laguna Hills High School established a Student Liaison Program to create a direct link between Laguna Hills High School and the City Council. Rena Cohen and Grant Dettman were selected by the Laguna Hills High School Parent, Teacher and Student Association (PTSA) to serve as the Fall 2021 Student Liaisons. The Assistant City Clerk met with Rena Cohen and Grant Dettman prior to this meeting to administer the Oath of Office.

ATTACHMENTS:

- Certificates of Appointment Fall 2021 Student Liaisons



CITY OF LAGUNA HILLS

CERTIFICATE OF APPOINTMENT

be it known that

GRANT DETTMAN

*on September 14, 2021, took the
Oath of Office
and on this date began serving as the*

STUDENT LIAISON

for the City of Laguna Hills

Dated this 14th day of September 2021.

ERICA PEZOLD, MAYOR



CITY OF LAGUNA HILLS

CERTIFICATE OF APPOINTMENT

be it known that

RENA COHEN

*on September 14, 2021, took the
Oath of Office
and on this date began serving as the*

STUDENT LIAISON

for the City of Laguna Hills

Dated this 14th day of September 2021.

ERICA PEZOLD, MAYOR



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Captain Matthew Stiverson
Chief of Police Services
ISSUE: MADD Award 2020/2021

RECOMMENDATION: That Mayor Pezold present MADD's 2020 Top Arresting Officer for Laguna Hills Police Services Certificate of Recognition and "23152" pin to Deputy Reyna Rivera.

SUMMARY:

Impaired driving continues to be a leading cause of death and injuries throughout the United States. Founded in 1980, Mothers Against Drunk Driving (MADD) is the nation's largest nonprofit organization working to end drunk driving, support victims, and prevent underage drinking. MADD provides services to victims and families of drunk and drugged driving crashes at no cost. MADD has successfully lobbied to support stronger driving under the influence (DUI) driving laws, delivers underage drinking prevention strategies to thousands of teens, and focuses on changing the culture surrounding drinking and driving.

Each year, MADD California hosts annual recognition ceremonies to honor exceptional law enforcement performance related to the enforcement of impaired driving laws. The MADD "23152" pin (representing the California Vehicle Code for DUI) is awarded to sworn peace officers for service over a one-year period. The pin is red to symbolize MADD's mission, represent the victims of impaired driving crashes and more specifically for law enforcement, to memorialize and honor those heroes injured and killed in impaired driving collisions. For officers, whose official responsibilities include so much more than DUI enforcement, arresting dangerous drivers with such consistency is remarkable and deserves to be recognized.

MADD Award 2020/2021

September 14, 2021

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For outstanding performance in DUI enforcement, MADD is proud to recognize Deputy Reyna Rivera as the 2020 Top Arresting Officer for Laguna Hills Police Services. Deputy Rivera's efforts including fifteen DUI arrests have truly made a difference in our community and has helped keep our roads safe from impaired drivers. Congratulations Deputy Rivera and thank you for your service.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Proclamation for "Opioid Epidemic Awareness Week"

RECOMMENDATION: That the City Council issue a Proclamation declaring September 19 - 25, 2021, as " Opioid Epidemic Awareness Week" and receive a presentation from Curt Fallin, Associate Special Agent in Charge, for the DEA Los Angeles Field Division regarding the issue.

SUMMARY:

To recognize the importance of communicating to the public the safety aspects of the utilization of both prescribed and not prescribed medications, a Proclamation has been prepared declaring September 19 – 25, 2021, as "Opioid Epidemic Awareness Week." Staff is recommending that the City Council issue the Proclamation. In addition, a representative from the Drug Enforcement Agency will be providing a presentation regarding the opioid issue.

ATTACHMENTS:

- Proclamation



CITY OF LAGUNA HILLS

PROCLAMATION

OPIOID EPIDEMIC AWARENESS WEEK

SEPTEMBER 19 - 25, 2021

WHEREAS, drug overdose (poisoning) is now the leading cause of unintentional injury death in the United States, causing more deaths than motor vehicle crashes. The number of Californians affected by prescription and non-prescription opioid misuse and overdose is substantial, with 5,363 deaths related to any opioid overdose, with 3,857 deaths related to fentanyl overdose in 2020; and

WHEREAS, the nation's COVID pandemic made the nation's drug overdose epidemic worse. Every state has reported a spike or increase in overdose deaths or other problems during the COVID pandemic; and

WHEREAS, opioid use disorder, or addiction to prescription opioids, is a disease that touches too many of our communities -- big and small, urban and rural -- and devastates families, all while straining the capacity of law enforcement and the health care system; and

WHEREAS, states and localities across our country, in collaboration with Federal and national partners, are working together to address this issue through innovative partnerships between public safety and public health professionals.

NOW, THEREFORE, I, Erica Pezold, Mayor, on behalf of the City Council of the City of Laguna Hills, California, proclaim that September 19 - 25, 2021, is hereby designated as Opioid Epidemic Awareness Week, and ask the citizens of Laguna Hills to pause to remember all those we have lost to opioid use disorder, we stand with the courageous individuals in recovery, and we recognize the importance of raising awareness of this epidemic.

Dated this 14th day of September 2021.

ERICA PEZOLD, MAYOR

Attachment: Proclamation (2566 : Proclamation for "Opioid Epidemic Awareness Week")



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Fire Prevention Week, October 3, 2021, through October 9, 2021

RECOMMENDATION: That the City Council issue a Proclamation declaring October 3, 2021, through October 9, 2021, as "Fire Prevention Week" and that Mayor Pezold present the Proclamation to Michael Contreras, Division Chief, Orange County Fire Authority.

SUMMARY:

The Orange County Fire Authority (OCFA) has requested that the City of Laguna Hills proclaim October 3, 2021, through October 9, 2021, as "Fire Prevention Week." This year's theme, "Learn the Sounds of Fire Safety!" works to educate everyone about the different sounds the smoke and carbon monoxide alarms make and encourages Orange County residents to check their alarm systems.

ATTACHMENTS:

- Proclamation



CITY OF LAGUNA HILLS

PROCLAMATION

FIRE PREVENTION WEEK

OCTOBER 3, 2021, THROUGH OCTOBER 9, 2021

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are where people are at greatest risk from fire; and

WHEREAS, working smoke alarms in the home can reduce the risk of dying in a fire by more than half. An average of 358,500 homes experience a structural fire each year; and

WHEREAS, three of every home fire deaths occur in homes with no smoke alarms. 16% of home fire deaths result from smoke alarms that failed to operate; and

WHEREAS, over the last year there have been 115 cooking fires across Orange County, at least 30 of which started in homes without functioning smoke alarms. In 2018, California was in the top three states in the US with the largest numbers of fire deaths; and

WHEREAS, Orange County residents are responsive to public education and outreach measures and can take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, the 2021 Fire Prevention Week theme, "Learn the Sounds of Fire Safety" effectively serves to remind us to learn the sounds of smoke alarms and how to respond to them.

NOW, THEREFORE, I, Erica Pezold, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby proclaim the week of October 3, 2021, through October 9, 2021, as "Fire Prevention Week" throughout the City and urge Orange County residents to learn the sounds of smoke alarms, what those sounds mean, and how to respond to them and to support the many public safety activities and efforts of Orange County Fire Authority during Fire Prevention Week 2021.

Dated this 14th day of September 2021.

ERICA PEZOLD, MAYOR



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services
ISSUE: Schedule of Future Events

RECOMMENDATION: That the Interim City Manager announce the upcoming City events for the month of September 2021.

SUMMARY:

The following is a list of upcoming events for the City of Laguna Hills in the month of September 2021:

Traffic Commission Meeting

Wednesday, September 15, 2021, 7:00 p.m., at the Laguna Hills Civic Center Council Chamber

24th Annual Inner-Coastal & Watershed Cleanup Day

Saturday, September 18, 2021, 9:00a.m. – 12:00p.m., meeting at the Laguna Hills Community Center

Regular City Council Meeting

Tuesday, September 28, 2021, 7:00 p.m., at the Laguna Hills Civic Center Council Chamber



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for August 24, 2021, Regular Meeting

RECOMMENDATION: That the City Council approve the Minutes for the August 24, 2021, Regular Meeting.

ATTACHMENTS:

- 210824 CC Minutes

**CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY**

**REGULAR MEETING
MINUTES
Tuesday, August 24, 2021**

CLOSED SESSION - CONVENING AT 6:00 PM

CALL TO ORDER

The meeting was called to order at 6:00 p.m. by Mayor Pezold.

ROLL CALL OF CITY COUNCIL MEMBERS

Attendee Name	Title	Status	Arrived
Erica Pezold	Mayor	Present	
Don Sedgwick	Mayor Pro Tempore	Present	
Janine Heft	Council Member	Present	
Bill Hunt	Council Member	Remote	
Dave Wheeler	Council Member	Present	

ANNOUNCEMENT OF CLOSED SESSION ITEM(S)

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of California Government Code Section 54956.9: (1 potential case).

Based on existing facts and circumstances, City Council will convene into closed session to consider and determine whether to join pending litigation.

Name of Case: Orange County Council of Governments, a Joint Powers Agency, Petitioner, v. Gustavo Velasquez, Interim Director of Department of Housing and Community Development, California Department of Housing and Community Development, et al., Respondents, Southern California Association of Governments, a Joint Powers Agency, Real Party In Interest.

Los Angeles County Superior Court Case No.: 21STCP01970.

PUBLIC COMMENT ON CLOSED SESSION ITEM(S)

There were no public comments on the closed session item.

CONVENE INTO CLOSED SESSION

The City Council convened into Closed Session to consider the matter listed above.

RECONVENE TO CITY COUNCIL CHAMBER

RECESS

GENERAL BUSINESS - CONVENING AT 7:00 PM**CALL TO ORDER**

The meeting was called to order at 7:00 p.m. by Mayor Pezold.

INVOCATION: Rabbi Tzali Stillerman of Chabad Jewish Center of Aliso Viejo & Laguna Woods

PLEDGE OF ALLEGIANCE: Council Member Heft

ROLL CALL OF CITY COUNCIL MEMBERS

Attendee Name	Title	Status	Arrived
Erica Pezold	Mayor	Present	
Don Sedgwick	Mayor Pro Tempore	Present	
Janine Heft	Council Member	Present	
Bill Hunt	Council Member	Remote	
Dave Wheeler	Council Member	Present	

1. PRESENTATIONS AND PROCLAMATIONS**1.1 Twenty-Five Year Anniversary Recognition**

Recommendation: That the City Council adopt Resolution No. 2021-08-24-1 "A Resolution of the City Council of the City of Laguna Hills, California, recognizing Janice Reyes for twenty-five years of service to the City."

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Dave Wheeler, Council Member
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

CLOSED SESSION REPORT

City Attorney Simonian stated that the City Council convened into closed session this evening pursuant to the authorities listed on the Agenda with no reportable action taken.

2. SCHEDULE OF FUTURE EVENTS**2.1 Schedule of Future Events**

Recommendation: Interim City Manager/Director of Public Services Rosenfield announced the upcoming City events for the months of August and September 2021.

3. PUBLIC COMMENTS

The following individuals submitted electronic public comments on non-agendized items that were received, forwarded to the Council prior to the meeting, and announced into the record by Assistant City Clerk Lee:

Cindy Dalessandro submitted an email regarding crime and homelessness in the City.

Tom Pham submitted an email regarding an unsafe living environment in the City.

The following individuals addressed the City Council on non-agendized items:

Dawn Ford, a resident of Laguna Hills, expressed concerns regarding crime in the Via Lomas area and provided suggestions of things to be done.

Neel Patel, a resident of Laguna Hills, spoke regarding a public safety issue in the City and urged residents to attend City Council meetings to voice their concerns.

At Mayor Pezold's request, Interim City Manager/Director of Public Services Rosenfield provided information in response to the public comments received.

4. CONSENT CALENDAR

Motion to approve the Consent Calendar with Council Member Heft removing Item No. 4.5 and Item No. 4.10, Council Member Wheeler removing Item No. 4.9 and Mayor Pezold removing Item No. 4.6 and Item No. 4.8.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

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 July 13, 2021, Regular Meeting

Recommendation: That the City Council approve the Minutes for the July 13, 2021, Regular Meeting.

4.3 Approval of Minutes for July 22, 2021, Special Meeting

Recommendation: That the City Council approve the Minutes for the July 22, 2021, Special Meeting.

4.4 Ratification of August 24, 2021, Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the period from July 2, 2021, to August 12, 2021, in the amount of \$2,326,576.30.

4.7 Award of Professional Services Agreement to De Novo Planning Group for Development of the Local Hazard Mitigation Plan

Recommendation: That the City Council award a Professional Services Agreement to De Novo Planning Group for Development of the Local Hazard Mitigation Plan and authorize the Mayor to execute the Agreement.

ITEMS REMOVED FROM THE CONSENT CALENDAR

4.5 City Council Review and Confirm the Necessity for Continuing the Local Emergency Related to the On-Going Threat of the Novel COVID-19 Virus and Confirmation of the Interim Director of Emergency Services/Interim City Manager/Director of Public Services's Executive Orders Related Thereto

Council Member Heft removed Item No. 4.6 from the Consent Calendar to discuss the possibility of terminating the local emergency.

Interim City Manager/Director of Public Services Rosenfield responded to Council Member requests for additional information.

A motion to direct Staff to review the Executive Orders that remain in effect to determine if any are no longer applicable was made by Council Member Heft, seconded by Council Member Hunt.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Bill Hunt, Council Member
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

Recommendation: That the City Council: 1) Review and confirm the necessity for continuing the local emergency declared in response to the Novel COVID-19 virus; and 2) Confirm the Interim Director of Emergency Services/Interim City Manager Executive Orders related thereto.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Erica Pezold, Mayor
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

4.6 Progress Payment No. 1 for Laguna Hills Civic Center EV Charging Stations, CIP No. 505

Mayor Pezold removed Item No. 4.6 from the Consent Calendar to request additional information.

Interim City Manager/Director of Public Services Rosenfield responded to Council Member requests for additional information.

Recommendation: That the City Council approve Progress Payment No. 1, in the net amount of \$44,887.50, to GC Electric Solar Corporation, for Laguna Hills Civic Center EV Charging Stations Project, CIP No. 505.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

4.8 Agreement with Southern California Edison Company (SCE) for Conversion of Existing Street Lighting Fixtures to Light Emitting Diode (LED) Fixtures

Mayor Pezold removed Item No. 4.8 from the Consent Calendar to thank Mr. Patel for his efforts regarding the Item.

Interim City Manager/Director of Public Services Rosenfield responded to Council Member requests for additional information.

The following individual submitted electronic public comments on Item No. 4.8 that was received, forwarded to the Council prior to the meeting, and announced into the record by Assistant City Clerk Lee:

Robin Jochims, a resident of Laguna Hills, submitted an email encouraging the City Council to consider a mixture of 3000k and 4000k lights.

The following individual(s) addressed the City Council on this item:

Neel Patel, a resident of Laguna Hills, spoke in favor of the item and emphasized the important of cost saving options for the City.

Recommendation: That the City Council approve the "Schedule LS-1 Option E Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement" with SCE and authorize the Interim City Manager/Director of Public Services to execute the Agreement.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Don Sedgwick, Mayor Pro Tempore
SECONDER:	Janine Heft, Council Member
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

4.9 Award of a Public Works Construction Contract for the 2021-2022 Fiscal Year Citywide Pavement Rehabilitation Project, CIP No. 101-L, & Ridge Route Drive Pavement Resurfacing, CIP No. 188, to Petrochem Materials Innovation, LLC, in the Total Amount (Base Bid Plus Alternate Bid No. 1) of \$2,686,489.00

Council Member Wheeler removed Item No. 4.9 from the Consent Calendar to indicate that he would like to see a tally of any budgeted monies returned to the general fund when not used.

Interim City Manager/Director of Public Services Rosenfield responded to Council Member requests for additional information.

The following individual(s) addressed the City Council on this item:

Neel Patel, a resident of Laguna Hills, inquired about the warranty for the projects.

Recommendation: That the City Council: 1) Find that the Project is categorically exempt from the California Environmental Quality Act (CEQA), as a Class 1 Existing Facilities, pursuant to CEQA Guidelines, Section 15301; 2) Award the Public Works Construction Contract to the lowest responsive, responsible bidder, Petrochem Materials Innovation, LLC, of Carlsbad, California, in the base bid amount of \$2,470,937.00, plus the Alternate Bid No. 1 in the amount of \$215,552.00, for a grand total amount of \$2,686,489.00 and reject all other bids; and 3) Authorize the Mayor to execute the proposed Public Works Construction Contract.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Dave Wheeler, Council Member
SECONDER:	Janine Heft, Council Member
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

4.10 2021 Fourth of July Post Event Report

Council Member Heft removed Item No. 4.10 from the Consent Calendar to commend Staff on the success of the event.

Interim City Manager/Director of Public Services Rosenfield responded to Council Member requests for additional information.

Deputy City Manager/Community Services Director Reynolds responded to Council Member requests for additional information.

Recommendation: That the City Council receive and file the report.

RESULT:	RECEIVE AND FILE [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

5. PLANNING AGENCY

Mayor Pezold recessed the City Council Meeting, and acting in capacity as Chair, called the Regular Meeting of the Planning Agency of the City of Laguna Hills, California, to order at 8:17 p.m.

5.1. ROLL CALL OF PLANNING AGENCY MEMBERS

Attendee Name	Title	Status	Arrived
Erica Pezold	Chair	Present	
Don Sedgwick	Vice Chair	Present	
Janine Heft	Agency Member	Present	
Bill Hunt	Agency Member	Remote	
Dave Wheeler	Agency Member	Present	

5.2. PUBLIC COMMENTS

There were no Planning Agency public comments on non-agendized items.

5.3. APPROVAL OF MINUTES**5.3.1 Approval of Minutes for July 13, 2021, Regular Meeting**

Recommendation: That the Planning Agency approve the Minutes for the July 13, 2021, Regular Meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Agency Member
SECONDER:	Dave Wheeler, Agency Member
AYES:	Erica Pezold, Chair; Don Sedgwick, Vice Chair; Janine Heft, Agency Member; Bill Hunt, Agency Member; Dave Wheeler, Agency Member

5.4. ADMINISTRATIVE REPORTS

There were no Planning Agency administrative reports.

5.5. PLANNING AGENCY PUBLIC HEARINGS

There were no Planning Agency public hearings.

PLANNING AGENCY ADJOURNMENT

Chair Pezold adjourned the Planning Agency Meeting at 8:18 p.m. Mayor Pezold, Mayor Pro Tempore Sedgwick, Council Member Heft and Council Member Wheeler were present. Council Member Hunt was present via teleconference.

6. CITY COUNCIL PUBLIC HEARINGS

There were no City Council public hearings.

7. ADMINISTRATIVE REPORTS**7.1. City Manager****7.1.1 A Resolution in Support of Local Control of Land Use and Other Matters**

Interim City Manager/Director of Public Services Rosenfield reviewed the information provided in the staff report and responded to Council Member requests for additional information.

Recommendation: That the City Council adopt Resolution No. 2021-08-24-2: "A Resolution of the City Council of the City of Laguna Hills, California, opposing any legislation which erodes local control over land use, zoning, housing, and other local matters and supporting legislation which maintains and enhances local discretion."

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

7.1.2 Private Donation Policy for Public Improvements

Interim City Manager/Director of Public Services Rosenfield reviewed the information provided in the staff report and responded to Council Member requests for additional information.

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

Recommendation: That the City Council direct Staff to prepare a formal City Council Policy on the acceptance of private financial donations in support of Public Improvements.

A motion to approve Staff's recommendation without a donation plaque option was made by Council Member Wheeler, seconded by Mayor Pro Tempore Sedgwick.

A substitute motion to direct Staff to look into the policies of other cities was made by Mayor Pezold, seconded by Council Member Heft.

RESULT:	FAILED [2 TO 3]
MOVER:	Erica Pezold, Mayor
SECONDER:	Janine Heft, Council Member
AYES:	Erica Pezold, Mayor; Janine Heft, Council Member
NAYS:	Don Sedgwick, Mayor Pro Tempore; Bill Hunt, Council Member; Dave Wheeler, Council Member

Mayor Pezold called for a roll call vote on the main motion to approve Staff's recommendation without a donation plaque option as moved by Council Member Wheeler, seconded by Mayor Pro Tempore Sedgwick.

RESULT:	APPROVED [4 TO 1]
MOVER:	Dave Wheeler, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member
NAYS:	Erica Pezold, Mayor

7.1.3 Review of Development Agreement Negotiator Proposals Received for the Village at Laguna Hills Project

Interim City Manager/Director of Public Services Rosenfield reviewed the information provided in the staff report and responded to Council Member requests for additional information.

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

The following individual submitted electronic public comments on Item No. 4.8 that was received, forwarded to the Council prior to the meeting, and announced into the record by Assistant City Clerk Lee:

Robin Jochims, a resident of Laguna Hills, submitted an email thanking the City Council for taking another look at the proposed Development agreement and encouraged the City Council to interview all three qualified law firms to find the best fit for the City.

The following individual(s) addressed the City Council on this item:

Neel Patel, a resident of Laguna Hills, spoke in favor of interviewing all three qualified law firms.

Recommendation: That the City Council receive and review the Development Agreement Negotiator Services Proposals received regarding the proposed Village at Laguna Hills Project and establish dates for City Council interviews of Council-selected Proposing Firms.

A motion to direct Staff to schedule a Special Meeting of the City Council for the purpose of interviewing Armbruster, Goldsmith & Delvac, LLP and Stradling, Yocca, Carlson & Rauth, LLP was made by Council Member Heft, seconded by Mayor Pro Tempore Sedgwick.

RESULT:	APPROVED [3 TO 2]
MOVER:	Janine Heft, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member
NAYS:	Erica Pezold, Mayor; Dave Wheeler, Council Member

7.2. Deputy City Manager/Community Services Director

7.2.1 2021 Memorial Day Post Event Report and Resolution Authorizing Community Assistance Funding for the 3/5 Marine Support Committee

Community Services Superintendent Meehan reviewed the information provided in the staff report.

Recommendation: That the City Council: 1) Receive and file the report; and 2) Adopt Resolution No. 2021-08-24-3: "A Resolution of the City Council of the City of Laguna Hills, California, authorizing community assistance funding for the 3rd Battalion, 5th Marines, 1st Division Support Committee, a California non-profit corporation.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

7.2.2 Renovation of the "LH" on the Hill Monument

Community Services Superintendent Meehan reviewed the information provided in the staff report, provided a PowerPoint presentation and responded to Council Member requests for additional information.

Richard A. Fisher, President, Richard Fisher Associates, Landscape Architect, responded to Council Member requests for additional information.

Recommendation: That the City Council approve Option A for the renovation of the LH on the hill monument and direct Staff to prepare plans and specifications and a budget to implement the project.

A motion to approve Option A and direct Staff to return to the City Council with options regarding color, lighting, and design for approval was made by Mayor Pro Tempore Sedgwick, seconded by Mayor Pezold.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Don Sedgwick, Mayor Pro Tempore
SECONDER:	Erica Pezold, Mayor
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

7.2.3 Celebration of the City's 30TH Year of Incorporation

Deputy City Manager/Community Services Director Reynolds reviewed the information provided in the staff report and responded to Council Member requests for additional information.

Recommendation: That the City Council approve of recommended events and activities proposed to recognize the City's 30th Anniversary of Incorporation and provide further direction on additional events and activities desired.

A motion to approve the recommended events and activities proposed to recognize the City's 30th Anniversary of Incorporation and to direct an Ad Hoc Committee, consisting of Mayor Pezold and Council member Heft be convened, to provide Staff with further direction on additional events and activities desired was made by Council Member Wheeler, seconded by Council Member Heft.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Dave Wheeler, Council Member
SECONDER:	Janine Heft, Council Member
AYES:	Erica Pezold, Mayor, Don Sedgwick, Mayor Pro Tempore, Janine Heft, Council Member, Bill Hunt, Council Member, Dave Wheeler, Council Member

7.2.4 City Website/Social Media Presence Update and City YouTube Channel

Deputy City Manager/Community Services Director Reynolds reviewed the information provided in the staff report and responded to Council Member requests for additional information.

Recommendation: That the City Council receive and file this report regarding the City website and Social Media Channel update and further determine if it is desirable to establish a City YouTube Channel with the services of a Public Relations Firm to establish YouTube content that promotes the City of Laguna Hills.

A motion to receive and file the report and to defer action on the establishment of a City YouTube Channel to a duly formed Ad Hoc Committee consisting of Mayor Pezold and Council Member Wheeler was made by Mayor Pezold, seconded by Mayor Pro Tempore Sedgwick.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erica Pezold, Mayor
SECONDER:	Don Sedgwick, Mayor Pro Tempore
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

7.3. Finance Director

7.3.1 Utilization of State and Local Fiscal Recovery Funds as Authorized Under the American Rescue Plan Act

Recommendation: That the City Council appropriate the City's full allocation of Coronavirus-related State and Local Fiscal Recovery Funds, as authorized under the American Rescue Plan Act, for: 1) the provision of government services to the full extent of the reduction in revenue (revenue loss) due to the COVID-19 public health emergency; and 2) to

respond to the public health emergency caused by COVID-19 or its negative economic impacts.

RESULT:	TABLED [UNANIMOUS]
MOVER:	Janine Heft, Council Member
SECONDER:	Erica Pezold, Mayor
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

7.4. Deputy City Manager/City Clerk

7.4.1 Honoring Former City Council Member and Mayor Dore J. Gilbert, M.D.

Deputy City Manager/City Clerk Au-Yeung reviewed the information provided in the staff report.

Recommendation: That the City Council adjourn the August 24, 2021, City Council meeting in the memory of former City Council Member and Mayor Dore J. Gilbert, M.D.

A motion to direct Staff to also prepare a flag that has flown at City Hall and multiple memorial plaques for the family of Dore J. Gilbert, M.D.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erica Pezold, Mayor
SECONDER:	Janine Heft, Council Member
AYES:	Erica Pezold, Mayor; Don Sedgwick, Mayor Pro Tempore; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS

There were no matters agendized and presented by City Council Members.

9. CITY COUNCIL MEMBER COMMITTEE REPORTS

There were no City Council Member committee reports.

10. CITY COUNCIL MEMBER COMMENTS**Mayor Pro Tempore Sedgwick**

Mayor Pro Tempore Sedgwick requested clarification on if the Traffic Commission could be assigned the task of considering the traffic implications of the proposed The Village at Laguna Hills project. The City Attorney advised this could not be done.

Council Member Wheeler

Council Member Wheeler reported that the Orange County Public Libraries now has a stationary OC Memory Lab at Tustin Library for digitization of photos, documents, audiovisual recordings, and other formats.

Council Member Heft

Council Member Heft reported that the Laguna Hills High School has invited that City Council Members to attend the September 3, 2021, football game to participate in their Hawks Hometown Heroes presentation during halftime and suggested that Mayor Pro Tempore Sedgwick present a brief tribute to about Dore J. Gilbert, M.D.

Council Member Heft reported that on Sunday, August 22, 2021, the Laguna Hills Chamber of Commerce hosted their 1st Annual Laguna Hills Chamber Car Show.

Mayor Pezold

Mayor Pezold reported on the Laguna Hills Chamber of Commerce 1st Annual Laguna Hills Chamber Car Show.

Mayor Pezold requested that a discussion regarding agendizing a public safety report at every City Council meeting, until the end of the year, be agendized for the next City Council meeting and received a second from Council Member Wheeler.

Mayor Pezold requested that a discussion regarding the retaining of a professional planning firm to educate the City Council Members on future development issues and needs within the City be agendized for a future meeting and received a second from Council Member Hunt.

Council Member Hunt

Council Member Hunt commended Chief of Police Services Capt. Stiverson and the OC Sheriff's Department on the recent arrest of residential burglars operating within the City.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Pezold declared the meeting adjourned in memory of Dore J. Gilbert, M.D., former Council Member and Mayor, at 11:51 p.m.

Melissa Au-Yeung, City Clerk

ATTEST:

Erica Pezold, Mayor

Approved at meeting of September 14, 2021



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for September 1, 2021, Special Meeting

RECOMMENDATION: That the City Council approve the Minutes for the September 1, 2021, Special Meeting.

ATTACHMENTS:

- 210901 CC Special Minutes

**CITY OF LAGUNA HILLS
CITY COUNCIL**

**SPECIAL MEETING
MINUTES
Wednesday, September 1, 2021**

CALL TO ORDER

The meeting was called to order at 6:06 p.m. by Mayor Pezold.

PLEDGE OF ALLEGIANCE: Council Member Hunt

ROLL CALL OF CITY COUNCIL MEMBERS

Attendee Name	Title	Status	Arrived
Erica Pezold	Mayor	Present	
Don Sedgwick	Mayor Pro Tempore	Present	
Janine Heft	Council Member	Present	
Bill Hunt	Council Member	Present	
Dave Wheeler	Council Member	Present	

PUBLIC COMMENTS

There were no public comments on the special meeting item.

CITY COUNCIL INTERVIEWS OF SELECTED CANDIDATE FIRMS FOR DEVELOPMENT AGREEMENT NEGOTIATOR SERVICES REGARDING THE PROPOSED VILLAGE AT LAGUNA HILLS PROJECT

Recommendation: That the City Council: 1) Conduct interviews of the selected Candidate firms for Development Agreement Negotiator Services for the proposed Village at Laguna Hills project, 2) Select the best qualified firm for this engagement; and 3) Direct Staff to return to the City Council with a proposed retainer agreement.

William F. Delvac, Partner, Armbruster, Goldsmith and Delvac, LLP, provided an oral presentation and responded to Council Member requests for additional information.

Damon Mamalakis, Partner, Armbruster, Goldsmith and Delvac, LLP, responded to Council Member requests for additional information.

Thomas P. Clark, Jr., Shareholder, Stradling, Yocca, Carlson, and Rauth, provided an oral presentation and responded to Council Member requests for additional information.

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

Interim City Manager Rosenfield responded to Council Member requests for additional information.

Motion to select Stradling, Yocca, Carlson, and Rauth to serve as special counsel to perform development agreement negotiator services for the proposed Village at Laguna Hills project and to direct Staff to work with the firm to prepare a retainer agreement to be brought before the City Council as soon as possible for review and approval.

RESULT:	APPROVED [4 TO 1]
MOVER:	Erica Pezold, Mayor
SECONDER:	Janine Heft, Council Member
AYES:	Erica Pezold, Mayor; Janine Heft, Council Member; Bill Hunt, Council Member; Dave Wheeler, Council Member
NAYS:	Don Sedgwick, Mayor Pro Tempore

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Pezold declared the meeting adjourned at 8:05p.m.

Melissa Au-Yeung, City Clerk

ATTEST:

Erica Pezold, Mayor

Approved at meeting of September 14, 2021



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Janice Reyes
Finance Director
ISSUE: Ratification of September 14, 2021, Warrant Register

RECOMMENDATION: That the City Council ratify the accompanying Warrant Register for the period from August 13, 2021, to September 2, 2021, in the amount of \$1,072,894.73.

SUMMARY:

The City issues accounts payable disbursements on a regular basis and presents it to City Council for ratification at its next regularly scheduled City Council Meeting. The attached Warrant Register containing checks and electronic funds transfers for the period from August 13, 2021, to September 2, 2021, is being presented for ratification by the City Council. Payments have been reviewed and approved by the appropriate departmental staff. The Director of Finance certifies to the accuracy of the attached register and to the availability of monies for payment thereof.

ATTACHMENTS:

- Warrant Register - September 14, 2021
- Payables Detail Report - September 14, 2021



City of Laguna Hills, CA

Warrant Register - September 14, 2021

By Check Number

Date Range: 08/13/2021 - 09/02/2021

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Regular				
8819631	C-1004	DISTRICT ATTORNEY'S OFFICE COUNTY OF ORANGE	08/19/2021	551.16
8819632	H-0963	HB STAFFING	08/19/2021	1,932.00
8819633	M-1513	MEEHAN, DANIEL	08/19/2021	47.50
8819634	S-1902	SAN DIEGO GAS & ELECTRIC	08/19/2021	18,356.64
8819635	A-0359	ANDERSON PENNA PARTNERS, INC.	08/19/2021	22,256.50
8819636	A-0365	AT&T - CALNET 3	08/19/2021	267.43
8819637	C-1179	CANON SOLUTIONS AMERICA	08/19/2021	67.38
8819638	C-0023	COX COMMUNICATION	08/19/2021	976.91
8819639	C-1122	CROSTOWN ELECTRICAL & DATA, INC.	08/19/2021	9,569.83
8819640	D-0561	DOCU-TRUST	08/19/2021	100.00
8819641	H-0963	HB STAFFING	08/19/2021	3,544.80
8819642	H-0960	HR GREEN PACIFIC, INC.	08/19/2021	26,436.00
8819643	I-0960	IRV SEAVER MOTORCYCLES	08/19/2021	354.44
8819644	J-1071	JCTEES.COM CORPORATION	08/19/2021	360.27
8819645	K-1193	KOSMONT COMPANIES	08/19/2021	6,958.90
8819646	L-1376	LONG BEACH BMW MOTORCYCLES	08/19/2021	545.42
8819647	M-1513	MEEHAN, DANIEL	08/19/2021	100.21
8819648	M-1388	MOBILE MINI, INC.	08/19/2021	817.26
8819649	O-1599	ORANGE COUNTY JUMPERS, LLC	08/19/2021	727.00
8819650	O-1575	ORANGE COUNTY REGISTER-FREEDOM CA. NEWSPAPER PARTNERSHIP	08/19/2021	2,238.00
8819651	C-1003	PARKING VIOLATIONS OC TREASURER-TAX COLLECTOR	08/19/2021	1,037.50
8819652	P-1834	PLACEWORKS, INC.	08/19/2021	418.20
8819653	P-1840	PVP COMMUNICATIONS	08/19/2021	1,447.09
8819654	R-1830	RALPHS GROCERY COMPANY	08/19/2021	17.57
8819655	R-1855	RICHARD FISHER ASSOCIATES	08/19/2021	506.74
8819656	R-1946	RK ENGINEERING GROUP, INC.	08/19/2021	7,500.00
8819657	R-1967	RUSSELL, RICHARD WYATT	08/19/2021	840.00
8819658	S-1902	SAN DIEGO GAS & ELECTRIC	08/19/2021	14,919.98
8819659	S-2250	SPARKLETTS	08/19/2021	108.32
8819660	T-2042	TRAUMA INTERVENTION PROGRAMS, INC	08/19/2021	910.32
8819661	V-2254	VITUITY - URGENT CARE SERVICES, PC	08/19/2021	599.00
8819662	A-0138	ALL CITY MANAGEMENT, INC.	08/26/2021	1,909.32
8819663	S-1904	SOUTHERN CALIFORNIA EDISON	08/26/2021	4,327.83
8819664	S-1904	SOUTHERN CALIFORNIA EDISON	08/26/2021	13,015.07
8819665	A-0377	ACTION WELDING CORP	08/26/2021	725.00
8819666	C-0333	CALIF PARK & REC SOCIETY, INC.	08/26/2021	145.00
8819667	C-1133	CALIFORNIA YELLOW CAB	08/26/2021	254.00
8819668	C-1177	CANON FINANCIAL SERVICES, INC.	08/26/2021	851.52
8819669	C-1139	COMPLETE OFFICE OF CALIFORNIA	08/26/2021	95.20
8819670	C-0023	COX COMMUNICATION	08/26/2021	443.91
8819671	D-0575	DOG WASTE DEPOT	08/26/2021	538.64
8819672	E-0504	EL TORO WATER DISTRICT	08/26/2021	17,282.20
8819673	Z-CS-0368	GARCIA, ALBERTO	08/26/2021	500.00
8819674	H-0804	HINDERLITER, DE LLAMAS & ASSOC., INC.	08/26/2021	3,145.18
8819675	H-0934	HOME DEPOT	08/26/2021	1,772.77
8819676	I-0920	ICMA	08/26/2021	200.00
8819677	J-1088	J THAYER COMPANY, INC	08/26/2021	157.26
8819678	J-1071	JCTEES.COM CORPORATION	08/26/2021	200.63
8819679	G-0709	JOE A. GONSALVES & SON	08/26/2021	2,900.00
8819680	M-1388	MOBILE MINI, INC.	08/26/2021	300.77
8819681	M-1302	MOULTON NIGUEL WATER DISTRICT	08/26/2021	6,389.54
8819682	N-1474	NIEVES LANDSCAPE, INC.	08/26/2021	932.13
8819683	O-1528	OCTA	08/26/2021	641.00

Attachment: Warrant Register - September 14, 2021 (2567 : Warrant Register, September 14, 2021)

Warrant Register - September 14, 2021

Check Number	Vendor Number	Vendor Name
8819684	P-1824	PACKET FUSION, INC.
8819685	P-1834	PLACEWORKS, INC.
8819686	R-1800	RALPH ANDERSEN & ASSOCIATES
8819687	R-1977	RJ ELECTRIC
8819688	S-1904	SOUTHERN CALIFORNIA EDISON
8819689	S-1904	SOUTHERN CALIFORNIA EDISON
8819690	S-2295	SOUTHERN COMPUTER WAREHOUSE
8819691	S-2250	SPARKLETTS
8819692	S-1980	STATE DEPARTMENT OF JUSTICE ACCOUNTING OFFICE
8819693	R-1801	WOODRUFF, SPRADLIN & SMART
8819694	W-2450	WEX BANK
8819695	C-1122	CROSTOWN ELECTRICAL & DATA, INC.
8819696	D-0541	DIAMOND ENVIRONMENTAL SERVICES
8819697	D-0561	DOCU-TRUST
8819698	G-0862	GRANICUS
8819699	G-0865	GREENBELT NURSERY INC. dba GREENBELT GROWERS
8819700	H-0829	HARTZOG & CRABILL, INC.
8819701	I-0960	IRV SEAVER MOTORCYCLES
8819702	J-1057	JAMEY CLARK, INC.
8819703	L-1362	LAGUNA HILLS TEAM DARK HORSE
8819704	M-1600	MERCY HOUSE LIVING CENTERS, INC.
8819705	N-1474	NIEVES LANDSCAPE, INC.
8819706	O-1546	OFFICE SOLUTIONS
8819707	R-1977	RJ ELECTRIC
8819708	S-2194	SECURE LIVE SCAN
8819709	S-1911	SOUTHERN CAL ASSOC OF GOVTS
8819710	U-2165	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA
8819711	V-2251	VIZUAL SYMPHONY, INC.
8819712	W-2337	WEST COAST ARBORISTS, INC.
8819713	W-2448	WEST GATE CONTRACTOR

Date Range: 08/13/2021 - 09/02/2021

Payment Date	Payment Amount
08/26/2021	62.59
08/26/2021	2,646.90
08/26/2021	3,500.00
08/26/2021	180.00
08/26/2021	14,233.82
08/26/2021	75.29
08/26/2021	75.24
08/26/2021	119.83
08/26/2021	96.00
08/26/2021	47,682.27
08/27/2021	483.66
09/02/2021	3,644.70
09/02/2021	623.50
09/02/2021	100.00
09/02/2021	4,853.52
09/02/2021	2,250.00
09/02/2021	1,900.00
09/02/2021	49.85
09/02/2021	720.00
09/02/2021	3,750.00
09/02/2021	3,502.55
09/02/2021	142.11
09/02/2021	182.81
09/02/2021	741.00
09/02/2021	25.00
09/02/2021	3,512.00
09/02/2021	164.49
09/02/2021	12,932.90
09/02/2021	12,384.00
09/02/2021	9,500.00
Total Regular:	311,373.37

Attachment: Warrant Register - September 14, 2021 (2567 : Warrant Register, September 14, 2021)

Warrant Register - September 14, 2021

Date Range: 08/13/2021 - 09/02/2021

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Bank Draft				
DFT0001703	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	59.25
DFT0001704	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	4,462.37
DFT0001705	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	2,274.74
DFT0001706	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	73.56
DFT0001707	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	3,038.76
DFT0001708	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	1,047.97
DFT0001709	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	346.75
DFT0001710	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	78.99
DFT0001711	B-0276	BANK OF AMERICA VISA CARD	08/16/2021	1,386.70
DFT0001719	C-1007	OCSD LAW ENFORCEMENT CONTRACT, OC TREASURER-TAX	08/13/2021	748,752.27
Total Bank Draft:				761,521.36

Bank Code AP Bank Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	110	83	0.00	311,373.37
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	10	10	0.00	761,521.36
EFT's	0	0	0.00	0.00
	120	93	0.00	1,072,894.73

Attachment: Warrant Register - September 14, 2021 (2567 : Warrant Register, September 14, 2021)

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	110	83	0.00	311,373.37
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	10	10	0.00	761,521.36
EFT's	0	0	0.00	0.00
	120	93	0.00	1,072,894.73

Fund Summary

Fund	Name	Period	Amount
998	POOL	8/2021	1,011,916.30
998	POOL	9/2021	60,978.43
			1,072,894.73

Attachment: Warrant Register - September 14, 2021 (2567 : Warrant Register, September 14, 2021)



City of Laguna Hills, CA

Payables Detail Report

By Fund

Payment Dates 08/13/2021 - 09/02/2021

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
Fund: 100 - GENERAL FUND					
08/13/2021	OCSO LAW ENFORCEMENT	SH 59646	Law Enforcement Services, Aug '21	100-420-720800	748,752.27
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMDEV	Departmental Expenditure, Jul '21	100-225-622000	73.56
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMDEV a	Departmental Expenditure, Jul '21	100-000-202000	78.99
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-195-720050	3,051.84
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-195-940000	287.74
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-310-613100	10.00
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-310-646100	183.16
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-310-695500	707.20
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-310-695501	212.44
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS	Departmental Expenditure, Jul '21	100-310-695502	9.99
08/16/2021	BANK OF AMERICA VISA CARD	072021 COMSVCS a	Departmental Expenditure, Jul '21	100-000-202000	346.75
08/16/2021	BANK OF AMERICA VISA CARD	072021 GENGOV2	Departmental Expenditure, Jul '21	100-155-626000	59.25
08/16/2021	BANK OF AMERICA VISA CARD	072021 GENGOV2 a	Departmental Expenditure, Jul '21	100-000-202000	1,047.97
08/16/2021	BANK OF AMERICA VISA CARD	072021 POLSVCS	Departmental Expenditure, Jul '21	100-420-611000	49.00
08/16/2021	BANK OF AMERICA VISA CARD	072021 POLSVCS	Departmental Expenditure, Jul '21	100-420-622000	493.50
08/16/2021	BANK OF AMERICA VISA CARD	072021 POLSVCS	Departmental Expenditure, Jul '21	100-420-695000	2,496.26
08/16/2021	BANK OF AMERICA VISA CARD	072021 POLSVCS a	Departmental Expenditure, Jul '21	100-000-202000	1,386.70
08/16/2021	BANK OF AMERICA VISA CARD	072021 PUBSVCS	Departmental Expenditure, Jul '21	100-155-610000	700.00
08/16/2021	BANK OF AMERICA VISA CARD	072021 PUBSVCS	Departmental Expenditure, Jul '21	100-155-612000	1,070.00
08/16/2021	BANK OF AMERICA VISA CARD	072021 PUBSVCS	Departmental Expenditure, Jul '21	100-355-611000	395.00
08/19/2021	AT&T - CALNET 3	000016853634	Traffic Signal, Public Services, Jul '21	100-356-630000	23.21
08/19/2021	AT&T - CALNET 3	000016859188	Alarm, Com Ctr & City Hall Lines, Aug '21	100-195-630000	154.24
08/19/2021	AT&T - CALNET 3	000016859188	Alarm, Com Ctr & City Hall Lines, Aug '21	100-310-630100	89.98
08/19/2021	ORANGE COUNTY REGISTER-FREEDOM CA. NEWSPAPER	0000519597	Legal Advertising, Jul '21	100-155-624001	2,238.00
08/19/2021	DOCU-TRUST	043734	Offsite Data Storage, Jul '21	100-155-700030	100.00
08/19/2021	RALPHS GROCERY COMPANY	0721125115_21892595	Operating Supplies, Comm Svcs, Aug '21	100-310-622005	17.57
08/19/2021	COX COMMUNICATION	080521	T-1 Line, Aug '21	100-195-630000	892.91
08/19/2021	COX COMMUNICATION	080621	Traffic Signal, Aug '21	100-195-630000	84.00
08/19/2021	SAN DIEGO GAS & ELECTRIC	081621	Street Lights, Traffic Control, Com Ctr, Jun '21	100-310-631100	8,223.74
08/19/2021	SAN DIEGO GAS & ELECTRIC	081621	Street Lights, Traffic Control, Com Ctr, Jun '21	100-355-631000	8,452.46
08/19/2021	SAN DIEGO GAS & ELECTRIC	081621	Street Lights, Traffic Control, Com Ctr, Jun '21	100-356-631400	1,680.44
08/19/2021	SAN DIEGO GAS & ELECTRIC	081621a	Street Lights, Traffic Control, Jul '21	100-355-631000	24.55
08/19/2021	SAN DIEGO GAS & ELECTRIC	081621a	Street Lights, Traffic Control, Jul '21	100-356-631400	11,531.40
08/19/2021	SAN DIEGO GAS & ELECTRIC	081621a	Street Lights, Traffic Control, Jul '21	100-356-631900	3,364.03
08/19/2021	RUSSELL, RICHARD WYATT	081721	Contract Instructor Services, Tennis	100-310-721500	840.00
08/19/2021	MEEHAN, DANIEL	081821	Petty Cash Replenishment, Community Services	100-310-613100	100.21
08/19/2021	MEEHAN, DANIEL	081821a	Petty Cash Replenishment, Community Services	100-310-611000	47.50
08/19/2021	ANDERSON PENNA PARTNERS, INC.	116213	Inspection Services, Jul '21	100-356-700255	22,256.50
08/19/2021	PVP COMMUNICATIONS	129728	Operating Supplies, Aug '21	100-420-622000	1,447.09
08/19/2021	HR GREEN PACIFIC, INC.	145499	Building Services, Community Development, Jul '21	100-225-700000	12,545.00
08/19/2021	HR GREEN PACIFIC, INC.	145500	Plan Check, Community Development, Jul '21	100-225-700000	13,891.00
08/19/2021	IRV SEAVER MOTORCYCLES	20211779	Motorcycle Maintenance, Police Svcs, Aug '21	100-420-646100	354.44

Attachment: Payables Detail Report - September 14, 2021 (2567 : Warrant Register, September 14, 2021)

Payables Detail Report

Payment Dates: 08/13/2021 - 09/02/2021

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
08/19/2021	DISTRICT ATTORNEY'S OFFICE	2072	Code Violations, Apr - Jun '21	100-420-720000	551.16
08/19/2021	COUNTY OF ORANGE				
08/19/2021	RK ENGINEERING GROUP, INC.	2107007	Engineering Services, Jul '21	100-356-700101	7,500.00
08/19/2021	TRAUMA INTERVENTION	2210	Community Program, TIP, 7/1/21 - 9/30/21	100-420-720821	910.32
08/19/2021	PROGRAMES, INC				
08/19/2021	VITUTY - URGENT CARE SERVICES,	322K20515	Recruitment, Workers Comp, Jul '21	100-195-617000	245.00
08/19/2021	VITUTY - URGENT CARE SERVICES,	322K20515	Recruitment, Workers Comp, Jul '21	100-310-540000	354.00
08/19/2021	CROSSTOWN ELECTRICAL & DATA,	3628 - 3660	Traffic Signal Maintenance, Jul '21	100-356-720420	5,925.13
08/19/2021	CANON SOLUTIONS AMERICA	4036995354	Copier Usage, Community Services, Jul '21	100-195-641200	67.38
08/19/2021	LONG BEACH BMW MOTORCYCLES	41246	Motorcycle Maintenance, Police Services, Aug '21	100-420-646100	545.42
08/19/2021	SPARKLETTS	4228482 081321	Operating Supplies, Aug '21	100-195-622000	108.32
08/19/2021	CROSSTOWN ELECTRICAL & DATA,	4296-21-007	Traffic Signal Maintenance, Jul '21	100-356-720420	3,644.70
08/19/2021	RICHARD FISHER ASSOCIATES	4423R	Professional Services, CIP 403, Jul '21	100-600-790600	506.74
08/19/2021	ORANGE COUNTY JUMPERS, LLC	68110	National Night Out, Aug '21	100-420-695000	727.00
08/19/2021	JCTEES.COM CORPORATION	7406	Operating Supplies, Community Services, Aug '21	100-310-622100	360.27
08/19/2021	MOBILE MINI, INC.	9011242177	Storage Rental, Community Center, 8/4 - 8/31/21	100-310-641000	734.29
08/19/2021	MOBILE MINI, INC.	9011252478	Storage Rental, Community Center, 7/13 - 8/9/21	100-310-641000	82.97
08/19/2021	HB STAFFING	910555379	Temporary Staffing, 6/21/21 - 7/1/21	100-225-512000	1,125.60
08/19/2021	HB STAFFING	910555511	Temporary Staffing, 6/28/21 - 7/4/21	100-225-512000	806.40
08/19/2021	HB STAFFING	910555511a	Temporary Staffing, 7/1/21 - 7/4/21	100-225-512000	268.80
08/19/2021	HB STAFFING	910555741	Temporary Staffing, 7/5/21 - 7/11/21	100-225-512000	537.60
08/19/2021	HB STAFFING	910555975	Temporary Staffing, 7/19/21 - 07/25/21	100-225-512000	1,125.60
08/19/2021	HB STAFFING	910556088	Temporary Staffing, 7/26/21 - 8/1/21	100-225-512000	1,075.20
08/19/2021	HB STAFFING	910556207	Temporary Staffing, 8/2/21 - 8/8/21	100-225-512000	537.60
08/19/2021	PARKING VIOLATIONS OC	JUL 21	Parking Fee Surcharge, Jul '21	100-420-720823	1,037.50
08/26/2021	TREASURER-TAX COLLECTOR				
08/26/2021	CALIF PARK & REC SOCIETY, INC.	081321	Membership, Community Services, T-1 Line, Aug '21	100-310-610000	145.00
08/26/2021	COX COMMUNICATION	081721	Street Lights, Traffic Control, Jul '21	100-195-630000	443.91
08/26/2021	SOUTHERN CALIFORNIA EDISON	082021 - Acct #70007600	Street Lights, Traffic Control, Jun '21	100-356-631400	75.29
08/26/2021	SOUTHERN CALIFORNIA EDISON	082321 - Acct #70016247	Street Lights, Traffic Control, Jun '21	100-356-631900	4,327.83
08/26/2021	SOUTHERN CALIFORNIA EDISON	082421 - Acct #70023450	Street Lights, Traffic Control, Jun '21	100-355-631000	141.43
08/26/2021	SOUTHERN CALIFORNIA EDISON	082421 - Acct #70023450	Street Lights, Traffic Control, Jun '21	100-356-631400	12,873.64
08/26/2021	SOUTHERN CALIFORNIA EDISON	082421A - Acct #70023450	Street Lights, Traffic Control, Jul '21	100-355-631000	452.13
08/26/2021	SOUTHERN CALIFORNIA EDISON	082421A - Acct #70023450	Street Lights, Traffic Control, Jul '21	100-356-631400	13,781.69
08/26/2021	MOULTON NIGUEL WATER DISTRICT	082521	Water Usage, Public Services & Com Ctr, Jul '21	100-310-635100	684.79
08/26/2021	MOULTON NIGUEL WATER DISTRICT	082521	Water Usage, Public Services & Com Ctr, Jul '21	100-355-635000	5,704.75
08/26/2021	EL TORO WATER DISTRICT	082521	Water Usage, Public Services, Aug	100-355-635000	17,282.20
08/26/2021	SPARKLETTS	12194330 081821	Operating Supplies, Comm Ctr, Jul	100-310-622005	119.83
08/26/2021	J THAYER COMPANY, INC	1526905-0	Office Supplies, Comm Ctr, Aug '21	100-310-620500	102.36
08/26/2021	J THAYER COMPANY, INC	1542738-0	Operating Supplies, Comm Ctr, Aug	100-310-622005	54.90
08/26/2021	JOE A. GONSALVES & SON	159235	Legislative Services, Sep '21	100-155-700020	2,900.00
08/26/2021	ACTION WELDING CORP	16119	Parks Contract Repair, Aug '21	100-355-720701	725.00
08/26/2021	COMPLETE OFFICE OF CALIFORNIA	2588887-0	Computer Supplies, Aug '21	100-195-621000	95.20
08/26/2021	CANON FINANCIAL SERVICES, INC.	27214026	Lease - Copier, Comm Ctr, 8/1/21 - 8/31/21	100-195-641200	279.86
08/26/2021	CANON FINANCIAL SERVICES, INC.	27214027	Lease - Copier, City Hall, 8/1/21 - 8/31/21	100-195-641200	253.84
08/26/2021	CANON FINANCIAL SERVICES, INC.	27214028	Lease - Copier, New Admin Copier, 8/1/21 - 8/31/21	100-195-641200	317.82
08/26/2021	DOG WASTE DEPOT	422434	Operating Supplies, Jul '21	100-355-622000	538.64
08/26/2021	ICMA	424819-082321	Membership, DR	100-310-610000	200.00
08/26/2021	HOME DEPOT	4371722	Program Expense, Build A Fort, Jul	100-310-695501	255.00
08/26/2021	STATE DEPARTMENT OF JUSTICE	525421	Pre-employment Fingerprinting, Jul	100-195-617000	96.00
08/26/2021	ACCOUNTING OFFICE				

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Payables Detail Report

Payment Dates: 08/13/2021 - 09/02/2021

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
08/26/2021	HOME DEPOT	5970164	Program Expense, Build A Fort, Jul	100-310-695501	1,074.99
08/26/2021	RJ ELECTRIC	59948	Parks Contract Repair, Aug '21	100-355-720701	180.00
08/26/2021	WOODRUFF, SPRADLIN & SMART	69033 - 69034	Professional Services Legal, Jul '21	100-155-700010	38,234.85
08/26/2021	WOODRUFF, SPRADLIN & SMART	69033 - 69034	Professional Services Legal, Jul '21	100-155-700011	88.00
08/26/2021	NIEVES LANDSCAPE, INC.	70292	Monthly and Misc Landscape, Aug	100-355-720700	300.00
08/26/2021	NIEVES LANDSCAPE, INC.	70293	Monthly and Misc Landscape, Aug	100-355-720700	115.00
08/26/2021	NIEVES LANDSCAPE, INC.	70313	Monthly and Misc Landscape, Aug	100-355-720700	98.09
08/26/2021	NIEVES LANDSCAPE, INC.	70314	Monthly and Misc Landscape, Aug	100-355-720700	118.33
08/26/2021	NIEVES LANDSCAPE, INC.	70315	Monthly and Misc Landscape, Aug	100-355-720700	214.59
08/26/2021	NIEVES LANDSCAPE, INC.	70316	Monthly and Misc Landscape, Aug	100-355-720700	86.12
08/26/2021	ALL CITY MANAGEMENT, INC.	71112	Crossing Guard Services, 5/30/21 - 6/12/21	100-420-720822	1,909.32
08/26/2021	HOME DEPOT	7152918	Program Expense, Build A Fort, Jul	100-310-695501	362.89
08/26/2021	JCTEES.COM CORPORATION	7445	Rooted Campaign Event, Aug '21	100-310-695500	200.63
08/26/2021	PLACEWORKS, INC.	75981	Professional Services, USE-0055-2021, Jul '21	100-000-223000	2,646.90
08/26/2021	PLACEWORKS, INC.	75981	Professional Services, USE-0055-2021, Jul '21	100-000-452000	(2,646.90)
08/26/2021	PLACEWORKS, INC.	75981	Professional Services, USE-0055-2021, Jul '21	100-225-700201	2,646.90
08/26/2021	HOME DEPOT	8641991	Program Expense, Build A Fort, Aug	100-310-695501	79.89
08/26/2021	MOBILE MINI, INC.	9011279183	Storage Rental, Community Center, 8/10 - 9/6/21	100-310-641000	82.97
08/26/2021	MOBILE MINI, INC.	9011290727	Storage Rental, Community Center, 8/11 - 9/7/21	100-310-641000	217.80
08/26/2021	OCTA	AR142713	Landscape Maintenance, Annual Lease OC-47	100-355-720700	641.00
08/26/2021	GARCIA, ALBERTO	FRD-0249	Refund, Facility Deposit, R #1034367.002	100-000-222000	500.00
08/26/2021	SOUTHERN COMPUTER WAREHOUSE	IN-000702858	Supplies, Program Services, Jul '21	100-310-622500	66.76
08/26/2021	SOUTHERN COMPUTER WAREHOUSE	IN-000703994	Computer Supplies, Aug '21	100-195-940000	8.48
08/26/2021	RALPH ANDERSEN & ASSOCIATES	INV-03298	Professional Services, Jul '21	100-155-700000	3,500.00
08/26/2021	HINDERLITER, DE LLAMAS & ASSOC., INC.	SIN010912	Sales Tax 3rdQtr , Audit Sales 1st Qtr	100-155-700052	3,145.18
08/26/2021	PACKET FUSION, INC.	SLSI-1007094	Phone Equipment, Aug '21	100-195-646000	62.59
08/27/2021	WEX BANK	72991246 POLSVCS	Vehicle Fuel, Jul '21	100-420-613100	132.42
08/27/2021	WEX BANK	72991375 COMDEV	Vehicle Fuel, Jul '21	100-225-613100	70.16
08/27/2021	WEX BANK	72991376 PUBWKS	Vehicle Fuel, Jul '21	100-355-613100	281.08
09/02/2021	DIAMOND ENVIRONMENTAL	0003239461	July 4th Expense, Jul '21	100-310-695508	623.50
09/02/2021	DOCU-TRUST	043992	Offsite Data Storage, Aug '21	100-155-700030	100.00
09/02/2021	SOUTHERN CAL ASSOC OF GOVTS	082521	Membership Dues, FY 21/22	100-155-610005	3,512.00
09/02/2021	LAGUNA HILLS TEAM DARK HORSE	082721	Community Assistance, 3/5	100-000-451600	3,750.00
09/02/2021	SECURE LIVE SCAN	11426	Pre-employment Fingerprinting, Aug '21	100-195-617000	25.00
09/02/2021	VIZUAL SYMPHONY, INC.	13969	AV Upgrade, Jul '21	100-195-940000	5,000.00
09/02/2021	VIZUAL SYMPHONY, INC.	13969	AV Upgrade, Jul '21	100-310-645500	7,932.90
09/02/2021	GRANICUS	141156	Agenda Software, 7/1/21 - 9/30/21	100-195-720050	4,853.52
09/02/2021	WEST COAST ARBORISTS, INC.	176145	Tree Trimming Services, Aug '21	100-355-720702	12,384.00
09/02/2021	IRV SEAVER MOTORCYCLES	20211850	Motorcycle Maintenance, Police Svcs, Aug '21	100-420-646100	49.85
09/02/2021	HARTZOG & CRABILL, INC.	21-0322	Traffic Signal Mgmt Services, Jul-Aug '21	100-356-700101	1,900.00
09/02/2021	WEST GATE CONTRACTOR	28	Graffiti Removal, Public Services, Aug '21	100-355-720500	9,500.00
09/02/2021	GREENBELT NURSERY INC. dba	38939	Landscape Maintenance, 50%	100-355-720700	2,250.00
09/02/2021	GREENBELT GROWERS				
09/02/2021	CROSSTOWN ELECTRICAL & DATA,	4296-21-008	Traffic Signal Maintenance, Aug '21	100-356-720420	3,644.70
09/02/2021	MERCY HOUSE LIVING CENTERS, INC.	5003-21-07	Contract Services - Homelessness, Jul '21	100-310-720302	3,502.55
09/02/2021	RJ ELECTRIC	59962	Parks Contract Repair, Aug '21	100-355-720701	741.00
09/02/2021	NIEVES LANDSCAPE, INC.	70343	Monthly and Misc Landscape, Aug	100-355-720700	142.11
09/02/2021	JAMEY CLARK, INC.	72699	Park Repairs, Public Services, Aug '21	100-355-720701	180.00

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Payables Detail Report

Payment Dates: 08/13/2021 - 09/02/2021

Payment Date	Vendor Name	Payable Number	Description (Payable)	Account Number	Amount
09/02/2021	JAMEY CLARK, INC.	72705	Park Repairs, Public Services, Aug '21	100-355-720701	540.00
09/02/2021	OFFICE SOLUTIONS	I-01907560	Office Supplies, Aug '21	100-195-620000	182.81
Fund 100 - GENERAL FUND Total:					1,055,629.98
Fund: 101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT					
08/19/2021	KOSMONT COMPANIES	1911.5-021	Prof Services, Village at Laguna Hills, Jul '21	101-000-223000	6,958.90
08/19/2021	KOSMONT COMPANIES	1911.5-021	Prof Services, Village at Laguna Hills, Jul '21	101-000-450000	(6,958.90)
08/19/2021	KOSMONT COMPANIES	1911.5-021	Prof Services, Village at Laguna Hills, Jul '21	101-225-700000	6,958.90
08/19/2021	PLACEWORKS, INC.	75984	Prof Services, Village at LH Expenses, Jul '21	101-000-223000	418.20
08/19/2021	PLACEWORKS, INC.	75984	Prof Services, Village at LH Expenses, Jul '21	101-000-450000	(418.20)
08/19/2021	PLACEWORKS, INC.	75984	Prof Services, Village at LH Expenses, Jul '21	101-225-700200	418.20
08/26/2021	WOODRUFF, SPRADLIN & SMART	69033 - 69034	Professional Services Legal, Jul '21	101-000-223000	9,359.42
08/26/2021	WOODRUFF, SPRADLIN & SMART	69033 - 69034	Professional Services Legal, Jul '21	101-000-450000	(9,359.42)
08/26/2021	WOODRUFF, SPRADLIN & SMART	69033 - 69034	Professional Services Legal, Jul '21	101-225-700012	9,359.42
Fund 101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT Total:					16,736.52
Fund: 212 - MEASURE M					
08/16/2021	BANK OF AMERICA VISA CARD	072021 PUBSVCS	Departmental Expenditure, Jul '21	212-355-720400	109.74
09/02/2021	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA	820210374	Street Maintenance, Aug '21	212-355-720400	107.35
09/02/2021	UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA	dsb20204331	Street Maintenance, Aug '21	212-355-720400	57.14
Fund 212 - MEASURE M Total:					274.23
Fund: 221 - SENIOR MOBILITY PROGRAM					
08/26/2021	CALIFORNIA YELLOW CAB	7406021	Senior Mobility Program, Jul '21	221-310-720000	254.00
Fund 221 - SENIOR MOBILITY PROGRAM Total:					254.00
Fund: 600 - CAPITAL IMPROVEMENT PROJECT					
08/19/2021	RICHARD FISHER ASSOCIATES	4423R	Professional Services, CIP 403, Jul '21	600-000-490100	(506.74)
08/19/2021	RICHARD FISHER ASSOCIATES	4423R	Professional Services, CIP 403, Jul '21	600-254-950403	506.74
Fund 600 - CAPITAL IMPROVEMENT PROJECT Total:					-
Grand Total:					1,072,894.73

Attachment: Payables Detail Report - September 14, 2021 (2567 : Warrant Register, September 14, 2021)

Report Summary

Fund Summary

Fund	Expense Amount	Payment Amount
100 - GENERAL FUND	1,055,629.98	1,055,629.98
101 - MGP DEVELOPMENT APPLICATION - VALH PROJECT	16,736.52	16,736.52
212 - MEASURE M	274.23	274.23
221 - SENIOR MOBILITY PROGRAM	254.00	254.00
600 - CAPITAL IMPROVEMENT PROJECT	-	-
Grand Total:	1,072,894.73	1,072,894.73

Account Summary

Account Number	Account Name	Expense Amount	Payment Amount
100-000-202000	Other Accrued Expenditures	2,860.41	2,860.41
100-000-222000	Refundable Deposits	500.00	500.00
100-000-223000	Plan Application Deposit	2,646.90	2,646.90
100-000-451600	Recreation Fees-5K Registration	3,750.00	3,750.00
100-000-452000	Plan Check Fee - Fee Base	(2,646.90)	(2,646.90)
100-155-610000	Memberships and Dues Expense	700.00	700.00
100-155-610005	Memberships and Dues - SCAG	3,512.00	3,512.00
100-155-612000	Travel, Conferences & Meetings	1,070.00	1,070.00
100-155-624001	Advertising - Legal	2,238.00	2,238.00
100-155-626000	Subscriptions & Books	59.25	59.25
100-155-700000	Professional Services	3,500.00	3,500.00
100-155-700010	Legal Services-General Counsel	38,234.85	38,234.85
100-155-700011	Legal Services-Litigation	88.00	88.00
100-155-700020	Professional Services - Legislative	2,900.00	2,900.00
100-155-700030	Professional Svcs- City Clerk	200.00	200.00
100-155-700052	Compliance Audit Services - Sales	3,145.18	3,145.18
100-195-617000	Recruitment	366.00	366.00
100-195-620000	Office Supplies	182.81	182.81
100-195-621000	Computer Supplies	95.20	95.20
100-195-622000	Operating Supplies	108.32	108.32
100-195-630000	Telephone & Communication	1,575.06	1,575.06
100-195-641200	Rent/Lease - Copier	918.90	918.90
100-195-646000	Maint & Rep-Equip & Machinery	62.59	62.59
100-195-720050	Contract Serv-Software Support	7,905.36	7,905.36
100-195-940000	Computer Hardware & Software	5,296.22	5,296.22
100-225-512000	Salaries - Part-Time & Temp	5,476.80	5,476.80
100-225-613100	Vehicle-Fuel	70.16	70.16
100-225-622000	Operating Supplies	73.56	73.56
100-225-700000	Prof. Svcs - Building & Safety	26,436.00	26,436.00
100-225-700201	Plan Application	2,646.90	2,646.90
100-310-540000	Worker Comp/Unemployment	354.00	354.00
100-310-610000	Memberships and Dues Expense	345.00	345.00
100-310-611000	Training and Education	47.50	47.50
100-310-613100	Vehicle-Fuel	110.21	110.21
100-310-620500	Office Supplies - Comm Ctr	102.36	102.36
100-310-622005	Operating Supplies Comm Ctr	192.30	192.30
100-310-622100	Operating Supplies - Uniforms	360.27	360.27
100-310-622500	Supplies-Program Services	66.76	66.76
100-310-630100	Phone & Communication Comm	89.98	89.98
100-310-631100	Utilities - Electric Comm Ctr	8,223.74	8,223.74
100-310-635100	Utilities - Water Comm Ctr	684.79	684.79
100-310-641000	Rent/Lease - Equipment	1,118.03	1,118.03
100-310-645500	Maint&Repair-Facility Comm Ctr	7,932.90	7,932.90
100-310-646100	Maint & Repairs - Vehicles	183.16	183.16
100-310-695500	Special Events-Program Service	907.83	907.83
100-310-695501	Day Camps & Build A Fort	1,985.21	1,985.21
100-310-695502	Special Needs Program	9.99	9.99
100-310-695508	July Fourth Celebration	623.50	623.50

Attachment: Payables Detail Report - September 14, 2021 (2567 : Warrant Register, September 14, 2021)

Payables Detail Report

Payment Dates: 08/13/2021 - 09/02/2021

Account Summary

Account Number	Account Name	Expense Amount	Payment Amount
100-310-720302	Contract Services - Homelessness	3,502.55	3,502.55
100-310-721500	Contract Services-Program Svce	840.00	840.00
100-355-611000	Training and Education	395.00	395.00
100-355-613100	Vehicle-Fuel	281.08	281.08
100-355-622000	Operating Supplies	538.64	538.64
100-355-631000	Utilities - Electric	9,070.57	9,070.57
100-355-635000	Utilities - Water	22,986.95	22,986.95
100-355-720500	Graffiti Removal	9,500.00	9,500.00
100-355-720700	Landscape Maintenance Contract	3,965.24	3,965.24
100-355-720701	Parks Contract Repair	2,366.00	2,366.00
100-355-720702	Tree Maintenance	12,384.00	12,384.00
100-356-630000	MOE Telephone &	23.21	23.21
100-356-631400	MOE Electricity-Streetlights &	39,942.46	39,942.46
100-356-631900	MOE Electricity On-bill Financing	7,691.86	7,691.86
100-356-700101	MOE Traffic Engineer Services	9,400.00	9,400.00
100-356-700255	MOE Improvement Inspection	22,256.50	22,256.50
100-356-720420	MOE Traffic Signal Maintenance	13,214.53	13,214.53
100-420-611000	Training and Education	49.00	49.00
100-420-613100	Vehicle-Fuel	132.42	132.42
100-420-622000	Operating Supplies	1,940.59	1,940.59
100-420-646100	Maint & Repairs - Vehicles	949.71	949.71
100-420-695000	CommunityAsstnc/PublicRelation	3,223.26	3,223.26
100-420-720000	Contract Services	551.16	551.16
100-420-720800	General Law Enforcement	748,752.27	748,752.27
100-420-720821	Trauma Intervention Program	910.32	910.32
100-420-720822	Crossing Guard Services	1,909.32	1,909.32
100-420-720823	Parking Citation Processing	1,037.50	1,037.50
100-600-790600	Transfers Out - Capital Imprv	506.74	506.74
101-000-223000	Plan Application Deposit	16,736.52	16,736.52
101-000-450000	Planning Fees	(16,736.52)	(16,736.52)
101-225-700000	Consultant Services	6,958.90	6,958.90
101-225-700012	Legal Services	9,359.42	9,359.42
101-225-700200	Consultant Services, Planning	418.20	418.20
212-355-720400	Street Maintenance	274.23	274.23
221-310-720000	Contract Services	254.00	254.00
600-000-490100	Transfer In- General Fund	(506.74)	(506.74)
600-254-950403	CIP-Misc Storms Drains	506.74	506.74
Grand Total:		1,072,894.73	1,072,894.73

Project Account Summary

Project Account Key	Expense Amount	Payment Amount
None	1,072,894.73	1,072,894.73
Grand Total:	1,072,894.73	1,072,894.73

Attachment: Payables Detail Report - September 14, 2021 (2567 : Warrant Register, September 14, 2021)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim Director of Emergency Services/Interim City Manager

ISSUE: City Council Review and Confirm the Necessity for Continuing the Local Emergency Related to the On-Going Threat of the Novel COVID-19 Virus and Confirmation of the Interim Director of Emergency Services/Interim City Manager's Executive Orders Related Thereto

RECOMMENDATION: That the City Council: 1) Review and confirm the necessity for continuing the local emergency declared in response to the Novel COVID-19 virus; and 2) Confirm the Interim Director of Emergency Services/Interim City Manager's Executive Orders related thereto.

SUMMARY:

On March 18, 2020, the City Manager, acting in his capacity as Director of Emergency Services, proclaimed the existence of a local emergency relating to COVID-19 (the "novel coronavirus"), at which time the City Council was not in session. On March 24, 2020, during a special meeting, the City Council ratified and confirmed the City Manager's proclamation declaring the existence of a local emergency and the issuance of Executive Orders. Since that time, the rate of infection and threat to public health and safety has been significant and growing. As of September 9, 2021, there were more than 219 million worldwide cases of COVID-19, and 4.55 million deaths; locally, there were approximately 309,000 confirmed cases and 5,286 deaths in Orange County. While COVID-19 cases have recently been on the decline and the public acceptance of vaccines has increased, allowing some Executive Orders to be relaxed, there is still a public health risk. Pursuant to Laguna Hills Municipal Code ("LHMC") Section 2-32.060, the City Council must review the necessity for continuing the local emergency no less frequently

Continuation of Local Emergency and Confirmation of Related Executive Orders
 September 14, 2021
 Page 2

than at every subsequent regular meeting of the City Council until the emergency is terminated. LHMC Section 2-32.150 further requires any rules and regulations, such as Executive Orders, issued by the Interim Director of Emergency Services/Interim City Manager that are reasonably related to the local emergency, such as for the protection of life and property as affected by the emergency, to be confirmed as soon as practicable by the City Council. Most Executive Orders have been rescinded to match the state of the emergency, however, it is recommended the proclamation of local emergency remain in place at this time.

BACKGROUND:

On January 30, 2020, the World Health Organization ("WHO") declared the outbreak of COVID-19 a "public health emergency of international concern" and by March 11, 2020, the WHO elevated the public health emergency to the status of a pandemic. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19. On February 26, 2020, the County of Orange and County Health Officer Dr. Nichole Quick declared a local emergency and a local health emergency to prepare for COVID-19, and on March 4, 2020, the Governor declared a State of Emergency in California allowing state agencies to take any action necessary to address COVID-19.

In light of these events, on March 18, 2020, the City Manager, acting as the Director of Emergency Services pursuant to LHMC Section 2-32.060(B), proclaimed the existence of a local emergency within the City of Laguna Hills by enacting Proclamation No. 2020-03-18-1, at which time the City Council was not in session. A copy of Proclamation No. 2020-03-18-1 is attached hereto. On March 24, 2020, the City Council unanimously ratified and confirmed the City Manager's proclamation declaring the existence of a local emergency during a special meeting, as required by LHMC Section 2-32.060(B). In accordance with the local emergency proclamation, the City Manager issued a variety of Executive Orders to effectuate safe and healthy practices of City operations.

As of September 9, 2021, there were more than 219 million worldwide cases of COVID-19, and 4.55 million deaths; locally, there were approximately 309,000 confirmed cases and 5,286 deaths in Orange County. While COVID-19 cases have recently been on the decline and the public acceptance of vaccines has increased, allowing some Executive Orders to be relaxed, there is still a public health risk. The rate of infection, potential

Continuation of Local Emergency and Confirmation of Related Executive Orders
September 14, 2021
Page 3

impact to health care systems, and the threat to public health and safety have not fully abated. The state of local emergency continues to exist.

It is recommended that the City Council: 1) Review and confirm the necessity for continuing the local emergency declared in response to the Novel COVID-19 virus; and 2) Confirm the Interim Director of Emergency Services/Interim City Manager's Executive Orders related thereto. A full list of originally issued, superseded and rescinded City Executive Orders is attached for information. Most of the City's Executive Orders have been rescinded, or are no longer applicable due to the passage of time, matching the state of the emergency. It is noted that of 49 issued Executive Orders, only five remain in effect. The ability to issue Executive Orders on an as needed basis is an important tool during this local emergency.

Based on the recommendations of the Interim Director of Emergency Services/Interim City Manager and the Chief of Police Services, it has been determined that the need for the locally declared emergency, pursuant to Proclamation No. 2020-03-18-1, continues to exist and should not be terminated at this time.

ATTACHMENTS:

- Proclamation No. 2020-03-18-1, Declaration of Existence of a Local Emergency
- Executive Orders, Interim Director of Emergency Services/Interim City Manager, September 1, 2021
- Full List of Executive Orders

PROCLAMATION NO. 2020-03-18-1

A PROCLAMATION OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DECLARING THE EXISTENCE OF A LOCAL EMERGENCY

WHEREAS, Laguna Hills Municipal Code Section 2-32.060 empowers the City Council (while in session), or the Director of Emergency Services (if the City Council is not in session), to declare the existence or threatened existence of a local emergency; and

WHEREAS, California Government Code Section 8550 *et seq.*, including Section 8558(c), authorizes the Director of Emergency Services to proclaim a local emergency when the City is threatened by conditions of disaster or extreme peril to the safety of persons and property within the City that are likely to be beyond the control of the services, personnel, equipment, and facilities of the City; and

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness and in some cases death. The Center for Disease Control and Prevention (CDC) has indicated the virus is a significant public health threat; and

WHEREAS, Chinese health officials have reported tens of thousands of cases of COVID-19 in China, with the virus reportedly spreading from person-to-person. COVID-19 illnesses, most of them associated with travel from Wuhan, are also being reported in numerous countries, with thousands of cases, including the United States; and

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared the outbreak a "public health emergency of international concern" and on March 11, 2020, the WHO elevated the public health emergency to the status of a pandemic. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19. On February 26, 2020, the County of Orange declared a local emergency and a local health emergency. On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in California; and

WHEREAS, on February 2, 2020, the federal government initiated the suspension of entry of foreign nationals who were in China during the 14-day period preceding their entry or attempted entry into the United States; and

WHEREAS, as of March 10, 2020, the WHO reported that, to date, 125,048 confirmed cases of COVID-19, 4,613 of which resulted in death, across 117 countries; and

WHEREAS, the Governor and the California Department of Health on March 11, 2020, issued a statement entitled "California Public Health Experts: Mass Gatherings Should be Postponed or Canceled Statewide to Slow the Spread of COVID-19," determining that gatherings should be postponed or canceled across the state until at least the end of March. Non-essential gatherings must be limited to no more than 250 people, while smaller events can proceed only if the organizers can implement social distancing of 6 feet per person. Gatherings of individuals who are at higher risk for severe illness from COVID-19 should be limited to no more than 10 people, while also following social distancing guidelines. Furthermore, essential gatherings should only be conducted if the essential activity could not be postponed or achieved without gathering, meaning that some other means of communication could not be used to conduct the essential function; and

WHEREAS, the Governor on March 12, 2020, issued Executive Order N-25-20, ordering, inter alia, that all residents are to heed the orders and guidance of state and local public health officials; and

WHEREAS, President Donald J. Trump on March 13, 2020, declared a national emergency to provide disaster funding, speed up the United States response to the crisis created by COVID-19, and to offer maximum flexibility to attack the problem; and

WHEREAS, on March 15, 2020, Governor Newsome requested bars and nightclubs to close, restaurants to reduce capacity by half, and all Californians aged 65 and older to self-isolate; and

WHEREAS, on March 16, 2020, President Donald J. Trump advised the public to avoid groups of more than 10 people to fight the coronavirus outbreak; and

WHEREAS, the City of Laguna Hills has the authority to impose measures to promote social distancing including, but not limited to, limitations on public events; and

WHEREAS, the City of Laguna Hills is a significantly populated city within Orange County, which is the sixth largest county in the United States; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen due to the potential introduction of COVID-19 to the City of Laguna Hills and Orange County; and

WHEREAS, such conditions are beyond the control of the services, personnel, equipment, and facilities of the City of Laguna Hills and require the combined forces of other political subdivisions to combat; and

WHEREAS, it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS, if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the community, and limits the spread of infection in the community and within the healthcare delivery system; and

WHEREAS, the mobilization of local resources, ability to coordinate interagency response, accelerate procurement of vital supplies, use mutual aid, and allow for future reimbursement by the state and federal governments will be critical to successfully responding to COVID-19; and

WHEREAS, the Director of Emergency Services has the authority to declare a local emergency as authorized by California Government Code Section 8630 and Laguna Hills Municipal Code Section 2-32.060.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED AND ORDERED BY DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF LAGUNA HILLS AS FOLLOWS:

Section 1. As contemplated in the Emergency Services Act contained in California Government Code Section 8550 *et seq.*, including Section 8558(c), and Chapter 2-32 of Title 2 of the Laguna Hills Municipal Code, a local emergency exists based on the existence of conditions of disaster or of extreme peril to the safety of persons and property caused by an epidemic, as detailed in the recitals set forth above.

Section 2. The area of the City of Laguna Hills which is endangered/imperiled is the entire city.

Section 3. During the existence of this local emergency, the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law and by ordinances, resolutions, and orders of this City, including but not limited to the City's Emergency Operations Plan.

Section 4. The City Council shall review and ratify this proclamation of the City Manager within **seven (7) days** as required by state law, and if ratified, shall continue to exist until the City Council proclaims the termination of this local emergency. The City Council shall review the need for continuing the local emergency as required by state and local law until it terminates the local emergency, and shall terminate the local emergency at the earliest possible date that conditions warrant.

Section 5. A copy of this proclamation shall be forwarded to the Director of California Governor's Office of Emergency Services requesting that the Director find it acceptable in accordance with state law; that the Governor of California, pursuant to the Emergency Services Act, issue a proclamation declaring an emergency in the City of Laguna Hills; that the Governor waive regulations that may hinder response and recovery efforts; that recovery assistance be made available under the California Disaster Assistance Act; and that the State expedite access to State and Federal resources and any other appropriate federal disaster relief programs.

PROCLAIMED this 18th day of March 2020.


Donald J. White,
Director of Emergency Services/
City Manager

ATTEST:


Melissa Au-Yeung, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Proclamation No. 2020-03-18-1 adopted by the Director of Emergency Services of the City of Laguna Hills, California, on the 18th day of March 2020.

(SEAL)


MELISSA AU-YEUNG, CITY CLERK



CITY OF LAGUNA HILLS

City Manager

OFFICE OF THE CITY MANAGER/DIRECTOR OF EMERGENCY SERVICES

Executive Orders

**Pursuant to Proclamation No. 20-03-18-01
Declaring the Existence of a Local Emergency**

RE: NOVEL CORONAVIRUS, COVID-19

Issue Date: September 1, 2021

On March 18, 2020, in the City Manager's capacity as the Director of Emergency Services (LHMC 2-32.060), the City Manager issued Proclamation 20-03-18-01 Declaring the Existence of a Local Emergency in response to severe public health concerns and economic impacts relating to the COVID-19 pandemic. The novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan, Hubei Province, China in December 2019. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, and, in multiple cases resulted in death. The Center for Disease Control and Prevention (CDC) has indicated the virus is a significant public health threat, and States of Emergency have been declared by the County of Orange, the State of California and the federal government of the United States. On March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, which bans gatherings, public and private, and orders residents to stay at home at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as defined, in order to mitigate the impact of COVID-19. Executive Order N-33-20 is enforceable pursuant to California law per Government Code Section 8665.

In order to comply with all applicable Public Health and Executive Orders and to protect public health in the City of Laguna Hills, the following Executive Order is in effect until further notice:

48. Indoor and Outdoor Building inspections, as well as inspections of non-occupied spaces, will resume on a modified basis. Executive Order No. 9, dated March 24, 2020, is hereby rescinded.

49. Law enforcement, including neighborhood patrol checks and surveillance of City parks, will resume as necessary. Executive Order No. 15, dated March 30, 2020, is hereby rescinded

Additional Executive Orders may be issued at any time relating to this public health emergency. Additional Executive Orders are cumulative, and do not negate or reverse these Executive Orders contained herein unless explicitly stated.



Kenneth H. Rosenfield
Interim Director of Emergency Services/
Interim City Manager

Cc:

Mayor and City Council
Greg Simonian, City Attorney
Melissa Au-Yeung, Deputy City Manager
David Reynolds, Deputy City Manager
David Chantarangsu, Community Services Director
Janice Reyes, Finance Director
Matthew Stiverson, Police Chief

Updated: August 16, 2021

(Res) = rescinded

(NA) - not applicable as matter has returned to normal

March 19, 2020 Executive Orders 1-7	
Executive Order	Order Description
1	Within the boundaries of the City of LH, all County & State COVID-19 Public Health Orders are hereby deemed mandatory; all residents are directed to heed the current County & State public health directives in order to mitigate the impact of the COVID-19 pandemic.
2 (Res)	City Hall is closed to the public. Services and hours have been modified as posted. (Rescinded on June 15, 2021.)
3 (Res)	The Community Center is closed to the public. All recreational programs and activities at the Community Center, including facility reservations/rentals, are canceled or suspended until further notice. Refunds and credits will be automatically processed. The LH Technology Library, located within the Community Center, is also closed to the public. (Rescinded on September 9, 2020.)
4 (Res)	All playground equipment at all City & privately owned are closed. (Rescinded on October 8, 2020.)
5 (Res)	All employees of the City are placed on paid administrative leave/work from home status with the following exceptions: all management staff, Robert Oros, Sal Quinones, Ryan Hanley, and Cindy Sands. Furthermore, all such employees are directed to stay at home pursuant to the Governor's Executive Order, unless otherwise directed by their addition, they are strongly encouraged to abide by the Governor's Executive Order at all times beyond their normal working hours. (Rescinded on June 5, 2020.)
6 (Res)	Cabot Park and the Sports Complex restrooms are closed to the public. (Rescinded on November 17, 2020.)
7 (Res)	The City owned skate park is closed to the public. (Rescinded on June 12, 2020.)
March 24, 2020 Executive Orders 8-11	
8 (Res)	Building Division Services are available on a modified basis. Building Division staff will conduct business by phone & email only. (Rescinded on June 15, 2021.)
9 (Res)	Outdoor Building inspections and inspections of non-occupied spaces will continue with the application of the order of practicing social distancing. Building inspections occurring within occupied spaces will be conducted on a case by case basis. The Building Official may utilize technology, including video conferencing, for inspections. Certain inspections may also be conducted under self-certification, as determined by the Building Official. (Rescinded September 1, 2021.)
10 (Res)	Planning Services are available on a modified level. All plan check submissions and permit issuances will be conducted electronically. (Rescinded on June 15, 2021.)
11 (NA)	Volunteer Connection Day is canceled.
March 30, 2020 Executive Orders 12-18	
12 (Res)	Street sweeping parking violations are suspended. No citations will be issued for vehicles parked during posted "No Parking for Street Sweeping" Periods. (Rescinded on June 15, 2021.)
13 (Res)	The City will place a portable restroom (s) and hand washing station at the Laguna Hills Civic Center, the Laguna Hills Community Center and Sports Complex, and at Cabot Park, to further promote public health and sanitation. (Rescinded on June 15, 2021.)
14 (Res)	Citations for violations of parking on public streets are hereby suspended, except for instances where a vehicle impedes traffic, causes a potential safety or traffic hazard, and/or blocks emergency access, as determined by Police Services personnel. (Rescinded on June 15, 2021.)
15 (Res)	Law enforcement will increase neighborhood patrol checks and increase surveillance of City parks to ensure members of the public remain in compliance with all applicable County and State Public Health Orders. (Rescinded September 1, 2021.)
16 (NA)	The Memorial Day Half Marathon, 10k and 5k event is canceled.
17 (Res)	Community Center Drive and Community Center parking lot closest to the Skate Park will be closed until further notice. (Rescinded on June 15, 2021.)
18	The City will work with tenants of the Civic Center to explore options, including rent deferral, as requested on a case-by-case basis.
April 10, 2020 Executive Order 19	
19 (NA)	This upcoming week of April 13th represents a critical week in the effort to "flatten the curve" by complying with the Governor's "Stay at Home" order. To that effect, as well as taking into account the addition of two Special Meetings during the week of April 14, 2020, Regular City Council meeting will be canceled. All agenda items that would otherwise be scheduled for the April 14, 2020, City Council Meeting will be rescheduled for consideration at the April 21, 2020, Special Meeting.
April 25, 2020 Executive Order 20	
20 (NA)	In consideration of the addition of two Special Meetings during the week of April 20th, the Regular City Council Meeting, currently scheduled for April 28, 2020, City Council meeting will be rescheduled for consideration at the May 12, 2020, Special Meeting.

May, 18, 2020 Executive Orders 21-22

21 (Res) All recreation programs and activities, including facility reservations/rentals, are canceled through September 10, 2020. Consequently, the following part-time employees covered by Resolution No. 2018-06-26-02 are furloughed, effective May 25, 2020, indefinitely: Community Services Leader I, Community Services Leader II, and Part Time Receptionist. (Rescinded on June 15, 2021.)

22 Existing full-time employees in the Community Services Department will be transitioned to the newly-established Coronavirus Recovery Team and hereby deemed essential. These designated employees are David Reynolds, Daniel Meehan, Todd Smyser, Matt Durham and Kayle McDonald

June 3, 2020 Executive Order 23

23 Interim procedures to allow for the operation of certain outdoor business activities. This is an executive order authorizing the Community Development Director to administratively grant emergency temporary use permits to lawfully established commercial businesses for the utilization of private property, parking lots, sidewalks, and public property.

June 5, 2020 Executive Order 24

24 (Res) Beginning on June 8, City employees will return to work on a modified and limited schedule. In coordination with their respective Department Heads, employees will work staggered shifts that adhere to social distancing protocol. The use of paid administrative leave will be discontinued as of June 8, 2020. Executive Order No. 5, dated March 19, 2020, is hereby rescinded. (Rescinded on June 15, 2021.)

June 12, 2020 Executive Order 25

25 (Res) The City owned skatepark is open to the public beginning on June 12, 2020. Executive Order No. 7, dated March 19, 2020 is hereby rescinded. (Rescinded on July 3, 2020.)

June 29, 2020 Executive Order 26

26 (NA) The Street Sweeping Maintenance Services Agreement for Citywide Street and Roadway Cleaning between the City and Jonset Corporation, INC, dba Sunset Property Services, dated July 1, 2015, is a currently scheduled to expire by operation of its own terms on June 30, 2020. The Parties will enter into Amendment No. 1 to the Agreement for the purpose of extending the term of the Agreement for one-year in order to provide for continued, uninterrupted citywide street sweeping maintenance services at the same hourly rates, charges, and unit pricing and pursuant to the same terms and conditions set forth in the Agreement, subject only to a 3.3% cost of living increase in order to defer operating cost increases. The proposed one-year extension does not create the need to increase the total Maximum Annual Contract Amount set forth in Section 2.1 of the Agreement.

July 3, 2020 Executive Order 27

27 (Res) The City owned skatepark is open to the public beginning on July 3, 2020. Executive Order No. 25, dated June 12, 2020 is hereby rescinded. (Rescinded on October 23, 2020.)

September 9, 2020 Executive Order 28-29

28 (Res) The City of Laguna Hills Community Center remain closed to the public until further notice, except for the Laguna Hills Technology Branch of the Orange County Public Library and other authorized events and programs. Facility reservations/rentals, unless otherwise permitted by applicable public health orders and/or state and county public health guidelines, shall remain cancelled or suspended until further notice. Executive Order No. 3, dated March 19, 2020, is hereby rescinded. (Rescinded on June 15, 2021.)

29 (Res) Recreation programs, classes and activities, unless otherwise permitted by applicable public health orders and/or state and county public health guidelines, shall remain suspended until further notice. (Rescinded on June 15, 2021.)

October 8, 2020 Executive Order 30

30 (Res) Outdoor playground facilities. Located within the City's public parks, are hereby reopened on a limited basis pursuant to the public health guidelines issued for Outdoor Playgrounds on September 28, 2020, by the California Department of Public Health. The use of all outdoor playground equipment, located within the City's public parks, by members of the public shall be in conformance with the public health guidelines, including the specific outdoor playground facility use restrictions and requirements, promulgated by the California Department of Public Health. Executive Order No. 4, dated March 19, 2020, is hereby rescinded. (Rescinded on June 15, 2021.)

October 23, 2020 Executive Order 31-32

31 (Res) The City -owned Skate Park facility, located at the Laguna Hills Community Center and Sports Complex, is hereby reopened to the public on a limited basis and will operate in accordance with the public health guidelines issued by the California Department of Public Health (CDPH) on October 14, 2020. Attendees must adhere to physical distancing requirements and mask wearing as outlined in the CDPH's Outdoor Playground Guidance. Executive Order No. 27 related to operational status of the City- owned Skate Park, dated July 3, 2020 is hereby rescinded.

32	Subsection (k) of executive order No. 23, dated June 3, 2020, entitled "Interim Procedures to Allow for the Operation of Certain Outdoor Business Activities, " is hereby amended and restated in its entirety to read as follows: "K. Expiration. Any emergency temporary use permit shall expire fourteen (14) days after the locally declared emergency pursuant to Proclamation No. 2020-03-18-1 is terminated, unless such temporary use permit is revoked earlier by order of the Community Development Director, as authorized herein.
November 17, 2020 Executive Order 33	
33 (NA)	Cabot Park and Community Center Sports Complex restrooms are reopened to the public. Executive Order No. 6, dated March 19, 2020, is hereby rescinded.
December 7, 2020 Executive Order 34	
34 (Res)	With the exception of management staff, Robert Oros, Sal Quinones, Ryan Hanley and Cindy Sands, all other employees of the City are hereby placed on work from home status until further notice. Those who are not able to work from home will be placed on paid administrative leave status. All employees, whether on paid administrative leave or on work from home status, are to be available by phone and/or electronic communication during their normal working hours. (Rescinded on March 11, 2021.)
March 11, 2021 Executive Orders 35-36	
35 (NA)	Community Center Drive and Community Center parking lot closest to the Skate Park are open. Executive Order No. 17, dated March 30, 2020, is hereby rescinded.
36 (Res)	With the exception of management staff, Robert Oros, Sal Quinones, Ryan Hanley and Cindy Sands, Dan Meehan, Kayle McDonald, Matt Durham, and Todd Smyser all other employees of the City are hereby placed on work from home status until further notice. Those who are not able to work from home will be placed on paid administrative leave status. All employees, whether on paid administrative leave or on work from home status, are to be available by phone and/or electronic communication during their normal working hours. Executive order No. 34, dated December 7, 2020, is hereby rescinded. (Rescinded on June 15, 2021.)
June 15, 2021 Executive Orders 37-46	
37 (NA)	City Hall is open to the public during normal business hours. Executive Order No. 2, dated March 19, 2020, is hereby rescinded.
38 (NA)	Building Department services are available during normal business hours. Executive Order No. 8, dated March 24, 2020, is hereby rescinded.
39 (NA)	Planning Department services are available during normal business hours. Executive Order No. 10, dated March 24, 2020 is hereby rescinded.
40 (NA)	Citations for all violations of parking on public streets will recommence on June 15, 2021, including, but not limited to, street sweeping parking violations. Executive Order No. 12 and Executive Order No. 14, both dated March 30, 2020, are hereby rescinded.
41 (NA)	Portable restrooms are no longer needed. Executive Order No. 13, dated March 30, 2020, is hereby rescinded.
42 (NA)	Furlough for part-time employees is cancelled. Executive Order No. 21, dated May 18, 2020, is hereby rescinded.
43 (NA)	The Laguna Hills Community Center is open to the public during normal business hours. Executive Order No. 28, dated September 9, 2020, is hereby rescinded.
44 (NA)	Recreation programs, classes and activities, will resume in accordance with normal operating procedures and the approved budget. Executive Order No. 29, dated September 9, 2020, is hereby rescinded.
45 (NA)	Outdoor playground facilities are open to the public. Executive Order No. 30, dated October 8, 2020, is hereby rescinded.
46 (NA)	City Employees are returned to work during normal office hours Monday through Thursday and, in coordination with their respective Department Heads, employees will work remotely on Fridays. The use of paid administrative leave will be discontinued as of June 1, 2021. Executive Order No. 24, dated June 5, 2020, is hereby rescinded. Executive Order No. 36, dated March 11, 2021 is hereby rescinded.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Award of Retainer Agreement for Special Counsel Legal Services with the Law Firm of Stradling Yocca Carlson & Rauth for Development Agreement Negotiation Services Related to the Proposed Village at Laguna Hills Project

RECOMMENDATION: That the City Council approve the award of a special counsel legal services Retainer Agreement with the law firm of Stradling Yocca Carlson & Rauth for development agreement negotiation services related to the proposed Village at Laguna Hills Project, and authorize the Mayor to execute the Retainer Agreement.

SUMMARY:

In accordance with the City Council's direction on August 24, 2021, interviews with selected candidate firms for development agreement negotiator services related to the proposed Village at Laguna Hills Project were conducted by the City Council during a Special Meeting held on September 1, 2021. Two candidate firms were selected by the City Council for interviews. The first interview was with Mr. William F. Delvac of Armbruster Goldsmith & Delvac and the second interview was with Mr. Thomas P. Clark, Jr., of Stradling Yocca Carlson & Rauth. After completing these interviews on September 1, 2021, the City Council voted 4-1-0 (Mayor Pro Tem Sedgwick voting no) to select Thomas Clark of Stradling Yocca Carlson & Rauth for this engagement and directed City staff to return to Council with a proposed Retainer Agreement. Based on the action taken by the City Council on September 1, 2021, it is in order for the City Council to approve the attached Retainer Agreement.

Award of Retainer Agreement for Special Counsel Legal Services

September 14, 2021

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BACKGROUND:

In accordance with prior City Council direction and the City's Procurement Code, a formal competitive Request for Proposals (RFP) was prepared and issued by the City on July 13, 2021, for professional development agreement negotiator services associated with the proposed Village at Laguna Hills Project. Four proposals were received and presented to the City Council at the meeting of August 24, 2021. The City Council reviewed the proposals and selected two candidate firms for interviews. The interviews with the selected firms were conducted and completed by the City Council during a Special Meeting held on September 1, 2021.

Following completion of the interviews, the City Council voted 4-1-0 (Mayor Pro Tem Sedgwick voting no) to select Thomas Clark of Stradling Yocca Carlson & Rauth for this engagement and directed City staff to return to Council with a proposed Retainer Agreement. It is, therefore, in order for the City Council to approve the attached Retainer Agreement with Stradling Yocca Carlson & Rauth for this engagement (**Attachment "A"**).

The continued Public Hearing for the proposed Village at Laguna Hills Project is scheduled for December 14, 2021. The completion of the interview process, award of an agreement for development agreement negotiation services, and the completion of the negotiations and revisions to the proposed Development Agreement is time sensitive. Accordingly, City staff recommends that the City Council approve the attached Retainer Agreement without delay.

As previously advised, in accordance with the Deposit/Reimbursement Agreement with MGP Fund X Laguna Hills, LLC, (MGP) entered into on November 26, 2019, Section 6, the City is required to provide notice to MGP prior to incurring additional reimbursable costs as follows, "... at least thirty (30) days prior to City retaining any third-party consultant to be paid from Deposit Funds, City shall provide for Developer's review written notice containing such consultant's qualifications, proposed scope of work, and budget estimate. At least thirty (30) days prior to City submitting any request for an Additional Deposit pursuant to Section 5 above, City shall provide for Developer's review written notice containing the scopes of work proposed to be funded by such Additional Deposit and budget estimates for such work. City shall provide any additional information reasonably requested by Developer during its 30-day review period and agrees to consider any changes reasonably requested by Developer to third-party consultants, scopes of work, or budget estimates pursuant to this Section 6. Notwithstanding the foregoing, any decision to retain such third-party consultants shall be at the sole

Award of Retainer Agreement for Special Counsel Legal Services

September 14, 2021

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discretion of the City, and City shall exercise its independent judgment in its determination as to which third-party consultants, if any, to retain."

Due to the time sensitive nature of this engagement, and in furtherance of the mutual interests of the parties, the Interim City Manager previously provided early notice to MGP via email on August 27, 2021, of the City Council's intent to retain one of these two law firms to provide development agreement negotiator services, and formally requested that MGP waive the required 30-day notice period in order to allow the work to begin as soon as possible. By way of correspondence dated September 1, 2021, MGP has agreed to waive its right to the 30-day review period specified in Section 6 of the Deposit/Reimbursement Agreement with MGP Fund X Laguna Hills, LLC, entered into on November 26, 2019. A copy of MGP's letter dated September 1, 2021, waiving the 30-day review period is attached hereto (**Attachment "B"**).

AUTHORITY:

Pursuant to Laguna Hills Municipal Code Section 3-08.150, Subsection (C), "... selection by the city for professional services in areas including but not limited to private architectural, landscape architectural, engineering, environmental, land surveying, construction project management, management and administration, financial, accounting, auditing, actuarial, economics, and/or development and planning, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise, training, or unique skills gained by formal studies or experience, shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and shall not be awarded solely on the basis of cost."

FISCAL IMPACT:

The development agreement negotiator services will be provided on a time and materials basis at the professional hourly rates established in the proposed Retainer Agreement with an initial cost estimate of \$100,000. This estimate could vary widely depending upon the time needed to review the extensive administrative record, prepare for engaging in further negotiations, complete the negotiations, revise the proposed Development Agreement, and appear at the continued Public Hearing on December 14, 2021. Third-party consultant costs associated with development agreement negotiations services are fully reimbursed by the Applicant, MGP Fund X Laguna Hills, LLC, pursuant to the terms of the November 26, 2019, Deposit/Reimbursement Agreement.

Award of Retainer Agreement for Special Counsel Legal Services

September 14, 2021

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ATTACHMENTS:

- Attachment A - Retainer Agreement with Stradling Yocca Carlson & Rauth
- Attachment B - September 1, 2021 Letter from Merlone Geier Partners

**TERMS OF RETENTION
OF
STRADLING YOCCA CARLSON & RAUTH**

This Terms of Retention of Stradling Yocca Carlson & Rauth is dated and is effective as of September 14, 2021 by and between the City of Laguna Hills ("City") and the law firm of Stradling Yocca Carlson & Rauth (the "Firm").

1. **Fees and Costs.** The Firm is compensated for its services based primarily on the value of the services and the time spent performing them. Such compensation may include the time spent on client conferences, travel, research, drafting documents, and other activities. The amount of fees charged on a statement is determined by the hours expended by the different attorneys and other professional personnel involved and the applicable rates. A schedule of the hourly rates applicable to attorneys expected to work on the Village at Laguna Hills matter on behalf of the City is attached as Exhibit A. The hourly rates provided in Exhibit A are the discounted rates the Firm charges for public agencies on land use matters. Such rates may change from time-to-time but no increases in excess of 2% per annum shall be implemented without the written consent of the City Manager. The scope of services is described in Section IV of the Request for Proposal (RFP) Development Agreement Negotiation Services dated July 13, 2021, as further supplemented by direction of the City from time to time.

The Firm also charges for various costs such as copying, telephone charges, computerized legal research, word processing and/or other computer time, overtime costs, messenger services, travel, filing fees and other costs. Bills for some costs are passed on directly, such as bills for certified shorthand reporters, technical consultants, and other professional fees.

2. **Termination by the Firm.** The Firm reserves the right to withdraw from representing you if, among other things, you fail to honor the terms of our agreement, you fail to cooperate fully or follow our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on your behalf.

3. **Termination by City.** We understand that we serve at the pleasure of the City and this Terms of Retention may be terminated by the City at any time, upon 10 days written notification, with or without cause. In the event that our services are terminated prior to completion of the engagement, fees and costs incurred prior to the effective date of termination shall be due and payable.

4. **Date of Termination.** Our representation of you will be considered terminated at the earlier of (i) your termination of our representation, (ii) our withdrawal from our representation of you, or (iii) the substantial completion of our substantive work for you.

5. **Related Activities.** If any claim or action is brought against us or any personnel or agents of the firm based on your negligence or misconduct, or if we are asked to testify as a result of

our representation of you or must defend the confidentiality of your communications in any proceeding, you agree to pay us for any resulting fees, costs, or damages, including our time, even if our representation of you has ended.

6. **No Guarantee of Outcome.** We do not and cannot guarantee any outcome in a matter.

7. **Insurance.** We hereby advise you that this Firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to you with limits of at least two million dollars (\$2,000,000). Evidence of such insurance will be provided upon request.

8. **Client.** This Firm's client for the purpose of our representation is only the City of Laguna Hills through its City Council. Unless expressly agreed, the Firm is not undertaking the representation of any other related or affiliated person or entity, nor any parent, brother-sister, subsidiary, or affiliated corporation or entity, nor any of your or their officers, directors, agents, or employees.

9. **Client File and Retention.** For each matter the Firm maintains a file in which the Firm places certain documents and items, including original documents, that are reasonably necessary to the Firm's representation in the matter. The Firm currently keeps each file for seven years after a matter concludes. The file belongs to the client and, subject to any protective order or non-disclosure agreement, the client may request to take possession of it once the matter concludes. Should all or any portion of the file become the subject of a subpoena, discovery request or other disclosure obligation ("Legal Process") while in the Firm's possession, including after the matter concludes, you agree to pay the Firm's then-prevailing hourly rates and costs that the Firm incurs in connection with the Legal Process.

10. **Payment Notwithstanding Dispute.** In the event of any dispute that relates to our entitlement to any payment from you, all undisputed amounts shall be paid by you. Any amounts in any client trust account held on your behalf, sufficient to pay the disputed amounts, shall continue to be held in such trust account until the final disposition of the dispute.

11. **Arbitration.** We appreciate the opportunity to serve as your attorneys and anticipate a productive and harmonious relationship. If you should feel for any reason that there is a problem with the services we have performed or with our charges, we encourage you to bring that to our attention immediately. If we perceive a problem with your representation, we likewise will endeavor to discuss it with you. Most problems should be rectified by communication and discussion. However, a dispute might arise between us which could not be resolved by negotiation. We believe that such attorney-client disputes are most satisfactorily resolved through final and binding arbitration rather than by litigation. Both the United States Supreme Court and the California Supreme Court have endorsed arbitration as an accepted and favored method of resolving disputes, because it is economical and expeditious.

In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review. Arbitration rules of evidence and procedure are often less formal and less rigid than the rules which apply in Court. Arbitration usually results in a decision much more quickly than proceedings in Court, and the attorneys' fees

and other costs incurred by both sides may be substantially less. You are free to discuss the advisability of arbitration with us, or with your own independent counsel or any of your other advisors, and to ask any questions which you may have.

By signing this Terms of Retention, we agree that, in the event of any dispute or claim arising out of or relating to our engagement, our relationship, our charges, or our services (including but not limited to disputes or claims regarding our charges, professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud, or violation of any statute), SUCH DISPUTE OR CLAIM SHALL BE RESOLVED BY SUBMISSION TO FINAL AND BINDING ARBITRATION IN ORANGE COUNTY, CALIFORNIA, BEFORE A RETIRED JUDGE OR JUSTICE. BY AGREEING TO ARBITRATE, YOU WAIVE ANY RIGHT YOU HAVE TO A COURT OR JURY TRIAL. Venue with regard to any ancillary proceedings arising out of such dispute or claim shall also be in Orange County. If we are unable to mutually agree on a retired judge or justice, then each side will name one retired judge or justice and the two named persons will select a neutral judge or justice who will act as the sole arbitrator. The fees of the arbitrator will be paid initially equally by both the Firm and you. However, the arbitrator shall have the right to order either party to pay all fees and costs as part of his award.

In arbitration, we shall both be entitled to conduct discovery in accordance with the provisions of the California Code of Civil Procedure, but either of us may request that the arbitrator limit the amount or scope of such discovery and, in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

Under California law, you have the right, if you desire, to request arbitration of any fee dispute before an arbitrator or panel of arbitrators selected by a local bar association or the State Bar ("Bar Arbitration") and a trial de novo in court if dissatisfied with the result. If you do request a Bar Arbitration, the law provides that evidence of any claim of malpractice or professional misconduct is admissible only concerning the fees or costs in dispute and that the Bar Arbitrators shall not award any affirmative relief in the form of damages, offset or otherwise on account of such claim. By signing this Terms of Retention, you agree that if a Bar Arbitration is conducted, that Bar Arbitration or any trial de novo in Court thereafter shall determine only the issue of the amount of fees properly chargeable to you, if any, and that such Bar Arbitration or trial de novo in Court thereafter shall have no effect on the provisions set forth above which require arbitration before a retired judge or justice of any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of conduct, breach of fiduciary duty, fraud or violation of any statute. Any such claims shall be solely determined in an arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration or trial de novo thereafter.

12. **Primary Attorney.** The primary attorney with responsibility for our representation of the City in connection with Village of Laguna Hills matter will be Thomas P. Clark, Jr. The parties agree that the Firm is being retained based on the unique skill, experience, and expertise of Mr. Clark and no change will be made in the primary attorney without the prior, written consent of the City.

13. **Other Clients.** As a law firm with many diverse clients and practice areas, we seek to retain the ability to accept unrelated matters for all of our clients. We may thus request your informed written consent in the event we seek to represent any other client in any future matter that is not substantially related to this matter and does not involve material confidential information we obtained while representing you in this matter. Such matters could arise during our representation of you in this matter. You may determine to consent or not consent to such request and should feel free to consult general counsel before deciding whether to grant any consent should it be requested.

14. **Electronic Communication and Storage Technology.** The Firm uses cell phones, email, wireless networks, cloud-based platforms, and other technology to communicate with others and to transmit or store documents and information. Such technology helps the Firm provide efficient and convenient legal services, but may pose confidentiality and security risks. By signing this letter agreement, you consent to the Firm's use of all such technology in connection with this engagement.

15. **Processing Client Personal Information.** In connection with our engagement, you may be required to disclose to the Firm, or the Firm may obtain on your behalf, personal information relating to individuals that the Firm does not otherwise collect for the Firm's own commercial or business purposes ("Client Personal Information"). For example, materials that you provide to the Firm may contain Client Personal Information relating to third parties. You hereby acknowledge, agree and require that the Firm only collect, retain, use, disclose, or otherwise process Client Personal Information as your "service provider" or "data processor," as defined in the California Consumer Privacy Act of 2018 or other data privacy laws, as applicable (collectively, "Data Privacy Laws"), or pursuant to any exception that may apply under Data Privacy Laws regarding the attorney-client relationship. The Firm will not sell Client Personal Information. The Firm will not collect, retain, use, disclose or otherwise process Client Personal Information for any purpose other than for the purpose of performing services to you pursuant to this engagement letter, unless applicable law requires us to do otherwise. The Firm will not collect, retain, use, disclose, or otherwise process Client Personal Information outside of the Firm's direct relationship with you, unless applicable law requires the Firm to do otherwise. The Firm certifies that the Firm understands these restrictions and will comply with them. These restrictions are not intended to reduce or replace our obligations under applicable rules of professional conduct, including but not limited to the Firm's obligation of confidentiality.

16. **Publicity.** You consent to the Firm's use of your name and logo (if applicable) on our web site and in our marketing materials.

17. **Client Communication.** You hereby designate the City Council, or an ad hoc committee of Council Members if one is appointed, to act on your behalf for this matter, and you authorize us to communicate with, and receive directions from, that person and any other person that you may designate in the future.

18. **Authority to Sign.** The person signing this letter on behalf of the City represents that he or she has the full right and authority to do so, and to fully commit and bind the City to this engagement letter.

Terms of Retention
September 3, 2021
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19. **Miscellaneous.** This letter sets forth the entire agreement between you and the Firm, and there is no other or additional understanding between you and the Firm on these subjects. This agreement supersedes any prior agreements or representations, written or oral, between you and the Firm on these subjects. Any modification or amendment to this agreement must be in a writing signed by you and the Firm. This agreement shall be governed by California law without reference to its conflict of law principles. If any provision of this agreement is found to be invalid or unenforceable, that provision shall be deemed modified or removed so that it is valid and enforceable to the fullest extent of the law, and the other provisions of this agreement shall be unimpaired.

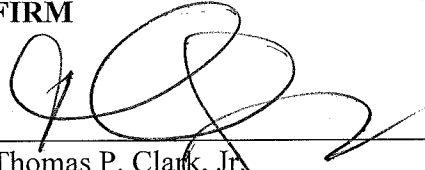
IN WITNESS WHEREOF, the parties hereto have signed these Terms of Retention of Stradling Yocca Carlson & Rauth as of the date set forth above.

AGREED:

CITY:

Erica Pezold, Mayor
City of Laguna Hills

FIRM



Thomas P. Clark, Jr.
Stradling Yocca Carlson & Rauth,
City Special Counsel

ATTEST:

Melissa Au-Yeung, City Clerk

APPROVED AS TO FORM:

Gregory E. Simonian, City Attorney for the
CITY OF LAGUNA HILLS

EXHIBIT A**2021 PUBLIC AGENCY DISCOUNTED RATES**

SHAREHOLDERS	2021 RATE
Thomas P. Clark, Jr.	\$450.00
Mark J. Huebsch	\$400.00
Other Shareholders	\$400.00
Associates	\$300.00
Paralegals	\$180.00

September 1, 2021

VIA EMAIL

Mr. Ken Rosenfield, P.E
City of Laguna Hills
Interim City Manager/Public Services Director
24035 El Toro Road
Laguna Hills, CA 92653

Dear Mr. Rosenfield:

Reference is made to your e-mail of August 27, 2021, requesting that MGP Fund X Laguna Hills, LLC ("MGP") agree to waive its right to a 30-day review period for consultant agreements under that certain Deposit/Reimbursement Agreement between the City and MGP, entered into on November 26, 2019 ("Reimbursement Agreement"), pertaining to the City's proposed engagement of outside counsel to negotiate the terms of the Development Agreement for the Village at Laguna Hills Project ("Development Agreement Negotiator Contract"). By this letter, MGP hereby waives its right under the Reimbursement Agreement for a 30-day review of the Development Agreement Negotiator Contract.

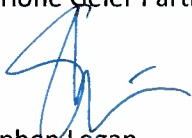
MGP is willing to waive this right in the spirit of good faith cooperation to try and bring Development Agreement negotiations to an expeditious conclusion. As stated in our August 24th letter to the City, it is MGP's expectation that the City Council will act on the Development Agreement and the Village at Laguna Hills Project entitlements at its December 14, 2021, hearing. All Development Agreement negotiations should be completed sufficiently in advance of that date to allow for the hearing to move forward as the City has planned.

Please forward the final Development Agreement Negotiator Contract to us for our records.

Please feel free to reach out to me should you have any further comments at 858-259-9909.

Sincerely,

Merlone Geier Partners



Stephen Logan
VP, Development

Cc: Matt Gray, Perkins Coie
Greg Simonian, Woodruff, Spradlin & Smart

Attachment: Attachment B - September 1, 2021 Letter from Merlone Geier Partners (2572 : Award of Retainer Agreement for Special Counsel



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Designation of Voting Delegate for League of California Cities Annual Conference

RECOMMENDATION: That the City Council appoint the Mayor as the Voting Delegate and appoint the Mayor Pro Tempore as the Voting Delegate Alternate for the League of California Cities Annual Conference.

SUMMARY:

The Annual Conference for the League of California Cities (League) is scheduled for Wednesday, September 22, 2021, through Friday, September 24, 2021, in Sacramento. An important part of the Annual Conference is the Annual Business Meeting scheduled for 12:30 pm on Friday, September 24, 2021. At this meeting, the League membership will consider and take actions on resolutions that establish League policy. The attached Memorandum from the League describes the process and provides procedures for voting at the Annual Conference. Please note that at this time, the procedures assume an in-person conference.

In order to vote at the Annual Business Meeting, the City Council must designate a Voting Delegate and, if so desired, a Voting Delegate Alternate. The Voting Delegate Form must be returned to the League no later than Wednesday, September 15, 2021. The League by-laws provide that each City is entitled to one vote in matters affecting municipal or League policy. Typically, the City Council reconfirms the appointment of the Mayor as the Voting Delegate and the Mayor Pro Tempore as the alternate along with all the City Council "Other Agencies" appointed representatives in January of each year.

Voting Delegates for LOCC

September 14, 2021

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The appointment of the voting delegates did not occur in January of 2021 due to the City not being an active member in the League of California Cities at the time. It is now appropriate to appoint the Mayor as the Voting Delegate and the Mayor Pro Tempore as the Voting Delegate Alternate.

ATTACHMENTS:

- Cal Cities 2021 Voting Delegate Packet
- Cal Cities 2021 Annual Conference Resolution Packet



Council Action Advised by August 31, 2021

June 16, 2021

TO: City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – September 22-24, 2021**

Cal Cities 2021 Annual Conference & Expo is scheduled for September 22-24, 2021 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 24. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to Cal Cities office no later than Wednesday, September 15. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note: Our number one priority will continue to be the health and safety of participants. We are working closely with the Sacramento Convention Center to ensure that important protocols and cleaning procedures continue, and if necessary, are strengthened. Attendees can anticipate updates as the conference approaches.

- **Action by Council Required.** Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open mid-June at www.cacities.org. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.
- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but

Attachment: Cal Cities 2021 Voting Delegate Packet (2533 : Voting Delegates for LOCC)

only between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.

- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 22, 8:00 a.m. – 6:00 p.m.; Thursday, September 23, 7:00 a.m. – 4:00 p.m.; and Friday, September 24, 7:30 a.m. – 11:30 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Wednesday, September 15. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

CITY: Laguna Hills

**2021 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to Cal Cities office by Wednesday, September 15, 2021. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: Melissa Au-Yeung

Email mau-yeung@lagunahillsca.gov

Mayor of City Clerk
(circle one) (signature)

Date 8/24/2021 Phone (949) 707-2621

Please complete and return by Wednesday, September 15, 2021 to:

Darla Yacub, Assistant to the Administrative Services Director

E-mail: dyacub@cacities.org

Phone: (916) 658-8254

Attachment: Cal Cities 2021 Voting Delegate Packet (2533 : Voting Delegates for LOCC)



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



**2020-2021
CAL CITIES OFFICERS**

President

Cheryl Viegas Walker
Mayor,
El Centro

First Vice President

Cindy Silva
Council Member,
Walnut Creek

Second Vice President

Ali Taj
Council Member,
Artesia

Immediate Past President

John F. Dunbar
Mayor,
Yountville

**Executive Director
and CEO**

Carolyn M. Coleman

August 6, 2021

TO: Mayors, City Managers and City Clerks

RE: Cal Cities 2021 Annual Conference Resolution Packet
Notice of Cal Cities Annual Meeting

Attached is the 2021 Resolutions Packet for the League of California Cities' 2021 Annual Conference & Expo being held September 22 - 24 in Sacramento. The conference announcement has been sent to all cities and we hope that you and your colleagues will be able to attend. More information about the conference is available on Cal Cities website at www.calcities.org. We look forward to welcoming city officials to the conference.

Resolutions: Two resolutions have been submitted for Cal Cities members to consider. The attached packet contains the proposed resolutions along with background materials provided by the sponsors, supporting letters from cities and city officials, and the Cal Cities staff analysis for the resolutions. The packet also includes detailed information on Cal Cities resolution process. The resolution packet also is posted on Cal Cities website, www.calcities.org/resolutions, for your convenience.

Voting Delegates: In order to vote during the General Assembly, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event the designated voting delegate is unable to serve in that capacity. If your city has not already done so, please complete the Voting Delegate form located on the Cal Cities website www.calcities.org/resolutions under the "voting delegates" section, and email it to Darla Yacub at dyacub@calcities.org by Wednesday, September 15. This will allow us time to establish voting delegate/alternate records prior to the conference. The Closing Luncheon and General Assembly will be held on Friday, September 24, at 12:30 p.m.

We encourage each city council to consider the resolution and to determine a city position so that your voting delegate can represent your city's position on the resolution. Should you have any questions regarding the attached material, please contact Meg Desmond at mdesmond@calcities.org or by phone at 916-837-6822.



Annual Conference Resolutions Packet

2021 Annual Conference Resolutions



September 22 - 24, 2021

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site:

www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number Key Word Index Reviewing Body Action

		1	2	3
--	--	---	---	---

1 - Policy Committee Recommendation
to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

KEY TO ACTIONS TAKEN

- | | |
|-----|---|
| A | Approve |
| D | Disapprove |
| N | No Action |
| R | Refer to appropriate policy committee for study |
| a | Amend+ |
| Aa | Approve as amended+ |
| Aaa | Approve with additional amendment(s)+ |
| Ra | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+ |
| Da | Amend (for clarity or brevity) and Disapprove+ |
| Na | Amend (for clarity or brevity) and take No Action+ |
| W | Withdrawn by Sponsor |

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

1. **RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION**

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background Information to Resolution

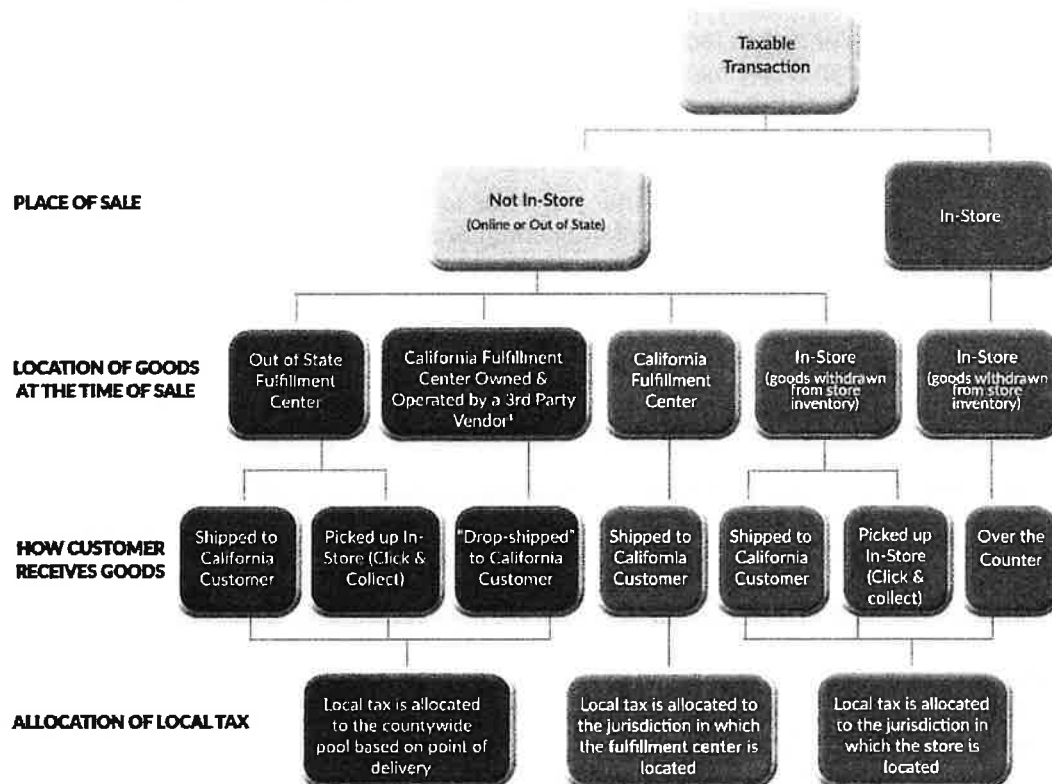
Source: City of Rancho Cucamonga

Background:

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

LETTERS OF CONCURRENCE

Resolution No. 1

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents.

We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town's position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,



Curt Emick
Mayor

July 21, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Letter of Support for the City of Rancho Cucamonga's Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer's sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,



Paul Fadelli, Mayor
City of El Cerrito

cc: El Cerrito City Council
City of Rancho Cucamonga



City Council
 Terry Walker, Mayor
 Keith Eich, Mayor Pro Tem
 Jonathan C. Curtis
 Michael T. Davitt
 Richard B. Gunter III

July 14, 2021

Ms. Cheryl Viegas Walker, President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

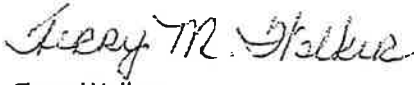
The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private

Ms. Cheryl Viegas Walker, President
July 14, 2021
Page 2

sector businesses even more profitable at the expense of cities' residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,



Terry Walker
Mayor



CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599
www.cityoflaverne.org

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Community Services 909/596-8700
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

July 19, 2021
Re: Online Sales Tax Equity Support
Page 2

especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,



Bob Russi
City Manager
City of La Verne

Steve Credi
Vice Mayor

Vicki L. Stuckey
Council Member

Ariel Fu
Council Member

Todd Rogers
Council Member



Jeff Wood
Mayor

July 15, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,

Jeff Wood
Jeff Wood
Mayor

Lakewood



CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021
Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 14, 2021

TRANSMITTED ELECTRONICALLY

Cheryl Viegas-Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer's sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)

JANICE S. PARVIN
Mayor

DR. ANTONIO CASTRO
Councilmember

CHRIS ENEGREN
Councilmember

DANIEL GROFF
Councilmember

DAVID POLLOCK
Councilmember

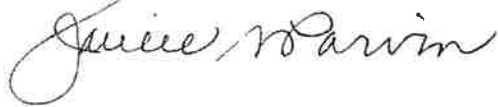
Letter of Support
Page 2

cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone's residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,



Janice S. Parvin
Mayor

cc: City Council
City Manager

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)

The People are the City

Mayor
CRAIG S. GREEN

Mayor Pro Tem
CHAD P. WANKE

Councilmembers:
RHONDA SHADER
WARD L. SMITH
JEREMY B. YAMAGUCHI



City Clerk:
ROBERT S. MCKINNELL

City Treasurer
KEVIN A. LARSON

City Administrator
DAMIEN R. ARRULA

401 East Chapman Avenue – Placentia, California 92870

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

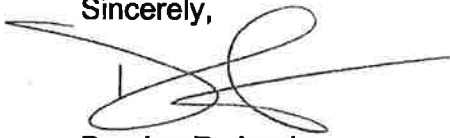
The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The

Letter of Support: City of Rancho Cucamonga
July 14, 2021
Page 2 of 2

current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at administration@placentia.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Damien R. Arrula', with a long horizontal line extending to the right.

Damien R. Arrula
City Administrator

SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager

City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment

SACRAMENTO

Office of the City Manager

Leyne Milstein
Assistant City Manager

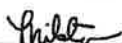
City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the General Assembly.

Sincerely,


Leyne Milstein (Jul 19, 2021 14:46 PDT)

Leyne Milstein
Assistant City Manager

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:

The City of Rancho Cucamonga is sponsoring this resolution to *“address the issues in how sales and use taxes are distributed in the 21st century.”*

The City notes that *“sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”

The City’s resolution calls for action on an unspecified solution that *“rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,”* which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

Sales and Use Tax in California

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer's physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller's business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business' sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "The Bradley-Burns Tax and Local Transportation Funds", noting that:

"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

The Auditor's report makes the following recommendation:

"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."

In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision

Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

Staff Comments:

Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

More Data is Needed to Achieve Equity Based Approach

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

Impact of Goods Movement Must Be Considered

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: California Office of Environmental Health Hazard Assessment (OEHHA) CalEnviroScreen. City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

Fiscal Impact:

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:

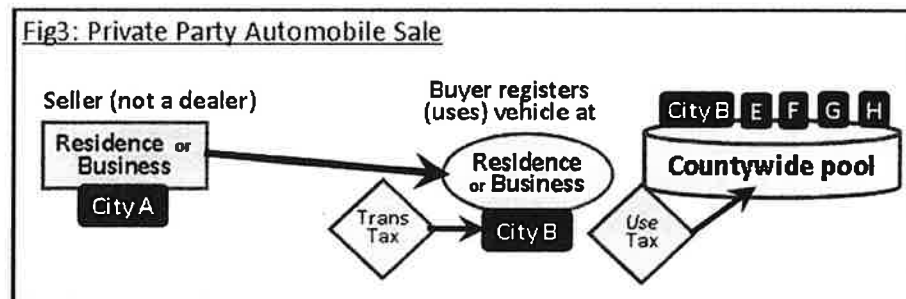
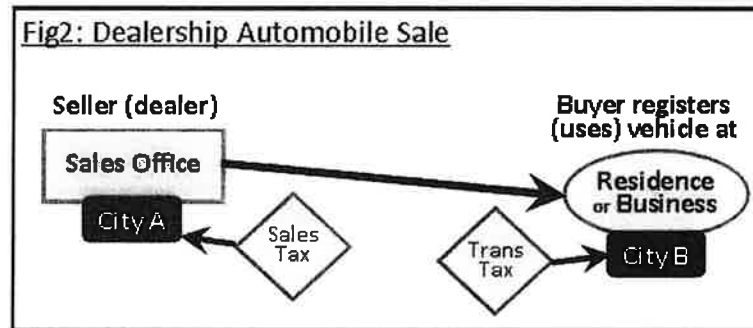
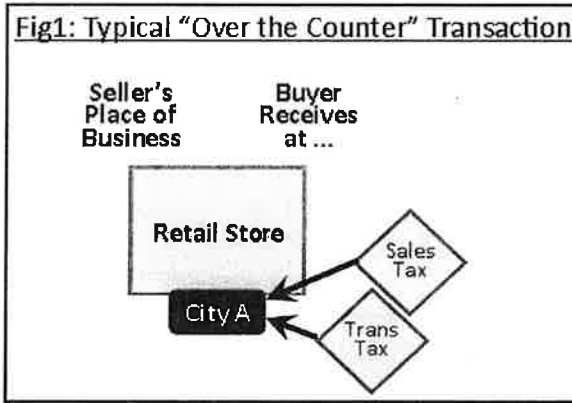
- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

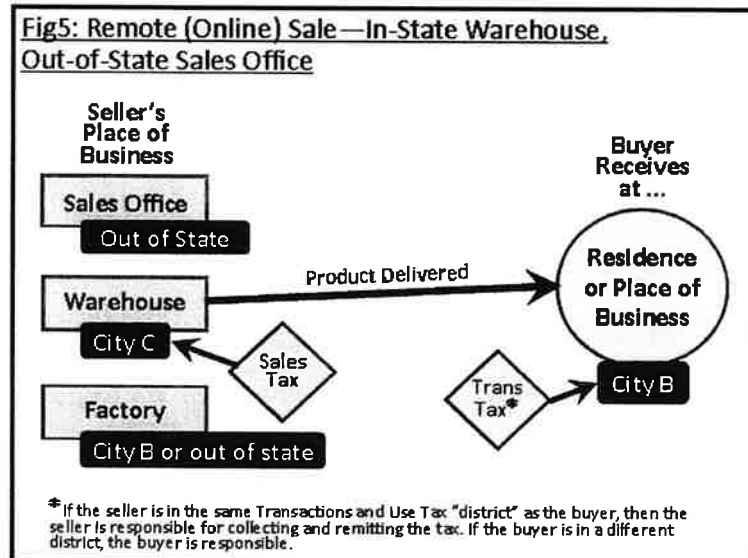
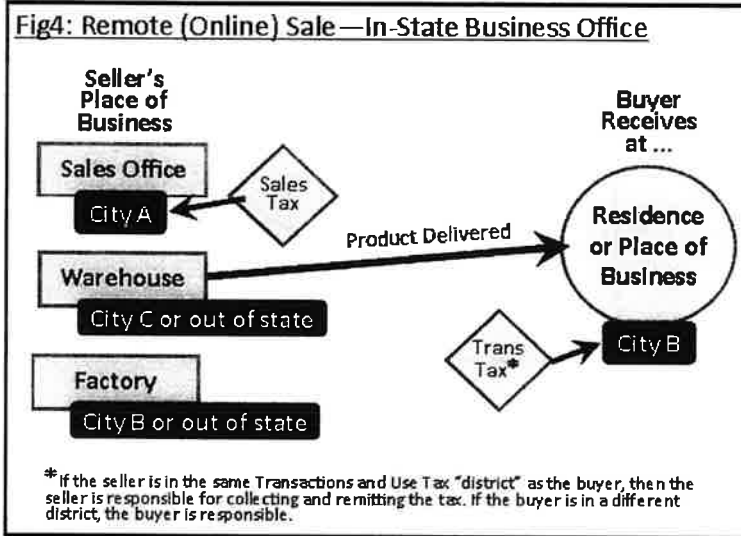
Support:

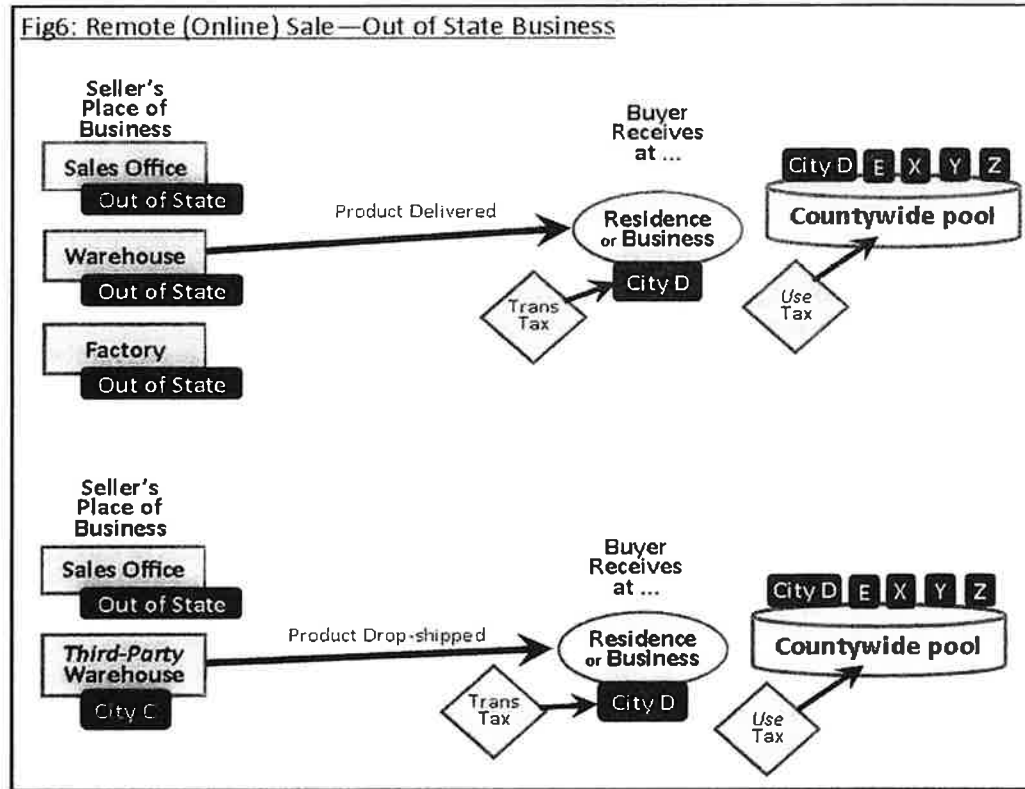
The following letters of concurrence were received:

Town of Apple Valley
 City of El Cerrito
 City of La Canada Flintridge
 City of La Verne
 City of Lakewood

City of Moorpark
City of Placentia
City of Sacramento







GUIDELINES FOR ALLOCATION OF LOCAL TAX - ONLINE AND IN-STORE			
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online - Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online - Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.⁶

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept⁷

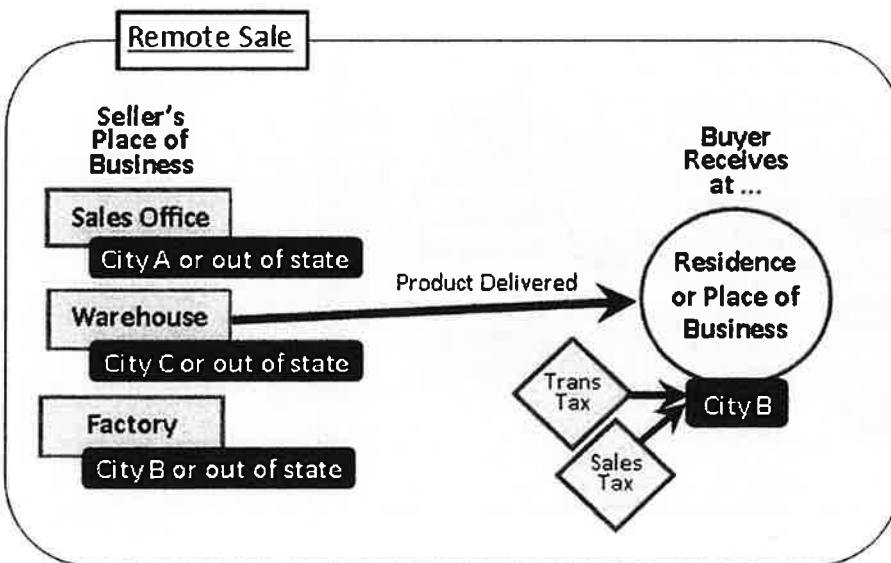
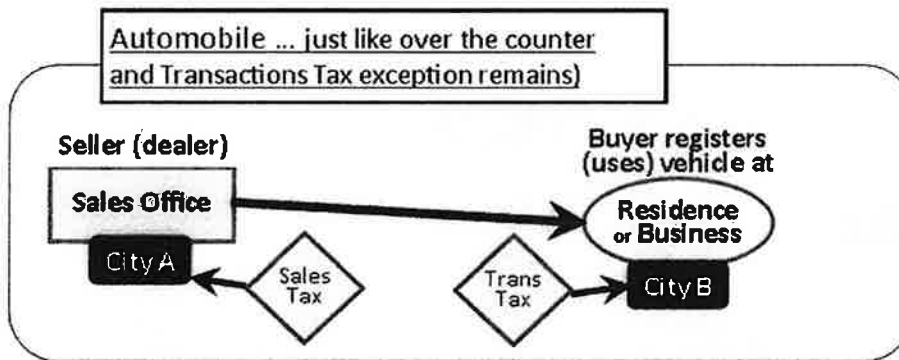
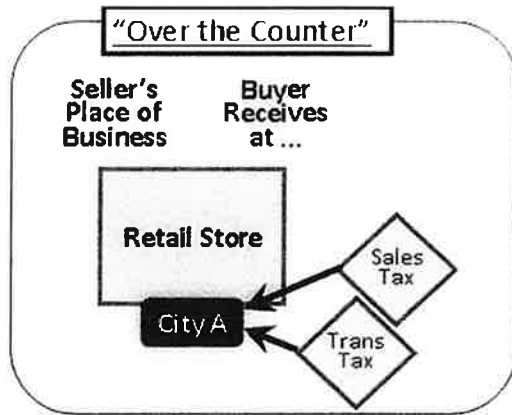
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

⁶ See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

⁷ The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

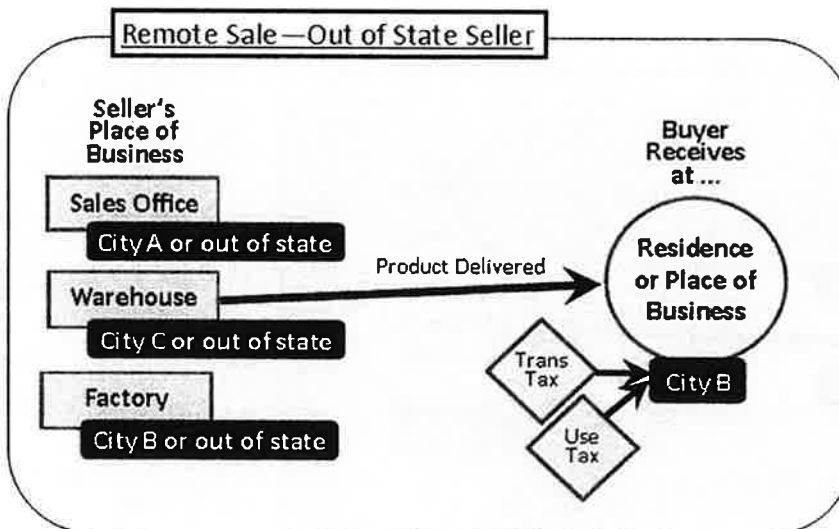
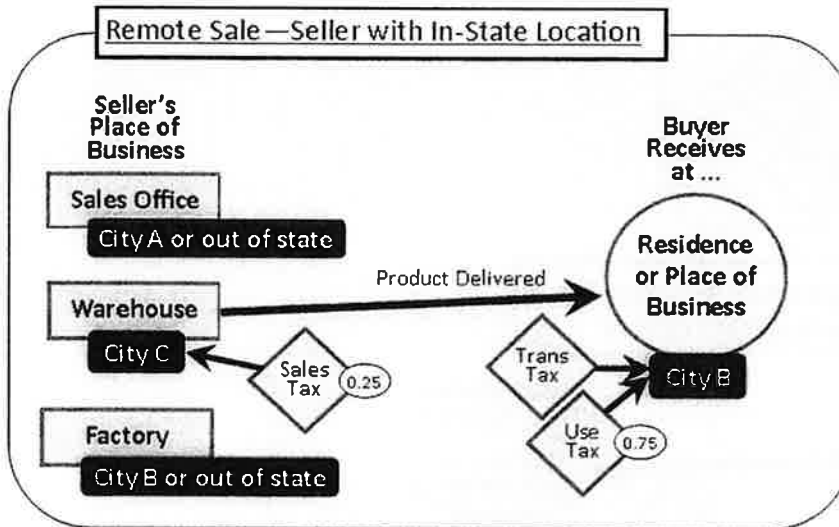
Destination Sourcing Scenario 1: Full-On



CaliforniaCityFinance.com

Destination Sourcing Scenario 2: Split Source

- Same as now for “over the counter” and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

CaliforniaCityFinance.com

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")
 CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES
 FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL
 SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE
 PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO
 CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST
 CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT
 AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ cities where the warehouse fulfillment centers ~~is are~~ located as opposed to going into a countywide pools that ~~is are~~ shared with all jurisdictions in ~~those counties that County~~, as was done previously; and

WHEREAS, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from ~~those that~~ centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by the ~~center~~, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Background Information to Resolution

Source: City of South Gate

Background:

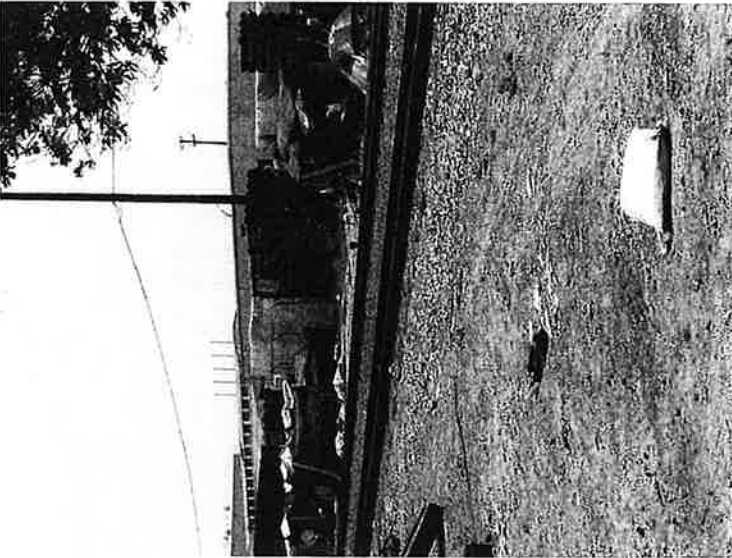
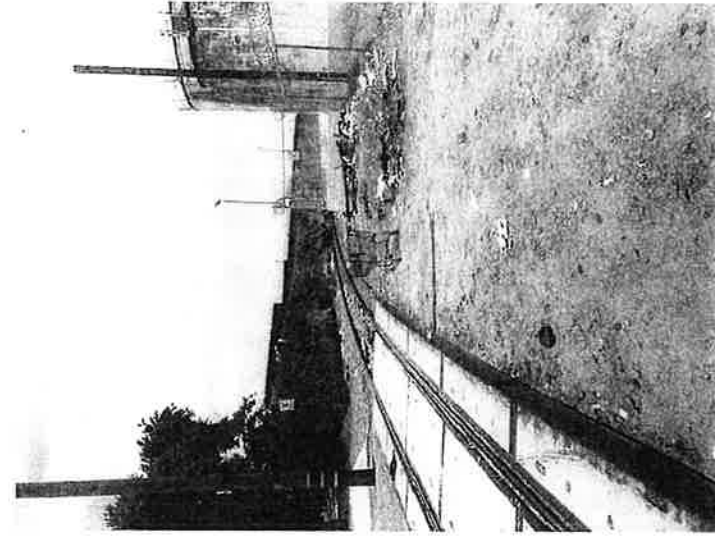
The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.



LETTERS OF CONCURRENCE

Resolution No. 2



City of BELL GARDENS

7100 Garfield Avenue · Bell Gardens, CA 90201 · 562-806-7700 · www.bellgardens.org

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Bell Gardens supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

Marco Barcena
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



City of BELL GARDENS

7100 Garfield Avenue • Bell Gardens, CA 90201 • 562-806-7700 • www.bellgardens.org

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Lisseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

Lisseth Flores

Lisseth Flores
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The city of Bell supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Philips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division,

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)



CITY OF COMMERCE

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Railroad Oversight Annual Conference Resolution

President Walker:

The City of Commerce supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' ("League") 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State's freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at ecisneros@ci.commerce.ca.us or at 323-722-4805, should you have any questions.

Sincerely,

Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

5220 Santa Ana Street
Cudahy, California 90201
(323)773-5143

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,

Jose Gonzalez
Mayor

CC: Chris Jeffers, City Manager, City of South Gate

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)



City of El Segundo

Office of the Mayor

July 16, 2021

Elected Officials:

Drew Boyles,
Mayor
Chris Pimentel
Mayor Pro Tem
Carol Pirszluk,
Council Member
Scott Nicol,
Council Member
Lance Groux,
Council Member
Tracy Weaver,
City Clerk
Matthew Robinson,
City Treasurer

Appointed Officials:

Scott Mitnik,
City Manager
Mark D. Mensley,
City Attorney

Department Directors:

Barbara Voss
Deputy City Manager
Joseph Lillo,
Finance
Chris Donovan,
Fire Chief
Charles Mallory,
Information Technology
Services
Melissa McCollum,
Community Services
Rebecca Redyk,
Human Resources
Doris Cook,
Interim Development Services
Jamie Bermudez,
Interim Police Chief
Elias Sassoon,
Public Works

www.elsegundo.org
www.elsegundobusiness.com
www.elsegundo100.org

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division's City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles
Mayor of El Segundo

CC: City Council, City of El Segundo
Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
Jeff Klerman, League Regional Public Affairs Manager (via email)

350 Main Street, El Segundo, California 90245-3813
Phone (310) 524-2302 Fax (310) 322-7137



CITY OF GLENDORA CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

**SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE'S ANNUAL
CONFERENCE RESOLUTION**

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue that many communities, small and large, are experiencing along active transportation corridors, particularly rail lines. Given the importance and growth of the ports and logistics sector, and the economic support they provide, we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal dumping (trash and debris) and the establishment of encampments by individuals experiencing homelessness along roadways, highways and rail lines. Such situations create unsafe conditions – safety, health and sanitation – that impact quality of life even as we collectively work to address this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process provided to the General Assembly and strongly support consideration of this issue. Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact Adam Raymond, City Manager, at araymond@cityofglendora.org or (626) 914-8201.

Sincerely,

Karen K. Davis
Mayor

C: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

PRIDE OF THE FOOTHILLS



Office of the Mayor

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution

President Walker:

The City of Huntington Park (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

Graciela Ortiz
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Enclosure(s)

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)



CITY OF LA MIRADA
DEDICATED TO SERVICE

13700 La Mirada Boulevard
La Mirada, California 90638
P.O. Box 828
La Mirada, California 90637-0828
Phone: (562) 943-0131 Fax: (562) 943-1464
www.cityoflamirada.org

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

**SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE'S PROPOSED
RESOLUTION AT CALCITIES ANNUAL CONFERENCE**

President Walker:

The City of La Mirada supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities that are home to the State's freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City's ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA


Ed Eng
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Ed Eng, EdD
Mayor

Anthony A. Otero, DPPD
Mayor Pro Tem

Steve De Ruse, D. Min.
Councilmember

John Lewis, Esq.
Councilmember

Andrew Sarega
Councilmember

Jeff Boynton
City Manager

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)

July 22, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate's proposed resolution for the League of California Cities' (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to increase oversight of rail operators' land maintenance. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested \$4 million in the Clean Long Beach Initiative as part of the City's Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate's proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,



THOMAS B. MODICA
City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)



OFFICE OF THE
MAYOR
MARISELA SANTANA

City of
LYNWOOD
Incorporated 1921

1330 Bullis Road, Lynwood, CA 90262
(310) 603-0220 x 200



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Lynwood supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,

Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)



July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Resolution in Support of City of South Gate Annual Conference Resolution

President Walker:

The City of Montebello (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne
Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



BRENDA OLMOS
Mayor

VILMA CUELLAR STALLINGS
Vice Mayor

ISABEL AGUAYO
Councilmember

LAURIE GUILLEN
Councilmember

PEGGY LEMONS
Councilmember

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL ASSEMBLY RESOLUTION

President Walker:

The City of Paramount supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. The proposed resolution is attached

South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.

Dedicated to providing fiscally responsible services that maintain a vibrant community.

16400 Colorado Avenue • Paramount, CA 90723-5012 • Ph: 562-220-2000 • paramountcity.com
[facebook.com/CityofParamount](https://www.facebook.com/CityofParamount) | [instagram.com/paramount_posts](https://www.instagram.com/paramount_posts) | [youtube.com/CityofParamount](https://www.youtube.com/CityofParamount)



Steve Carmona
City Manager

City of Pico Rivera
OFFICE OF THE CITY MANAGER
6615 Passons Boulevard · Pico Rivera, California 90660
(562) 801-4371

Web: www.pico-rivera.org e-mail: scastro@pico-rivera.org

City Council

Raul Elias
Mayor
Dr. Monica Sánchez
Mayor Pro Tem
Gustavo V. Camacho
Councilmember
Andrew C. Lara
Councilmember
Erik Lutz
Councilmember

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 14, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Pico Rivera supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

City Manager
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Attachment: Cal Cities 2021 Annual Conference Resolution Packet (2533 : Voting Delegates for LOCC)

League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
 Jason Rhine, Assistant Director, Legislative Affairs
 Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
 Housing, Community, and Economic Development

Summary:

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Background:

California Public Utilities Commission (CPUC) Railroad Oversight

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC's Ability to Address Homelessness on Railroads

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of Commission GO 118-A, which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

Commission GO 26-D, which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California

According to the 2020 Annual Homeless Assessment Report (AHAR) to Congress, there has been an increase in unsheltered individuals since 2019. More than half (51 percent or 113,660 people) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the Federal Railroad Administration over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to compel railroad companies to increase their efforts to address homeless encampments on their railroads or grant a local authority's application for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

Fiscal Impact:

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

Existing League Policy:

Public Safety:

Graffiti

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Transportation, Communications, and Public Works

Transportation

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

Housing, Community, and Economic Development

Housing for Homeless

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:

The following letters of concurrence were received:

- City of Bell Gardens
- City of Bell
- City of Commerce
- City of Cudahy
- City of El Segundo
- City of Glendora
- City of La Mirada
- City of Paramount
- City of Pico Rivera
- City of Huntington Park
- City of Long Beach
- City of Lynwood
- City of Montebello

ATTACHMENT A

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECESSARY~~ NECESSARY FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULITY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

WHEREAS, the ~~California Public Utilities Commission~~ (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that the Cal Cities League calls for the Governor and the Legislature to work with the Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Declaration of September 18, 2021, as the 24TH Annual Inner-Coastal Watershed Cleanup Day

RECOMMENDATION: That the City Council support and declare September 18, 2021, as Inner-Coastal Watershed Cleanup Day and encourage volunteer participation in this event.

SUMMARY:

The “Inner Coastal Watershed Cleanup Day,” is held in conjunction with the Annual Coastal Cleanup Day which is scheduled for Saturday, September 18, 2021. This event brings together residents and volunteers to increase water quality awareness and to remove trash and debris within the Aliso Creek Watershed. The City of Laguna Hills proposes to organize volunteers and direct efforts to clean up the City Wetlands along Alicia Parkway and also within the open space and trail behind the Laguna Hills Community Center & Sports Complex and High School. It is recommended the City Council support and declare September 18, 2021, as Inner Coastal Watershed Cleanup Day and encourage volunteer participation in the event.

BACKGROUND:

Trash and debris in our inner coastal waterways, including local creeks that are tributary to the ocean, have been determined to be contributors of litter into the Pacific Ocean. This may cause the ocean waters to be unhealthy for swimming and other water activities; and it can also be harmful to marine life. Annually, a statewide volunteer effort is organized to clean up the creeks, watersheds, and coastline. The 24th Annual

Inner-Coastal Watershed Cleanup Day
September 14, 2021
Page 2

Inner Coastal Watershed Cleanup Day is being held in conjunction with the Annual California Cleanup Day on September 18, 2021. One of the objectives of the Cleanup Day is to raise awareness of water quality issues amongst the public. It is also a great opportunity for residents to volunteer to clean up the community and preserve its beauty.

The City of Laguna Hills has regularly participated in this statewide effort to diminish litter from entering the ocean and to help clean up the community. Laguna Hills has participated in this event since 2004. Staff and volunteers will meet at the Community Center and then clean up a portion of the City Wetlands along Alicia Parkway, from Via Lomas to Laguna Court, and the open space and trail from Alicia Parkway to Indian Hill Lane, behind the Laguna Hills Community Center & Sports Complex and High School, on September 18, 2021, from 9:00 a.m. to Noon. The City of Laguna Hills' announcement of this year's Clean-up Day is attached to this Report, is posted on the City website and social media channels.

It is recommended the City Council support and declare September 18, 2021, as Inner Coastal Watershed Cleanup Day and encourage volunteer participation in the event.

FISCAL IMPACT:

The City typically provides a \$750 sponsorship in support of this event and approximately eight staff hours will be necessary to coordinate the volunteer efforts at the site location on the day of the event. Funds are available to support this event in the 2021-2022 Fiscal Year Budget.

ATTACHMENTS:

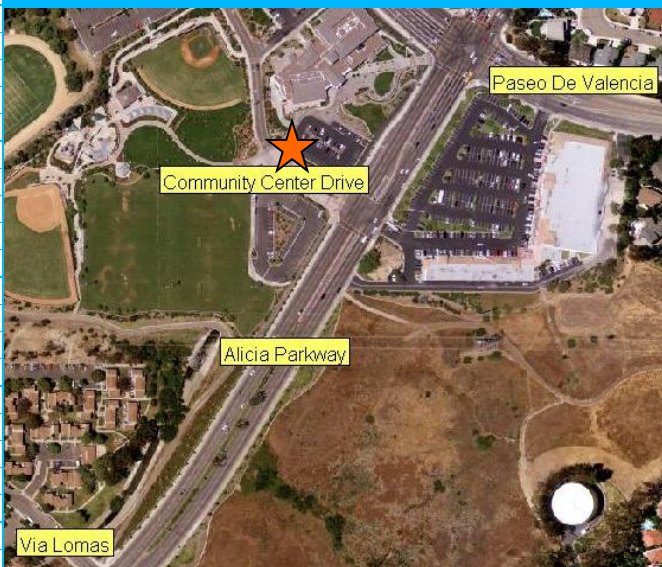
- Announcement for 24th Annual Inner Coastal Watershed Cleanup Day



The City of Laguna Hills

24th Annual Inner-Coastal & Watershed Cleanup Day

- What:** Take pride in our community and help clean up local creeks, watersheds & trails to preserve the beauty of our community.
- When:** Saturday, September 18, 2021 9:00 a.m. - 12:00 p.m.
- Where:** Laguna Hills Community Center (Meeting Location)
25555 Alicia Parkway, Laguna Hills, CA 92653
- Who:** Volunteers / Community Groups / Residents / Families



Laguna Hills Community Center

Directions: From Interstate 5, exit Alicia Parkway and turn west. Travel to Community Center Drive and turn right. Turn left into the parking lot.

★ = Meeting location. Look for the booth setup in the parking lot.

For more information please visit www.lagunahillsca.gov or contact Ryan Hanley in the Public Services Department at (949) 707-2652. Individuals and groups may pre-register by email to ghanley@lagunahillsca.gov.



Wear appropriate clothes including closed-toe shoes or hiking boots (no sandals or open toed shoes). Bring gardening or work gloves if you have them. Remember your sunscreen and a hat!

This event is held in conjunction with California Coastal Clean-up Day.

Come join your neighbors in helping to keep our Community beautiful!

ORANGE COUNTY STORMWATER
POLLUTION PREVENTION PROGRAM.
"THE OCEAN BEGINS AT YOUR FRONT DOOR"



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Approve a Joint Agreement Between the County of Orange and the City of Laguna Hills for 800MHz Countywide Coordinated Communications System

RECOMMENDATION: That the City Council approve a Joint Agreement between the County of Orange and the City of Laguna Hills for 800MHz Countywide Coordinated Emergency Communications System

SUMMARY:

The County of Orange's 800MHz Countywide Coordinated Communications System (CCCS) is one of the nation's largest, fully interoperable communications networks for law enforcement, fire services, lifeguard, public works, and numerous other local government and public service agencies and serves as the County's public safety radio system. The Orange County Sheriff's Department operates the CCCS, and oversight is provided by the CCCS Governance Committee, which is comprised of four Orange County City Managers and three County of Orange representatives. All Orange County cities, the County of Orange, the Orange County Fire Authority (OCFA), and other participating agencies jointly govern and finance, determined by a mutually agreed upon cost-sharing formula, the CCCS.

The City has participated in the system since its inception in 1996 in accordance with a Joint Agreement between the County of Orange and the City of Laguna Hills for 800MHz CCCS (Agreement). The most recent Agreement between the County of Orange and the City of Laguna Hills expired on June 30, 2021. Consequently, in order to access and

Approve a Joint Agreement for 800MHz Countywide Coordinated Communications System

September 14, 2021

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utilize the public safety radio system, the City must enter into a new Agreement with the County of Orange. Staff recommends that the City Council approve the Agreement.

BACKGROUND:

The Sheriff-Coroner Department (Sheriff) operates and maintains the CCCS, which provides centralized, interoperable voice radio communications for the County and its 34 cities, including all public safety and public service agencies, as well as a number of private, state, and federal agencies that provide support to the aforementioned agencies. Oversight of the CCCS public safety radio system is provided by the CCCS Governance Committee, comprised of four City Managers and three County representatives.

All Orange County cities, the County of Orange, the OCFA, and other participating agencies jointly govern and finance – through a cost-sharing formula – the CCCS in accordance with the terms and conditions of the Joint Agreement (Agreement). In accordance with Section 5.3.1 of the Agreement, the cost-share formula for participating agencies is calculated based on the number of Subscriber Units each agency operates on the CCCS as a percentage of the total number of Subscriber Units operating on the system. A Subscriber Unit is defined as the subscriber radios and other devices that utilize the system, such as mobile radios, portable radios, cellular based devices, and other devices that allow the City to communicate over the CCCS. The City currently utilizes 42 Subscriber Units, with 38 Subscriber Units allocated to law enforcement personnel and the remainder to the Public Services Department. In FY2020-2021, the City's cost-share allocation was \$13,283. The City's cost-share allocation for FY2021-2022 amounts to \$14,288, representing a 7.6% increase from the previous fiscal year. A portion of operational costs to administer, maintain, and update the system are also included in the City's cost-share allocation.

On February 6, 1996, the Orange County Board of Supervisors (Board) approved the original Agreement for the implementation and operation of the Orange County 800MHz CCCS. At the time, the participating agencies included 31 cities and OCFA, and the Agreement outlined partnership responsibilities and financial obligations for the implementation and management of the public safety radio system.

Subsequently, on November 23, 2004, the Agreement was revised and entered into by the 34 Orange County cities, the County of Orange, OCFA, and other participating agencies. Later, the County of Orange and the participating agencies amended the

Approve a Joint Agreement for 800MHz Countywide Coordinated Communications System

September 14, 2021

Page 3

Agreement to define post-implementation operational, technical, and financial requirements and guidelines to manage the CCCS.

The most recent version of the Agreement expired on June 30, 2021. Consequently, for the purpose of drafting an updated Agreement, the CCCS Governance Committee convened in January 2021 and proposed a re-write of the Agreement to establish bylaws for the Governance Committee and to revise the technical, operational, and financial requirements for participating agencies. The revised financial requirements of the Agreement define financial parameters for annual and future costs to operate and maintain the public safety radio system and, in addition, include provisions for capital expenditures related to the CCCS.

The revised Agreement was presented to the Governance Committee at the April 28, 2021, Governance Committee meeting and later to all 34 City Managers for review and comment. All revisions proposed by the City Managers and representatives from other participating agencies were incorporated into the Agreement. Subsequently, the Agreement was presented and approved by the Board on June 22, 2021, and must be approved by the governing body of each participating agency. Staff recommends that the City Council approve the Agreement.

FISCAL IMPACT:

The City's portion of the cost-share allocation for 42 Subscriber Units and operational costs for 2021-2022 Fiscal Year amounts to \$14,288 and this cost is included in the current Budget.

ATTACHMENTS:

- Joint Agreement
- Cost-Share Allocations

JOINT AGREEMENT
FOR THE OPERATION, MAINTENANCE AND FINANCIAL MANAGEMENT OF THE ORANGE
COUNTY
800-MEGAHERTZ COUNTYWIDE COORDINATED COMMUNICATIONS SYSTEM

This agreement is entered into on /2021, by and between the executing Partner agencies. This agreement replaces the 2005 Agreement as amended, and to the extent there is a conflict, this Agreement controls.

RECITALS:

Whereas, the Next Generation installation and implementation of the 800 MHz Countywide Coordinated Communications System (800 MHz CCCS) has been completed; and,

Whereas, the original Joint Agreement for the Operation, Operation Maintenance, and Financial Management of the Orange County 800 MHz Countywide Coordinated Communications System was executed September 19, 1995, and related Amendments Nos. 1, 2, 3, 4, 5, and appropriate change orders thereto followed (the "1995 Joint Agreement"), and;

Whereas, a subsequent Joint Agreement for the Operation, Operation Maintenance, and Financial Management of the Orange County 800 MHz Countywide Coordinated Communications System was executed in November 2005, and related Amendments Nos. 1 and appropriate change orders thereto followed (the "2005 Joint Agreement"), thereby superseding the original 1995 Joint Agreement, and;

Whereas, the Partner agencies now desire to execute a new Joint Agreement (the "2021 Joint Agreement") to supersede all previous Joint Agreements; and,

Now, therefore, in consideration of the mutual covenants, conditions, agreements, and stipulations hereinafter expressed, the Partner agencies hereby agree as follows:

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1.0 GENERAL

1.1 System

The 800 MHz Countywide Coordinated Communications System (800 MHz CCCS) will be referred to as the “System.” The System shall be maintained by the Orange County Sheriff-Coroner Department’s Technology Division (hereinafter referred to as “Lead Agency”).

1.2 Definition of Terms

- “System” is defined as a multichannel digital trunked radio communications system enabling interoperability among all participating City and County law, fire, public works, and lifeguard/marine safety departments. The System components also include transmitting /receiving sites, microwave networks, IP networks, dispatch consoles, control stations, and field equipment (mobile and portable radios).
- “Governance Committee” is established by the Board of Supervisors and Partner Agencies to the Joint Agreement to facilitate the operation, maintenance, and financial management of the system. The Governance Committee is comprised of nine (9) members as identified in the Governance Committee Bylaws, attached hereto as Attachment A.
- “Governing Authorities” are the City Councils, the Orange County Board of Supervisors, and the Orange County Fire Authority Board of the Partner Agencies, responsible for approving certain substantive modifications or amendments to this agreement where such approval authority has not been expressly delegated to the Governance Committee.
- “Law Enforcement Agency” is defined as all governmental Law Enforcement Agencies operating primarily within the limits of Orange County, including, but not limited to: Orange County Sheriff-Coroner Department, Orange County City Police Departments, Orange County District Attorney’s Office, and Orange County Probation Department.
- “Lead Agency” is designated to be the Orange County Sheriff’s Department (OCSD) Technology Division that will be responsible to manage, maintain, and enhance the System and its respective Standard Operating Procedures (SOP).
- “Marine Safety” is defined as and shall include all governmental and private lifeguard agencies operating primarily within the limits of Orange County.

- “Member Agency” is defined as an agency authorized by the Governance Committee to use the System. Members include the Lead Agency and Partner Agencies.
- “Mobile Radio” is defined as two-way radio equipment installed in a vehicle to provide communications for the vehicle operator.
- “Mutual Aid Provider” is any governmental organization not otherwise defined in this Agreement that will provide short term assistance across jurisdictional boundaries during an emergency or planned event that exceeds local resources. Mutual aid use of the System will be restricted to the timeframe of the mutual aid incident.
- “New Partner Agency” are Partner Agencies added after the adoption of this Joint Agreement.
- “Parties” are all those entities that are authorized users of the System and have signed this agreement.
- “Partner Agency” are authorized subscribers to the system who agree to share in the System Operational Costs to administer, maintain, and upgrade the technology by providing recurring rate schedule payments.
- “Portable Radio” is a two-way radio equipment that is rechargeable, and handheld or belt carried.
- “Radio Site” is defined as a location, which consists of a building, systems within the building, and a tower.
- “Sponsored Agency” is any agency approved to use the System under sponsorship of a Partner Agency.
- “Sponsoring Partner Agency” is a Partner Agency that wishes to sponsor a Sponsored Agency.
- “Subscriber Unit” is defined as the subscriber radios and other devices that utilize the System. This includes dispatch operator positions, mobile radios, portable radios, cellular based devices and any other device that allows a user to communicate over the System.
- “System infrastructure” is defined as all associated radio and support equipment required to establish a radio network on which user radios can operate to communicate throughout the County of Orange. System infrastructure includes, but is not limited to, servers, switches, routers, data lines, base station radios, microwave technology, and firewalls.
- “System Operational Costs” are the expenses required to administer, maintain, and update the System.

- “System Modification” is any change in operational procedure or technology that requires alteration to the System.
- “System Subscriber Equipment” is defined as all equipment used to support user access to the System including Subscriber Units and other supporting equipment such as dispatch center console equipment, antennas, batteries, etc.
- “System User” is defined as an individual or agency authorized to access the System.
- “System Watch Network Operation Center” is a Lead Agency staffed support center responsible for the 24/7 support of the System. This includes but not limited to, live monitoring, notifications, troubleshooting, callouts, and repair.
- “Talkgroups” are used to identify groups of users who communicate together on a trunked radio system.

1.3 Amendment Process

The Governance Committee is authorized to make future updates, amendments, or modifications to the Agreement and its attachments without further action of the Governing Authorities, so long as the updates, amendments, or modifications to the Agreement and its attachments would result in minor, non-substantive changes that do not create or increase the financial obligations of the Partner Agencies. Where the Governance Committee is authorized to make such updates, amendments, or modification, such delegated authority shall be expressly granted in this agreement.

This agreement may also be amended or modified by the consent of all of the Governing Authorities representing the Partner Agencies.

1.4 Liability

Each Party of this Agreement (the “Indemnitor”) shall indemnify, defend, and hold all other Parties, and their agents and employees (the “Indemnitees”) harmless from all claims, liabilities, damages, and losses to the Indemnitees arising out of any acts or omissions of itself and its agents and employees in connection with the performance of this agreement which acts or omissions constitute gross negligence.

1.5 Withdrawal from System

Any Party may withdraw from this Agreement by serving written notice to the Governance Committee of their intent to withdraw. Due to the cost distribution model used to fund the operation of the System, any Party withdrawing from this Agreement will financially impact the remaining Parties. As such, Parties wishing to withdraw from this Agreement shall do the following:

- 1) Withdrawing Party provides written notice twelve months prior of withdrawal after meeting its financial obligations under this agreement.

- 2) Withdrawing Party will attend the Governance Committee meeting following their submittal to discuss withdrawal process.
- 3) Withdrawing Party will work with the Lead Agency to effect the withdrawal.
- 4) Withdrawing Party will make all Operational Cost payment obligations for the full fiscal year of the withdrawal.
- 5) Withdrawing Party will be responsible for all Lead Agency Costs associated with the withdrawal process.

Withdrawing Party will not be responsible for any financial obligations assumed by the other Partner agencies subsequent to withdrawal and upon fulfillment of existing financial obligations. Similarly, it is understood that the County of Orange has ownership of the System and certain sites as well as FCC licenses presently issued to the County, and upon any withdrawal by any Parties to the Agreement, any and all right, title, and interests in the System, those sites and FCC licenses shall remain with the County. Should the County of Orange wish to withdraw, an orderly transition to the remaining Parties must be affected.

2.0 GOVERNANCE COMMITTEE

2.1 Governance Committee Authority

The Governance Committee shall be governed in accordance with the Governance Committee Bylaws attached hereto as Attachment A. Any future updated revisions or amendments to the Governance Committee Bylaws shall be deemed adopted by this agreement without further action of the Governing Authorities.

2.2 Governance Committee Member Appointment

The Governance Committee shall be comprised of nine (9) members, as identified below. It will also be responsible for coordinating with their appropriate associations/agencies on issues involving the appropriate Governing Authorities approvals:

- Four City Managers appointed by the Orange County City Managers' Association
- Orange County Chief Executive Officer, or Designee
- Orange County Sheriff-Coroner, or Designee
- Orange County Public Works Deputy Director, or Designee
- Orange County Chief of Police & Sheriffs Association (OCCOPSA) Chief or Designee not from a city currently represented on the governance committee
- Orange County Fire Chiefs Association (OCFCA) Fire Chief or Designee not from a city currently represented on the governance committee

2.3 Governance Committee Purpose

The Governance Committee oversees all aspects of the implementation, operation, and fiscal management of the system, including but not limited to, the following:

- Approving System operational policies
- Addressing System operational issues

- Resolving operational policy or fiscal matter disputes of Partner Agencies.
- Addressing System facilities development
- Reviewing and approving modification and enhancement plans
- Approving contract pricing changes
- Approving Annual System Operational Budget and Cost Sharing Allocations.
- Approving 10 year capital plans and allocation of Reserve Fund for required upgrades.
- Approving New Partner Agencies.
- Approving Sponsored Agencies.

3.0 MEMBERS TO THE SYSTEM

Members are all agencies authorized by the Governance Committee to use the system and who have signed this agreement.

3.1 Lead Agency

The lead agency is designated to be the Orange County Sheriff's Department Technology Division and will manage, maintain, and enhance the system. Lead Agency is responsible for System Administration as outlined in Section 4 below.

3.2 Partner Agencies

Partner Agencies are authorized subscribers to the System who have signed this Joint Agreement or added as New Partner Agencies via the process outlined in 3.2.1 below. Partner agencies agree to share in the System Operational Costs and System Maintenance Costs as outlined in Section 5 below.

3.2.1 New Partner Agencies

Agencies that wish to become an authorized subscriber to the System may be added as a New Partner Agency via the following steps:

- 1) The prospective New Partner Agency submits an official request, in writing, to the Lead Agency requesting to join as a Partner Agency.
- 2) Lead Agency gathers additional information from requesting New Partner Agency to determine the feasibility of the request and the potential impact on the System operation and the existing Members.
- 3) The Lead Agency processes the request to obtain approval.
- 4) Lead Agency presents the request to the Governance Committee along with previous approvals from appropriate Governing Authorities. Governance Committee will determine final approval or denial of the request.
- 5) Once all approvals have been obtained, requesting New Partner Agency will execute a copy of this agreement along with the associated New Partner Agency forms identified in Attachment B.
- 6) The approved New Partner Agency will purchase necessary radio equipment and arrange to pay associated New Partner Agency costs described in in 5.2 below.

3.2.2 Sponsored Agencies

Partner Agencies may, with Lead Agency review and Governance Committee Approval, sponsor non-partner agencies to participate in the system.

3.2.2.1 Sponsored Agencies Approval Process:

- 1) Sponsoring Partner Agency submits to the Lead Agency an official written request to add a Sponsored Agency.
- 2) Lead Agency gathers relevant information from Sponsoring Partner Agency to determine the feasibility of the request and the potential impact on the System Operation and the existing Members.
- 3) Lead Agency reviews all available information to determine the feasibility of the request to add the Sponsored Agency. Lead Agency shall work with the Sponsoring Partner Agency to determine the additional costs to the Sponsoring Partner Agency.
- 4). Lead Agency presents the request to the Governance Committee at a Governance Committee Meeting. Governance Committee shall approve or deny the addition of the Sponsored Agency.

3.2.2.2 Sponsored Agency Access and Limitations

Sponsored Agencies are only allowed access to use the common talkgroups/channels and select agency specific talkgroups/channels of the sponsoring Partner Agency, as recommended by the Lead Agency and approved by the Governance Committee. Sponsored Agencies do not have a role in defining the operation of the System. The inclusion or exclusion of Sponsored Agencies in the System will be determined by the Governance Committee and will be reviewed annually or as needed. Partner Agencies shall be responsible for any System use by a Sponsored Agency. Sponsored Agencies must use the same common talkgroups as the sponsoring Partner Agency.

3.2.2.3. Sponsored Agency Financial Responsibilities

Sponsored Agency financial responsibilities are outlined in section 5.2.4 below.

3.3 Mutual Aid Agencies

Certain governmental agencies may, with Lead Agency review and Governance Committee Approval, be granted access to the System for the express purpose of providing mutual aid to Partner Agencies. Mutual Aid agencies are limited to and identified within ATTACHMENT C

3.3.1 Mutual Aid Agency Approval Process:

- 1) Any Partner Agency may submit to the Lead Agency an official written request to add a Mutual Aid Agency.

2) Lead Agency gathers relevant information to determine the feasibility of the request and the potential benefit to existing Partner Agencies and overall public safety in Orange County.

4) Lead Agency presents the request to the Governance Committee at a Governance Committee meeting. The Governance Committee shall approve or disapprove the addition of the Mutual Aid Agency.

3.3.2 Mutual Aid Agency Access and Limitations

Mutual Aid Agencies are only allowed access to use the common talkgroups/channels and the mutual aid channels associated with other systems that are included in our radio programming. Mutual Aid Agency use of the System is restricted to the actual duration of a mutual aid incident. Mutual Aid Agencies do not have a role in defining the operation of the System. The inclusion or exclusion of Mutual Aid Agencies in the System will be determined by the Governance Committee and will be reviewed annually or as needed.

3.3.3 Mutual Aid Agency Financial Responsibilities

Mutual Aid Agency financial responsibilities are outlined in section 5.2.5 below.

4.0 SYSTEM ADMINISTRATION

The Lead Agency shall have the authority and responsibility to maintain the proper operation of the System. The Lead Agency shall be responsible for maintaining, managing, and operating the System, which includes staffing the System Watch Network Operations Center on a continual basis (e.g., 24x7x365), assuring the seamless operation of the System.

4.1 System Equipment

The Lead Agency shall approve and evaluate all equipment and new technology for use with the system to ensure that it meets the requisite technical standards and requirements. Approved equipment must meet the standards set by the Federal Communication Commission as well as any Federal, State, and Local Laws.

4.2 System Subscriber Equipment

Each Member Agency is responsible for the maintenance, management, and operation of its System Subscriber Equipment. A Member Agency may establish a System Subscriber Equipment maintenance contract with the Lead Agency.

Prior to making any modifications to System Subscriber Equipment, including but not limited to adding radios or alteration to dispatch center equipment, Member Agencies must request such modifications to be reviewed and approved by the Lead Agency as outlined in section 4.4.

4.3 Dispatch Centers

Member Agencies may operate their own Dispatch Centers at their discretion. Individual Member Agencies that manage their own Dispatch Centers shall be responsible for the day to day maintenance, management, and operation of those Dispatch Centers, equipment and associated facilities. Day to day dispatch operations and protocols shall be left to the individual Members

Agencies. The Lead Agency will not be responsible for the maintenance or management of Members Agencies' individual Dispatch Centers unless a Member User contracts with the Lead Agency for maintenance, management, or operations.

4.3.1 Dispatch Center Equipment

Dispatch Center Equipment must meet the technical standards as outlined in Section 4.1.

4.3.1.1 Dispatch Center Required Equipment Upgrades

The Governance Committee may mandate equipment upgrades for Member Agencies Dispatch Center Equipment. If the Governance Committee mandates an Equipment Upgrade to Members Agencies' Dispatch Center Equipment, then the Members Agencies must upgrade their equipment as directed by the Governance Committee.

4.3.1.2 Dispatch Center Non-Required Equipment Upgrades

Members Agencies may upgrade their Dispatch Center equipment and associated facilities at their own cost without coordination with the Lead Agency so long as the upgrade will not adversely affect the System itself. However, Member Agencies must coordinate with the Lead Agency as outlined in the System Modifications section 4.4, below, when upgrading or modifying any Dispatch Center equipment vital to the operation of the System. Dispatch Center Equipment modification requiring coordination with the Lead Agency includes, but is not limited to: computer equipment, software, consoles, routers, switches, gateways, firewalls, control stations, and antenna systems.

4.4 System Modifications

The System will require occasional routine modifications, which shall be conducted as outlined in this section.

4.4.1 System Modifications requiring Governance Committee Approval

The following System Modifications require the pre-approval of the Governance Committee, as outlined in the Governance Committee By-Laws:

- A. Addition of any New Member Agencies to the System.
- B. Any modification that adds a financial burden shared by the Member Agencies.
- C. Any modification that would affect a System User other than the requesting Member Agency.

The Lead Agency is required to provide a report and recommendation to the Governance Committee on any proposed System Modification that requires Governance Committee approval. The Lead Agency report and recommendation must provide a financial analysis of the System Modification, if appropriate, and an estimated timeline to complete the System Modification.

The Lead Agency is responsible for implementing any Governance Committee approved modification.

4.4.2 System Modification by Lead Agency

The Lead Agency is authorized to perform System Modifications, as necessary. The Lead Agency has the discretion to implement System Modifications without prior Governance Committee Approval, so long as the modification does not require Governance Committee approval as listed in Section 4.4.1 of this agreement, and does not cause unanticipated or unbudgeted costs to Member Agencies.

4.4.3 System Modifications requested by Partners Agencies

Partner Agencies may request system modifications. System Modification requests from Partner Agencies must be submitted in writing to the Lead Agency for review and approval.

If the Lead Agency grants a Partner Agency modification request, and the request does not require Governance Committee Approval as outlined in Section 4.4.1, then the Lead Agency shall provide the Partner Agency with a formal approval, including all costs of the requested modification. If a Member Agency agrees with the official permission, the Member Agency may request the Lead Agency to implement the System Modification. Any and all costs associated with implementing the System Modification will be the sole responsibility of the System User requesting the modification.

If a Member Agency modification request requires Governance Committee approval per Section 4.4.1 above, then the Lead Agency and the Member Agency requesting the modification shall present the modification request to the Governance Committee for approval. The modification request shall include the reason for the modification, the Lead Agency's recommendation and cost analysis of implementing the modification.

4.4.4 Appeal of Modification Request Denial

If the Lead Agency denies a Member Agency's modification request, the Lead Agency shall provide the Member Agency, in writing, the reasons for the denial. Members Agencies may submit a written appeal of the decision of the Lead Agency to the Governance Committee within 90 days of the denial notification. The Lead Agency will ensure the appeal is added to the next Governance Committee meeting agenda for action.

4.4.5 Notification of System Modifications to Governance Committee

Lead agency is required to provide a list of implemented, pending and requested System Modifications at each Governance Committee Meeting.

4.5 Security

The Lead agency has in place a Security Plan for the System (Attached as Attachment D.) Member Agencies and System Users are required to protect the security of the System as set forth in the Security Plan.

System Users are required to contact System Watch for any actual or potential security breach to the System as soon as the actual or potential security threat is known. The Lead Agency must evaluate any reported security breaches and is authorized to implement measures to remediate the

security breach. If appropriate, the Lead Agency shall inform the Governance Committee of any reported breach and steps taken to remediate.

4.6 Maintenance & Service Contracts

Within approved and adopted budget, the Lead Agency is authorized to enter into contracts with vendors as needed for the ongoing execution of this agreement. Such contracts include, but are not limited to, the purchase or lease of equipment, installation of equipment, service and/or maintenance of equipment, and System upgrades. All contracts shall comply with applicable law and purchasing policies and guidelines. Appropriate shared costs will be included in System Operational Costs cost-sharing allocations. The Lead Agency shall negotiate and enter into contracts with vendors as intended in this agreement and shall make payments due and payable under such contracts on behalf of the parties.

The Lead Agency will serve as an administrative liaison between the other Member Agencies and the contracted vendors.

4.7 System Standard Operating Procedures

The Lead Agency is responsible for the development and maintenance of the Standard Operating Procedures ("SOP") (Attachment E) for the system. The Lead Agency shall coordinate with System Users, including but not limited to Law Enforcement, Fire Services, Marine Safety, and Public Works in developing and updating the SOP. The SOP, and any amendments to the SOP, must be approved by the Governance Committee. All Member Agencies must follow the SOP and any amendments to the SOP once approved by the Governance Committee.

4.8 Partner Agency Operational Policies and Procedures

Member Agencies must inform the Lead Agency of any changes to their operational policy or procedures, in writing and prior to any implementation of such changes, if the change of operational policy or procedure affects or may affect the System. The Lead Agency will work with Member Agencies to ensure that operational policies and procedures are compatible with the System. The Lead Agency shall work collaboratively with Member Agencies to settle any disputes regarding Member Agency Operational Policies and Procedures. The Lead Agency shall bring any dispute to Member Agency Operational Policies and Procedures to the Governance Committee for review and resolution if a dispute cannot be resolved between the Lead Agency and the Member Agency.

5.0 FINANCIAL ADMINISTRATION

5.1 Governance Committee Financial Authority

The Governance Committee shall have the authority to allocate available budgeted funds as they deem appropriate for the operation, maintenance, and management of the system. Governance Committee has the authority to approve the System Operations Budget, set rates and fees, and approve use of the Reserve Fund for necessary expenditures and upgrades. Governance Committee has the authority to approve capital expenditure funding and approved sources of the reserve fund.

5.2 Partner Agencies Financial Obligations

Partner Agencies and New Partner Agencies are responsible for certain financial obligations including, but not limited to, the following.

5.2.1 System Operational Costs

All Partner Agencies shall contribute to the System Operational Costs via the Systems Operations Budget and administered as described in section 5.3 below.

5.2.2 System Entry Fees/Upgrade Fees

Some Partner Agencies must pay System Entry Fees when they enter/register a radio into the System for activation based on the System Entry Fee established by the Governance Committee. The Lead Agency shall submit their recommendation of the System Entry Fees for Governance Committee approval at the same time the System Operations Budget (Section 5.3) is submitted for approval annually.

The System Entry Fees are necessary to recoup/offset costs that were required during the previous System upgrade. Partner Agencies that financially contributed to the previous System Upgrade are not required to pay System Entry Fees. Legacy Partner Agencies that are not required to pay System Entry Fees are listed in attachment C. Partner Agencies not listed in attachment C and any New Partner Agencies are required to pay the System Entry Fee for each radio they add to the System.

System Entry Fees are billed on a per radio basis. The Lead Agency shall invoice the Partner Agency or New Partner Agency for any System Entry Fees at the approved per radio rate when a new radio is entered into the System on behalf of that Partner or New Partner.

System Entry fees shall be deposited into the Reserve Fund as outlined in section 5.6 below.

Over-the-air upgrade programming of radio equipment will not be charged and limited to two annually per Member Agency. Any additional upgrades past the two annually will incur a cost.

5.2.3 Miscellaneous Rates and fees

As stated in 5.1 above, the Governance Committee has authority to set rates and fees as necessary. The Lead Agency may charge Partner Agencies and New Partner Agencies via invoice. Partner Agencies shall pay invoice within thirty (60) days of the date of the invoice.

Governance Committee shall set any Miscellaneous Rates and Fees annually. Lead Agency shall submit their recommendation for Miscellaneous Rates and Fees at the same time they submit the System Operations Budget (Section 5.3) for approval.

5.2.4 Mutual Aid Agencies

Mutual Aid Agencies are not authorized to use the System for day-to-day communications but are limited to use of the System only when providing emergency assistance to Partner Agencies. As such, Mutual Aid Agencies are not included in the System Operations cost share calculations or System Entry Fees. Mutual Aid Agency equipment and programming costs will be the responsibility of the Mutual Aid Agency.

5.2.4 Sponsored Agencies

The sponsoring Partner Agency is responsible for the costs, rates, and fees of any Sponsored Agency it sponsors on the System, unless otherwise approved by the Governance Committee. System Entry Fees per 5.2.2 above shall not apply to System Subscriber equipment for a Sponsored Agency.

5.3 System Operations Budget

The Lead Agency will submit the proposed System Operations Budget for approval to the Governance Committee no later than one hundred and twenty (120) days prior to the beginning of the fiscal year. Governance Committee shall be responsible for approving the System Operation Budget no later than ninety (90) days prior to the fiscal year.

5.3.1 Partner Agency Cost

The Lead Agency shall submit the Partner Agency Cost Share to the Governance Committee along with the System Operations Budget in 5.2 above. The Governance Committee shall be responsible for approving the Partner Agency Cost Share, along with the System Operations Budget.

Partner Agency Cost Share shall be calculated based on the number of Subscriber Units each agency operates on the System as a percentage of the total number of Subscriber Units operating on the System. This will determine the agency's share of the annual System Operations Budget.

5.3.2 Payment Remittance

Partner Agencies are required to remit payments to the Lead Agency for their contribution for use of the System. The Lead Agency shall invoice Partner Agencies quarterly. Lead Agency shall issue invoices no later than thirty (30) days after the beginning of each quarter. Partner Agencies shall pay invoice within thirty (30) days of the date of the invoice.

5.4 Year End Settlement

At the end of each fiscal year, the Lead Agency shall submit a financial review with the actual System Operational Costs from the previous fiscal year to the Governance Committee. The findings of the financial review shall be reported in writing to the Partner Agencies on the system. Thereafter, to the extent there have been contributions made by the Partner Agencies which exceed the actual System Operations Costs, the number of said excess contributions shall be deposited into the Reserve Fund (see 5.5), unless the Governance Committee deems otherwise. In the event of a shortfall, each Partner Agency shall be billed its pro-rata share of the shortfall, which shall be paid in the first quarter payment for the next fiscal year following the fiscal year of the shortfall.

5.5 Ten-Year Plan

The Governance Committee, in conjunction with the Lead Agency, will be responsible for evaluating and planning for future upgrades. Doing so will ensure the continued structural

integrity of System equipment and Sites and any necessary maintenance or repairs, and allocating for unforeseen events which may lead to additional expenses outside of the standard operational costs. Such items will be defined within a Ten-Year Plan, which will be presented to and approved annually by the Governance Committee.

The Lead Agency shall submit an updated Ten-Year Plan to the Governance Committee annually for review and approval.

5.6 Reserve Fund

The Governance Committee shall review and approve a long-term financial plan to ensure funds are available for the System's capital needs as defined in the annually updated Ten-Year Plan, as well as for any unforeseen emergency expenses. A Reserve Fund has been established to ensure adequate funds are available for ongoing maintenance, upgrades, and unforeseen expenses which may arise outside of operational costs.

5.6.1 The Reserve Fund shall be funded in the following manner:

5.6.1.1 Contributions by Partner Agencies

The Partner Agencies are responsible for providing funds for deposit to the Reserve Fund. The Lead Agency shall submit the cost of each Partner Agency along with the Fiscal Year Budget described in section 5.3. The Governance Committee shall approve the Reserve Fund contributions as part of the annual budget review and adoption process.

5.6.1.2 System Entry Fees

All System Entry Fees collected per 5.2.2 of this Agreement shall be deposited into the Reserve Fund.

5.6.1.3 System Operation Budget Surplus

In the event of a System Operation Budget Surplus at the Year-End Settlement, that System Operation Budget Surplus shall be deposited into the Reserve Fund.

5.7 System Modification Cost

Any costs associated with System Modifications shall be addressed as outlined in section 4.4 of this agreement.

IN WITNESS WHEREOF, the Partner agencies hereto have set their hands and seals on the date set forth opposite their respective signatures on identical counterparts of this instrument, each which shall for all purposes be deemed an original thereof.

COUNTY OF ORANGE

By: _____

Board of Supervisors

Dated: _____

Approved As to Form:

County Counsel

APPROVED AS TO FORM

 COUNTY COUNSEL OF
 ORANGE COUNTY, CALIFORNIA

CITY OF: _____

ATTEST:

By: _____

By: _____

 City Clerk

Dated: _____

Approved As to Form:

City Attorney

By: _____

Chairman

Dated: _____

ATTEST:

 Clerk of the Authority

IN WITNESS WHEREOF, the Partner agencies hereto have set their hands and seals on the date set forth opposite their respective signatures on identical counterparts of this instrument, each which shall for all purposes be deemed an original thereof.

COUNTY OF ORANGE

By: _____
Board of Supervisors

Dated: _____

Approved As to Form:
County Counsel

CITY OF: _____

ATTEST:

By: _____

By: _____

City Clerk

Dated: _____

Approved As to Form:
City Attorney

By: _____

Chairman

Dated: _____

ATTEST:

Clerk of the Authority

ORANGE COUNTY AGENCY

APPROVED AS TO FORM:

By: _____
Authority Counsel

Dated: _____

ATTEST:

Clerk of the Authority

APPROVED AS TO FORM:

By: _____
Authority Counsel

Dated: _____

By: _____
Chairman

Dated: _____

ATTEST:

Clerk of the Authority

APPROVED AS TO FORM:

By: _____
Authority Counsel

Dated: _____

**BYLAWS
800 MHz GOVERNANCE COMMITTEE**

Page 1

Article 1 Name

Section 1. The name of this body is the 800 MHz GOVERNANCE COMMITTEE, hereinafter referred to as the "Governance Committee."

Article 2. Purpose and Authority

Section 1. It is the purpose of the Committee to oversee implementation and operation of the 800 MHz Countywide Coordinated Communications System (the "System"), including Member Agency compliance with payment schedules, addressing operational issues affecting System operation and site development, reviewing and approving conversion, modification and enhancement plans, approving contract pricing changes, resolving disputes between Member Agencies, operational and fiscal matters necessary for the operation and maintenance of the System, and performing any other responsibilities required to implement the Joint Agreement. The Governance Committee shall be responsible for approving the 800 MHz Project System Operations Budget operating and Reserve Fund that are jointly funded by the Parties to the Joint Agreement.

Section 2. The Governance Committee was established November 23, 2004, and amended June 2, 2015, by the Orange County Board of Supervisors (the "Board") and Parties to the Joint Agreement to facilitate the operation, maintenance and financial management of the 800 MHz CCCS.

Section 3. This Governance Committee will operate under the revised Board authorization of the re-written Joint Agreement to facilitate the operation, maintenance, and financial management of the 800 MHz CCCS established on _____

Article 3. General Operating Mandated Regulations and Statutes

Section 1. The Governance Committee must adhere to all local, state and federal regulations and statutes that may, from time to time, apply.

Section 2. The Committee shall be subject to the provisions of The Brown Act (commencing with Section 54950 of the Government Code) relating to public meetings of local governmental advisory boards.

Section 3. The Governance Committee must comply with the County's non-discrimination and zero tolerance sexual harassment policies.

Section 4. The Governance Committee must comply with the County's Code of Ethics, which outlines the County's clear expectations for behavior in relation to the members' duties as public servants.

Attachment: Joint Agreement (2565 : Approve a Joint Agreement for 800MHz Countywide Coordinated Communications System)

BYLAWS
800 MHz GOVERNANCE COMMITTEE

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Section 5. The Governance Committee shall operate strictly within its designated purpose.

Article 4. Membership and Term of Office

Section 1. Appointment. The Committee shall be comprised of nine (9) members, as identified below, and will also be responsible for coordinating with their appropriate associations/agencies on issues involving the appropriate Governing Authorities approvals:

- Four City Managers appointed by the Orange County City Managers' Association
- County Executive Officer, County of Orange, or Designee
- Sheriff-Coroner, or Designee
- Orange County Public Works Resources and Development Management Department Director, or Designee
- Orange County Chief of Police & Sheriffs Association (OCCOPSA) Executive Director, or Designee
- Orange County Fire Chiefs Association (OCFCA) Fire Chief or Designee

Each member must designate and name an alternate as a voting member if member cannot attend.

Section 2. Terms. Committee members shall be appointed for a two (2) year term. Members may serve for multiple additional two (2) year terms upon reappointment to each new term in accordance with Article 4, Section 1 above.

Section 3. Removal. The Governance Committee, by majority vote, may remove members of the Committee any time without cause. In addition, if a committee member misses three (3) consecutive Governance Committee meetings (whether regular or special meetings), said Governance Committee member will be deemed automatically removed without further Governance Committee action.

Section 4. Vacancies. A vacancy on the Governance Committee shall be filled by majority vote of the Governance Committee in accordance with Article 4, Section 1 above. Such vacancy should, if possible, be filled within 30 days of vacancy.

Article 5. Meetings

Section 1. Regular meetings shall be held on a quarterly basis. Governance Committee meetings shall be fixed on the first month of each quarter (January, April, July, and

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800 MHz GOVERNANCE COMMITTEE**

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October) on the fourth Wednesday at 1:30 PM unless a majority of the Committee members determine that an alternate fixed meeting day and time within the designated months is required to maximize member attendance. At least 72-hours prior to a regular meeting, an agenda shall be posted that contains a brief general description of each item to be covered in the meeting.

Section 2. Special meetings may be held on 24-hour public notice, including a binding agenda with brief general description of items to be covered at the meeting. Any special meeting notice must be publicly posted in accordance with all applicable laws and must be received by Committee members at least 24 hours in advance (Government Code Section 54956).

Section 3. A majority five (5) of the members shall constitute a quorum to conduct business.

Section 4. Only Governance Committee members may vote on items on the Agenda and each member may have only one vote.

Section 5. Governance Committee meetings may be rescheduled or canceled in accordance with the Brown Act. Orange County Sheriff Technology staff shall act as the Clerk of the Board for meeting rescheduling purposes.

Article 6. Officers

Section 1. The officers shall consist of a Chairperson and Vice Chairperson. The elected Chairperson shall conduct the meetings.

Section 2. The elected Vice Chairperson shall conduct regular Governance Committee meetings in the absence of the Chairperson; and do everything necessary to assist the Chairperson in related duties. In the event that both the Chairperson and the Vice Chairperson are absent from the same committee meeting, the remaining Governance Committee members present may appoint one of them to be the Chairperson for that meeting.

Section 3. Elections for Chairperson and Vice Chairperson shall be conducted by the full Governance Committee and shall occur in April of each year. The Chairperson shall call for nominations from the Governance Committee members and the Chairperson will initiate a vote. A majority vote of the Committee members present is required for each candidate to be elected as Chairperson and Vice Chairperson.

Article 7. Staffing

Section 1. Orange County Sheriff Technology staff secretary will provide secretarial support to the Governance Committee. Orange County Sheriff Technology staff secretary shall prepare and publish the Committee's agenda for each meeting. Orange County

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800 MHz GOVERNANCE COMMITTEE**

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Sheriff Technology staff shall call for attendance at the beginning of each meeting, keep the minutes, and perform other clerical duties as appropriate to the position. He/she shall retain the attendance records including the minutes.

Article 8. Compensation

Section 1. Governance Committee members shall receive no compensation for their service.

Article 9. Amendments. Review, Dissolution and Effective Date

Section 1. This Committee will operate as established by the Board of Supervisors on November 23, 2004 and revised by the Board of Supervisors in _____, 2021

Section 2. These Bylaws shall supersede all previous Bylaws and shall become effective on upon the approval of the Board of Supervisors.

Section 3. These Bylaws shall remain in effect until amended, revised or terminated by the Board of Supervisors and Parties to the Joint Agreement.

Section 4. The Board of Supervisors and Parties to the Joint Agreement may make amendments to the Bylaws at any time.

Section 5. This Governance Committee can be terminated at any time, without cause, by action of the Board of Supervisors and Parties to the Joint Agreement.



Project No:
Project Name:
Project Location:

NEW PARTNER AGENCY RIDER TO JOINT AGREEMENT FOR THE OPERATION, MAINTENANCE AND FINANCIAL MANAGEMENT OF THE ORANGE COUNTY 800 MEGAHERTZ COUNTYWIDE COORDINATED COMMUNICATIONS SYSTEM

This New Partner Agency Rider (“**NPA Rider**”) is entered into on _____, (“**Effective Date**”), by and between _____ (hereinafter referred to as “**NEW PARTNER AGENCY**”) and the Orange County 800 Megahertz Countywide Coordinated Communications System Governance Committee (hereinafter referred to as “**GOVERNANCE COMMITTEE**”). For the purposes of this agreement, the GOVERNANCE COMMITTEE represents the Partners (hereinafter referred to as “**JOINT AGREEMENT PARTNERS**”) of the Joint Agreement for the Operation, Maintenance and Financial Management of the Orange County 800 Megahertz Countywide Coordination Communications System (hereinafter referred to as “**JOINT AGREEMENT**”) (Section 1.4.1 of the JOINT AGREEMENT). GOVERNANCE COMMITTEE and NEW PARTNER AGENCY may be referred to individually herein as a “**Partner**” or collectively as the “**Partners.**”

RECITALS

- I. WHEREAS, JOINT AGREEMENT PARTNERS entered into the JOINT AGREEMENT in 2020; and,
- II. WHEREAS, NEW PARTNER AGENCY, executed a copy of the JOINT AGREEMENT in accordance with Section 3.2.1 of the JOINT AGREEMENT on _____; and,
- III. WHEREAS, NEW PARTNER AGENCY executed a copy of the New Partner Agency Agreement per Section 3.2.1 of the JOINT AGREEMENT on _____; and,
- IV. WHEREAS, Section 2.1, “Governance Committee Authority”, and Section 3.2.1, “Adding New Partner Agencies”, of the JOINT AGREEMENT grants the GOVERNANCE COMMITTEE the authority to enter into a separate agreement with NEW PARTNER AGENCY to establish additional terms, conditions, and costs for entry into the Countywide Coordinated Communications System (the “CCCS”); and,
- V. WHEREAS, the JOINT AGREEMENT in Section 1.4 “Liability” provides for indemnification only between those Partners listed in Exhibit A of the JOINT AGREEMENT (and would not include NEW PARTNER AGENCY); and,
- VI. WHEREAS, Section 1.4.1 of the JOINT AGREEMENT, “New Agency Liability Rider”, grants the GOVERNANCE COMMITTEE the authority to enter into a Liability Rider that shall, for all intents and purposes, make the NEW PARTNER AGENCY, a Partner in Section 1.4.

VII. WHEREAS, the GOVERNANCE COMMITTEE and NEW PARTNER AGENCY now desire to enter into a separate agreement (this NPA Rider) to establish additional terms and conditions by including NEW PARTNER AGENCY in the indemnity provision of the JOINT AGREEMENT per Section 1.4;

NOW THEREFORE, in consideration of the Recitals above, the receipt of which the Partners acknowledge herein, and which are incorporated herein by this reference, and the mutual covenants and agreements hereinafter contained, the GOVERNANCE COMMITTEE and NEW PARTNER AGENCY do hereby agree as follows:

A. NEW PARTNER AGENCY LIABILITY.

NEW PARTNER AGENCY shall now be included as a Partner as stated in Section 1.4 of the JOINT AGREEMENT.

Except as otherwise expressly set forth herein, all terms and conditions contained in the JOINT AGREEMENT, including any amendments/modifications, are hereby incorporated herein by this reference as if fully set forth herein and shall remain in full force and effect.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Partners have executed this New Partner Agency Rider on the day and year first written above.

GOVERNANCE COMMITTEE

By: _____

Date: _____

NEW PARTNER AGENCY

By: _____

Date: _____

Attachment: Joint Agreement (2565 : Approve a Joint Agreement for 800MHz Countywide Coordinated Communications System)

A. LEGACY PARTNER AGENCIES – Partner Agencies that financially contributed to the previous System Upgrade:

Aliso Viejo, Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Dana Point, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, La Habra, La Palma, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Metronet, Mission Viejo, Newport Beach, Orange, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, West-Comm, Westminster, Yorba Linda, Orange County Fire Authority, CEO, District Attorney, Health Care Agency, John Wayne Airport, Animal Control, OC Lifeguard, OC Parks, OC Waste & Recycling, OC Public Works, Probation, OC Sheriff, Social Services Agency, Orange County Transportation District, Irvine Valley College Police, Santa Ana Unified School District Police, Saddleback College Police

B. MUTUAL AID AGENCIES

ATF, CA State Parks, California Corrections & Rehabilitation, CHP, Downey Fire, Lake Mission Viejo LG, Loaners, Long Beach Fire, Long Beach PD, Los Alamitos Armed Forces Reserve, LA County Fire, LA Sheriff, San Diego Sheriff Aviation, Santa Fe Springs Fire, Signal Hill PD, DOJ, UCI Irvine, US Marshals, USMC Camp Pendleton Fire

**COUNTY OF ORANGE
CALIFORNIA**

800 MHz CCCS
(Countywide Coordinate Communications System)

STANDARD OPERATING PROCEDURES



**PREPARED AND DISTRIBUTED
BY:**

**ORANGE COUNTY
LEAD AGENCY**

January 2021

Attachment: Joint Agreement (2565 : Approve a Joint Agreement for 800MHz Countywide Coordinated Communications System)

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1.0 INTRODUCTION

The 800 MHz Countywide Coordinated Communications System (CCCS) Standard Operating Procedures (SOP) provides National Incident Management System (NIMS) compliant procedures that are applicable to multi-agency, multi-discipline, all-hazard responses throughout the County of Orange. This SOP ensures consistent protocols and formalizes the operation and usage of the 800 MHz Radio System (System). This SOP will be utilized by CCCS emergency response and support personnel, communications operational and technical personnel, local/State/Federal government representatives, non-governmental organizations, and other System users as authorized by 800 MHz CCCS Governance Committee.

All System users shall comply with this SOP.

2.0 PURPOSE

The System is an 800 MHz trunked simulcast radio communications system designed to meet the needs of Orange County law enforcement, fire, lifeguard and public works responders and any other authorized users who are supporting these services.

This SOP addresses procedural and operational aspects of the System to include:

- Operational guidelines.
- Technology specifications and requirements.
- Usage guidelines.
- Training and exercises.
- Maintenance and repair.

2.1 Governance

The CCCS is governed by the 800 MHz CCCS Governance Committee which was established November 23, 2004 and amended June 2, 2015, by the Orange County Board of Supervisors and Parties to the Joint Agreement to facilitate the operation, maintenance and financial management of the 800 MHz CCCS. The Governance Committee is comprised of nine members including four City Managers, and designees from the County Executive Officer, Sheriff-Coroner, Public Works Director, Orange County Chiefs' of Police & Sheriff's Association and Orange County Fire Chief's Association. The Governance Committee responsibilities include the establishment and enforcement of these Standard Operating Procedures.

Additional information on the 800 MHz CCCS Governance Committee membership and responsibilities are documented in the 800 MHz CCCS Governance Committee Bylaws.

2.2 Users Group

The 800 MHz CCCS Users Group meetings occur once each quarter. The Users Group meetings allow for the sharing of information from the Lead Agency (Orange County Sheriff's Department Technology Division) regarding the System operations and any upgrade or enhancement projects proposed or in progress. These meetings also allow for Partner Agencies to discuss current concerns or provide input regarding future enhancements. All Partner Agencies are welcome to participate in the quarterly 800 MHz Users Group meetings.

2.3 800 MHz CCCS Radio System

The 800 MHz CCCS Radio System (System) is an advanced digital radio communications system built to the Association of Public-Safety Communications Officials (APCO) Project 25 (P25) digital radio standards. The System utilizes radio frequencies in the 800 MHz radio spectrum under the rules and regulations of the Federal Communications Commission (FCC). The System consists of the following major components:

- Radio Communications sites located throughout the County (towers, equipment shelters, generators & site security).
- Radio infrastructure (transmitters, receivers, combiners, antennas, etc).
- Radio spectrum in the 800 MHz frequency band and microwave radio frequency spectrum.
- Microwave radio links between the radio sites and the Loma Ridge Master Site.
- Subscriber Units (mobile radios, portable radios, control stations, dispatch consoles).
- System Watch Network Operations Center (NOC).

The System is designed to provide 95% portable radio coverage, 95% of the time within the Orange County operating area.

2.4 Eligible Users

The primary purpose for the System is to support Orange County public-safety and local government agencies' day-to-day operations by providing dependable, interoperable radio communication. Orange County public safety and local government agencies as well as applicable State and Federal government agencies may be eligible for access to the System. System access will be determined by the 800 MHz CCCS Governance Committee in compliance with the 800 MHz CCCS Joint Agreement and with consideration of System capacity.

2.5 Acceptable Usage/Radio Discipline

All System users shall follow these policies.

The System is to be used for day-to-day operations, emergency response calls, incidents, missions and disasters. The System may also be utilized for planned events, training and exercises with consideration of channel capacity and available talkgroups.

This policy clearly defines the discipline for agencies and individuals to follow when using radios on the System. Each Agency is responsible for ensuring their users adhere to proper radio discipline.

Misuse of the System shall be reported to the Lead Agency Director to handle directly with the Department Head of the agency involved. The reporting party's contact information should be provided in the notification. No profanity, playing music, personal conversations or activities not directly related to agency business will be permitted on the System.

All agencies and individuals shall utilize these communications resources professionally and keep radio conversations as concise as possible.

All agencies and individuals utilizing the System must abide by all FCC regulations as stated in Title 47 Part 90 Land Mobile Communications.

3.0 SCOPE

This SOP applies to the operational, technical and usage aspects of the System. It is therefore applicable to any user of the System, and applies to government agencies at the local, County, State and Federal levels, as well as authorized non-government users.

3.1 SOP Approval

This SOP and subsequent revisions require approval of the 800 MHz CCCS Governance Committee after review by the Lead Agency.

3.2 SOP Change Process

Annual Review Requirement

The SOP will be reviewed on an annual basis to assess the need for updates or revisions. The Lead Agency Director or designee will be assigned the task of reviewing the SOP, identifying applicable updates, and submitting a draft of the revised SOP for Governance Committee approval.

Operational Context

The 800 MHz CCCS Governance Committee is charged with approving standards, protocols and procedures for optimal operations between and among the users of the System.

Submitting Change Requests

Requests to delete, add, and/or change adopted standards, policies and/or procedures may be submitted in writing to the Governance Committee at any time. If the requested change is time critical, the Governance Committee may direct a request for immediate consideration to the Lead Agency Director.

Change Request Contents

A written request for any change to the SOP submitted to the Governance Committee shall include:

- A full description of the deletion, addition, or change including section and subsection references.
- The reason for the change (including the potential consequences if the request is not approved).

- A preliminary assessment of impact on other System users and an estimate of associated costs, if any.

The Governance Committee may direct the Lead Agency Director to conduct an assessment to address:

- Technical impact to current and future System performance including which system or subsystems will be or may be affected.
- Operational impact to current and future system performance including effects on System capacity and determination of those systems or subsystems that will be or may be affected.
- Degree of conformance with Governance Committee approved plans and standards.
- Cost impact to current participants.
- Potential alternatives.

The Lead Agency Director shall forward the completed assessment to the Governance Committee along with recommendations including strategies to mitigate negative impacts, if appropriate.

The Governance Committee shall notify all agencies of all requests along with potential impact and invite their comments.

The Governance Committee will approve, deny, or modify the requested SOP change.

If approved, the Governance Committee will incorporate the applicable SOP modifications and inform System users.

Management of Change Process

The Governance Committee Chair will manage this process.

4.0 RADIO SYSTEM MANAGEMENT

4.1 Radio System Architecture

The System is an advanced digital radio communications system built to the Association of Public-Safety Communications Officials (APCO) Project 25 (P25) digital radio standards. The P25 System is a standards based system, and different vendor subscriber radios may be able to access and use it. Due to manufacturer differences outside of the defined P25 standard, not all manufacturer radio features may work with the System. Some radios may interact differently with the existing infrastructure and can potentially exhibit undesirable operational characteristics.

As a result, the following procedures must be followed:

- All manufacturer's radios must be tested and approved by the Lead Agency prior to being used on the System.
- A listing of tested and approved radio models will be maintained by the Lead Agency.

Operational Context

The System is dedicated primarily to public safety agencies, the agencies that support public safety and public utility and service agencies.

Protocol / Standard

The System utilizes the APCO Project 25 Phase 1 digital radio standard for the voice and control channels. The microwave radio system is a digital system that adheres to Telecommunications Industry Association (TIA) / Electronic Industry Alliance (EIA) standards.

4.2 Radio System Management

The Lead Agency is responsible for System administration and the day-to-day management, operation and oversight of the System and for the maintenance of this SOP. While their specific duties are not detailed in this document, their general duties include:

- Monitoring the System and components for normal operations.
- Diagnosing System performance, problems, and developing corrective action recommendations.
- Dispatching appropriate repair services in the event of a malfunction of System equipment.
- Managing the database elements, including subscriber IDs, talkgroup IDs, and the various parameters that relate to their effective operation.
- Working with all agencies and their technical staff to diagnose and resolve problems that involve radio operations, maintenance or repair of the equipment.
- Serving as the point of contact (POC) with equipment manufacturers for issues related to the radio System.
- Providing timely information to System users on issues that arise, or repair/maintenance issues related to System equipment that would affect normal radio operations.
- Monitoring System databases for normal operations and conducting regular database backups.
- Programming of all subscriber radios and dispatch consoles with System access.
- Encryption management including managing and maintaining encryption keyloaders.

The Lead Agency makes decisions on issues related to the day-to-day operation of the System and addresses urgent or emergency operational, maintenance, or repair decisions.

An urgent or emergency situation is one where immediate decision authority is needed to allow the System as a whole, or any of the subsystem components, to continue supporting normal wide-area voice communications services. It is recognized that Lead Agency may have to obtain authorizations from the CCCS Governance Committee to make longer-term or non-emergency capital or repair expenditure decisions.

Due to the complexity and distributed administration and maintenance of the System, problems can typically occur when changes are made to hardware or software. In order to keep all System users informed of any updates, notifications will be sent to all dispatch centers and designated User Agency contacts when the following actions occur:

- Planned maintenance work is being performed on the System that will impact performance or System operations
- Equipment malfunctions or failures that affect System performance or operation
- Configuration changes in equipment or software by any user agency that may impact operations of any other agency

4.3 Network Management

Purpose or Objective

Defines the responsibilities for network management.

Technical Background

The System is comprised of, but not limited to, channel banks, hubs, switches, routers, servers, local area networks, and wide area network links connecting sites together. The network sites are interconnected by usage of microwave radio equipment, fiber, Ethernet or telecom T1 circuits. The radio network is monitored with network management tools provided by the equipment manufacturers and/or other vendors.

The radio System architecture is primarily constructed around the APCO Project 25 standard. The microwave system is composed of industry standard equipment, which also provides flexibility and a large variety of management and diagnostic tools.

The System network is complex. Unusual problems may be difficult to identify and resolve. System documentation shall be kept up to date or it will lose its value in supporting the System network.

The System is protected from all other agency data networks to manage the security and functionality of the System. If there is a connection to another data network, it shall be through a manufacturer specified and configured firewall, and approved by the Lead Agency.

Operational Context

The components of the System are considered as "owned" by the Partnership with responsibility for maintenance of the sites and equipment delegated to the Lead Agency by the authority of the 800 MHz CCCS Governance Committee and the 800 MHz CCCS Joint Agreement. Any required maintenance contractor agreements will be negotiated by the Lead Agency and presented to the 800 MHz CCCS Governance Committee for approval.

The backbone of the System is structured on an integrated network. Any infrastructure hardware and software upgrades or changes that may impact the System require reasonable discussion, approval and oversight by the Lead Agency, and the 800 MHz CCCS Governance Committee.

All maintenance work being scheduled that may affect System performance is preceded by reasonable and appropriate notification to the user agencies.

The configurations for each of the components of the System are documented primarily for the purpose of maintenance, but also affect future planning. The manufacturer provides the original 'as-built' documentation.

The other defined standards for maintenance, documentation, notification, changes, security, and training also pertain to the network portion of the System.

Procedure

The methods for performing detailed System operations are defined in the technical resource manuals and training documentation for the System. The technical resource manuals are classified as 'Restricted Information' and are not available to the general public except by formal written request approved by the 800 MHz CCCS Governance Committee, the Lead Agency and County Counsel.

Management

The Lead Agency is responsible for managing the System network.

4.4 Advanced System Keys

Purpose or Objective

To outline the procedures for the production, and usage of both the Software and Advanced System Keys (ASK) for the System.

Technical Background

A system key allows for the programming of a radio for use on the System and is used to maintain System security. The System key keeps unauthorized units from gaining access to the System. Most radio equipment manufacturers provide a software based system key unique to each trunked radio system. The System key is required for a radio (subscriber unit) to be programmed so that the radio can be recognized by the System and the user can access the System.

Operational Context

The Lead Agency will maintain and safeguard all Master ASKs, regardless of manufacturer and is responsible for the production and issuing of all secondary keys to authorized users. Manufacturers' radios that do not require a system key will not be approved for operation on the System.

An agency using subscriber radios other than the System manufacturer (Motorola) must acquire and provide to the Lead Agency the manufacturer's Master ASK for the 800 MHz System and all necessary software and key hardware to program secondary keys as needed.

The safeguarding of these keys is paramount and should at all times be treated as restricted, public safety sensitive information with access closely guarded.

Management

The Lead Agency Director is responsible for maintaining the security of and access to the System keys.

4.5 Database Management

Purpose or Objective

Defines the aspects and assignment of responsibilities for managing the System's databases.

Technical Background

The management of the System and subsystem databases is assigned to Lead Agency staff with responsibility for the various aspects of the System operations.

The databases contain information for the System and subsystems defining the operational characteristics of:

- Subscriber Radios
- Radio Users
- Talkgroups
- Profiles for Radio Users and Talkgroups
- System portion of the fleet map programming
- System and Subsystem equipment operational parameters
- Security Group structures
- Login User accounts and privileges

The databases contain the operational personality of the entire System. Because of this critical function, the data must be properly managed for System functionality and archived regularly in case of data loss or corruption.

Operational Context

The System databases are partitioned to facilitate the distributed management of the data contained in them. The database management responsibilities of the Lead Agency include the following:

- The Lead Agency is responsible for maintaining and archiving copies of all radio codeplug data and System databases.
- Database backups are made once per week and are stored "off-site" on a backed-up server in the event of a disaster.
- Database restoration will be performed by trained technical staff and only in the event of System software reloading and version changes, System database corruption, or as defined in the Disaster Recovery Plan.
- Database restoration is performed when a non-critical condition exists and if approved by the Lead Agency Director.
- The Lead Agency notifies agencies of any database issues that adversely impact their normal operations.

Procedure

The methods for performing the database operations are defined in the manufacturer's technical resource manuals. The technical resource manuals are classified as 'Restricted Information' and are not available to the general public except by formal written request to the Lead Agency.

The procedure for this standard is at the discretion of the Lead Agency.

Management

The Lead Agency is responsible for managing the data attributes and is responsible for backing up the System databases.

4.6 Subscriber Radio Inventory/Fleetmap

Purpose or Objective

Establishes the policy to ensure all radios activated on the System are properly accounted for, assigned, and managed.

Technical Background

Each radio operating on the System must be assigned a unique 7-digit IUID number allowing the radio to affiliate and communicate on the System. The System's controller provides individual access to the System for each assigned radio.

Operational Context

The Lead Agency manages the subscriber radio inventory and is responsible for assigning and tracking all IUID numbers. Each 7-digit IUID number can only be used with an individual radio and shall not be duplicated or "cloned" to another radio.

IUID management and subscriber radio inventory are critical to the operational integrity of the System. Accurate subscriber radio inventory is also important as this is the basis for the equitable distribution of the costs associated with System operations and maintenance.

Protocol / Standard

The Lead Agency is the only authorized source for IUID assignment and subscriber radio programming. The Lead Agency establishes and maintains the Fleetmap Inventory database and conducts annual inventory verification with each Partner Agency. This annual inventory is also provided to Lead Agency Financial for use in the various budget and billing calculations for Partner Agencies.

Management

The Lead Agency is responsible for IUID issuance and management of the subscriber radio inventory/Fleetmap.

4.7 Lost or Stolen Radio Notifications

Purpose or Objective

Establishes the policy to ensure the System's operational integrity and security by providing users with a procedure for reacting to incidents of missing, lost or stolen radio units.

Each agency shall develop internal guidelines for dealing with incidents of lost, stolen or missing radio equipment, to include notification to the Lead Agency.

Technical Background

The System's controller provides individual access to the System for each assigned radio. The controller provides the ability to disable the radio altogether with the 'inhibit' feature.

The target radio must be turned on and affiliated with the System for the actions to be processed. If the target radio is not active, the requested action can be put into the passive mode. When the target radio does attempt to affiliate with the System, the pending action is initiated.

Operational Context

All agencies are required to make immediate notification to the Lead Agency upon receiving information, notification, or recognition that an assigned radio is misplaced, lost or stolen. Delay in providing notification could result in unauthorized persons causing interference and/or receiving confidential information.

Protocol/Standard

The Lead Agency shall be immediately notified of the situation by a phone call and submission of a Lost/Stolen Radio Report Form.

The request to inhibit a lost/stolen radio must be specified on the Lost/Stolen Radio Report and must be accompanied by a copy of the Police report.

Lost and stolen radio information will be passed on to user agencies and local radio shops in case the radio is located or turned in.

The Lead Agency will invoice the agency for the replacement cost of the radio if owned by the Lead Agency (ie., a loan pool radio).

Management

The Lead Agency is responsible for managing this policy.

4.8 System Management Access

Purpose or Objective

Defines the types and areas of individual access to the management functions of the System.

Technical Background

Every login user of the System has a minimum of one login account and possibly more if multiple levels of access rights are needed for different purposes, such as administrative or general use. Every account can be individually set with the security and application rights needed to meet the needs of each user. All user account IDs shall be unique as the System's

databases do not permit the use of duplicate IDs. The user login aliases are limited to a specific length.

Operational Context

Personnel who log into the systems to use management applications and support tools are referred to as "Login Users". These are technical support staff such as the System Manager, administrators, technicians, etc. This is different that "Radio User" as referred to in other standards. Every user's login ID on the system is unique. Every login user of the System has a user ID that is only for that specific agency's or individual's use. Based on the types of access required an individual may need more than one login ID.

The types of access fall into the following areas:

- System Management
- Infrastructure Maintenance
- Subscriber Administration
- Dispatch Management
- Asset Management

The areas of access are based on the physical locations of the equipment and individual need.

Access to System, Network, and Asset Management terminals will be limited to Lead Agency staff and approved vendors.

Lead Agency may review personnel with System access at any time to ensure that only the appropriate levels of access have been granted based on their currently assigned business needs.

Protocol

Each Login User account must be requested from and approved by the Lead Agency Director. The account will be assigned a login name and access level based on the requirements of the request. Access will be immediately rescinded for any unauthorized actions or change of employment status.

Management

The Lead Agency is responsible for the creation of administrative accounts, designating the areas of access allowed for each account, and the review of access granted.

4.9 Requesting System Access

Purpose or Objective

To establish the procedure for an eligible agency to apply to participate on the 800 MHz CCCS.

Operational Context

The 800 MHz CCCS Governance Committee has determined the requirements and procedure for potential new applicants desiring access to the 800 MHz CCCS. Those procedures are documented in the 800 MHz CCCS Joint Agreement.

Management

The Lead Agency Director is responsible for managing the process of potential new System User applications in accordance with protocols established by the Governance Committee and documented in the 800 MHz CCCS Joint Agreement.

4.10 Alias List Standards**Purpose or Objective**

To establish a standard for the use of Subscriber alias for identifying radio users.

Operational Context

An alias is a common alphanumeric name used to identify a radio, talkgroup, site, etc. rather than referencing the assigned 7-digit IUID number.

The Lead Agency does not maintain alias names for Partner Agencies.

Each Partner Agency shall maintain their own alias database and their alias names will only appear on their local dispatch consoles and subscriber radios.

Management

Each User Agency is responsible for establishing and maintaining any alias lists used by that agency.

4.11 Member Agency Operational Policy Changes**Purpose or Objective**

Defines a process to mitigate negative impact to this SOP, other Member Agencies or the overall operation of the System when Member Agencies make changes to their individual Agency operational policies.

Operational Context

The 800 MHz CCCS Governance Committee is charged with approving standards and determining protocols and procedures for optimal operations between and among the users of the System.

Member Agency operational policies must not be contrary to this established SOP nor should they knowingly impact other Member Agencies in a negative manner. There will be occasions or incidents that might result in the need for a Member Agency to make changes to their operational policies. Member Agencies must ensure that any change made to their internal operational policies harmonizes with the established SOP and fellow Member Agencies.

Protocol

Member Agencies are expected to understand the potential for their policies to impact other Agencies on an integrated communications system. As a result, any Member Agency planning to make changes to their operational policy must take into account the impact on the System. If the operational policy change is likely to have an impact on the System and/or on other

Member Agencies, or, if it is unknown whether the change will have such an impact, the Agency planning to make the change shall submit the planned policy change in writing to the Lead Agency for evaluation.

The Lead Agency will address Member Agency policy change notices with respect to their impact on the System and other Agencies. The Lead Agency will inform the Governance Committee Chair of the decision regarding the policy change if it is determined that the change will impact the System or other Member Agencies.

A written notice of any planned operational policy change submitted to the Lead Agency shall include:

- Description of the policy being changed
- Reason for the planned policy change (including the potential consequences if the request is not approved)
- Preliminary assessment of impact to other System users, and an estimate of any associated costs to implement the request

An assessment shall be conducted by the Lead Agency technical and management staff and shall address:

- Technical impact to the current and future System performance including which systems or subsystems are affected
- Operational impact including capacity impact to current and future System performance
- The degree of conformance with established policies and standards
- Cost impact to current participants
- Potential alternative solutions

The Lead Agency Director shall forward the completed assessment to the requesting Member Agency along with recommendations including ways to mitigate negative impact where applicable. If the assessment reveals a negative impact to the System or to other Member Agencies, the Lead Agency will advise the requesting Agency against enacting the change. The requesting Agency may appeal the decision to the Governance Committee for resolution if desired.

The Governance Committee shall then review the requested policy change and approve, deny or modify the request. If approved or modified, the Governance Committee shall set forth operational and/or financial responsibility as appropriate and notify all affected parties of the decision.

Management

The Lead Agency Director, acting on behalf of the Governance Committee, shall manage this process.

4.12 Infrastructure Equipment Standards

Purpose or Objective

Sets the minimum technical and performance standards for infrastructure equipment operating on or interfacing with the System and establishes a policy preventing premature obsolescence of the same.

Technical Background

The 800 MHz CCCS is an APCO P25 standards-based System constructed by Motorola Solutions, Inc. It consists of radio communications sites utilizing 800 MHz radio spectrum. The Master Site is located at the Loma Ridge Facility where the Lead Agency Radio Microwave Unit is collocated along with the County Emergency Operations Center and the OCSD PSAP/Dispatch Center. Microwave links between the Master Site and the radio sites utilize redundant methods in the construction of the System to provide for a public safety grade of service.

Vendors' equipment often utilizes different operating software and may interact differently with the existing infrastructure which can potentially exhibit undesirable operational characteristics.

It is also possible that new, untested radios, equipment and/or software can exhibit performance and functionality characteristics that are destructive to the performance, capacity and/or security of the System.

Operational Context

Participants desiring to connect or interface with the System any type of fixed equipment such as a radio or console product must receive approval from the Lead Agency. Prior to approval, the System manufacturer must prove equipment compatibility. All equipment must be installed in compliance with all rules, regulations and codes applicable to its operation and location. Industry accepted radio site installation and equipment grounding practices, such as R56 or approved equivalent in effect at the time of installation, shall be used.

Protocol

To ensure the reliability of the System, all infrastructure equipment directly interfaced with the System's core must maintain the same level of software revision.

Requests shall be submitted in writing to the Lead Agency signed by the requesting agency director or department head.

Procedure

The request shall provide an outline of plans the requesting agency has developed for equipment integration. The written request shall indicate the name and contact information for the person designated to lead the project.

The Lead Agency Director will review the request and make the final decision.

If a technical use plan is already in place, the agency shall submit the plan to the Lead Agency for review to ensure compliance and compatibility with CCCS policy, standards and procedures. If a technical use plan is not in place, Lead Agency shall assist the requesting agency in developing a plan. Costs associated with the development of a technical plan are borne by the requesting agency. When the plan is complete it is submitted to the Lead Agency Director, who shall review the plan for compliance and compatibility with CCCS policies and procedures.

Management

The Lead Agency is responsible for management of infrastructure equipment standards and integration.

4.13 Subscriber Equipment Standards**Purpose or Objective**

Sets the minimum technical and performance standards for subscriber radios operating on the System including:

- Establishing a policy to prevent premature obsolescence of subscriber radios.
- Establishing procedures for Lead Agency to measure, test, certify and publish a list of subscriber radios that are approved for use on the System.
- Ensuring that decommissioned subscriber radios are properly deprogrammed before disposal to prevent interference with public safety communications.

Technical Background

The System utilizes digital communication technology with the primary use being voice communications using the APCO P25 Phase 1 protocol with 9600-baud control channels.

Subscriber radios from various vendors often utilize different operating software providing a variety of services, features, functionality and performance to the users. Many of these radios interact differently with the infrastructure and can potentially exhibit undesirable operational characteristic. It is possible that untested radios and/or software can exhibit performance and/or functionality characteristics that are destructive to the overall performance, capacity and/or security of the System. Users are prohibited from using radios or accessories that may be destructive to the System.

Partner Agencies shall deliver any retired radio subscriber equipment to the Lead Agency for decommissioning and deprogramming. Decommissioned radios that are not properly deprogrammed could pose interference issues with public safety communications. Radios removed from the System for decommissioning purposes shall be deprogrammed so as to remove all System related information, ID's, and conventional channels, leaving only an idle frequency of 851.0000 MHz to prevent potential interference issues with public safety communications.

Management

The Lead Agency is responsible for maintaining all testing, managing radio equipment manufacturer initiated submittals, coordinating activities of the test team, and the proper deprogramming of subscriber radios. Any Agency purchasing new subscriber equipment is encouraged to work with the Lead Agency first to ensure the new equipment meets System standards and is properly equipped to operate on the System.

4.14 System Administrator Standards**Purpose or Objective**

Establishes the minimum training standards for System administration and staff. This ensures that System functionality and integrity are maintained by restricting System administrative functions to trained, qualified and authorized personnel only.

Protocol

The Lead Agency is responsible for maintaining System configuration databases for System or subsystem infrastructure, subscriber databases and console configuration databases.

4.15 Dispatch Center Personnel Training

Purpose or Objective

Establishes minimum training standards for the public-safety dispatch center personnel with access to System resources. This ensures that personnel performing communications dispatch operations are properly trained by the Lead Agency.

Operational Context

System functionality and integrity shall be maintained by ensuring that only qualified personnel perform dispatch functions using console equipment connected to the System core.

Protocol/Standard

Public safety dispatch center personnel shall be familiar with all applicable mutual aid requirements, interoperability requirements, trunk system patching and all established SOPs.

Other recommended training that each agency's communications center personnel should have include:

- COML.
- ICS courses 100, 200, 700.B, 800 or others as required by employing agency

Recommended Procedure

This policy does not contain specific training procedures or training modules.

Management

The communications / 9-1-1 center manager within each agency is responsible to ensure personnel with radio console access to resources on the System comply with the following:

- Public safety communications / 9-1-1 center personnel receive the appropriate training before accessing System resources.
- Public safety communications / 9-1-1 center personnel maintain familiarity with features and functions of communications consoles in order to rapidly and effectively

communicate with public safety personnel and are able to identify and establish interoperability solutions when appropriate or directed.

- Only qualified personnel perform dispatch functions on System resources.
- Public safety communications / 9-1-1 center personnel maintain familiarity with all applicable sections of the SOP.

4.16 Incident / Tactical Dispatcher Training

Purpose or Objective

Establishes minimum training standards for those performing incident or tactical dispatch functions with access to System resources. This ensures that System communications incident/tactical dispatcher operations are performed by properly trained dispatch personnel.

Operational Context

System functionality and integrity shall be maintained by ensuring that only qualified personnel perform incident/tactical dispatch functions.

Protocol or Standard

Incident/tactical dispatch personnel shall successfully complete appropriate training on the console system, mobile radios or control stations in the Mobile Command/Communications Units. Appropriate training shall, at a minimum, include formal training either by an incident/tactical dispatch trainer who has completed the training from a qualified instructor or by a qualified radio technical staff member familiar with the Mobile Command/Communications Unit's (MCU) operations.

Incident/tactical dispatch personnel shall be familiar with all applicable mutual aid requirements, interoperability requirements, trunked system patching, gateway and other communications equipment in the MCU as well as all established standard operating procedures.

Other recommended incident/tactical dispatcher training should include:

- COML.
- COMT.
- ICS courses 100, 200, 300, 400, 700.B, 800 or others as required by their employing agency.
- Any other developmental, technical or safety courses deemed necessary by employing agency.

Procedure

This policy does not contain specific training procedures or training modules.

Management

The Communications Center Manager within each agency is responsible to ensure personnel with access to MCU resources on the System comply with the following:

- Incident/tactical dispatch personnel or those acting in that capacity receive the appropriate training before accessing System resources.

- Incident/tactical dispatch personnel maintain familiarity with features and functions of MCU in order to rapidly and effectively communicate with public safety personnel and are also able to identify and establish interoperability solutions when appropriate or directed.
- Only qualified personnel perform incident/tactical dispatch functions on System resources.
- Incident/tactical dispatch personnel maintain familiarity with all applicable sections of the SOP.

4.17 Radio (Subscriber) User Training

Purpose or Objective

Establishes the minimum training standards for radio users, which ensures proper operation of radios on the System.

Operational Context

System functionality and integrity shall be maintained by ensuring that only trained personnel operate radio equipment.

Protocol/Standard

Radio users shall successfully complete appropriate training on assigned radios before being allowed to operate on the System. Appropriate training shall include formal training from a qualified instructor or approved media and, at a minimum, include the following:

- Radio users shall be trained on the technical operation of assigned radios. Training will be required biennial.
- Radio users shall be trained on how to operate the radio within the System along with any special features of the System they will use, e.g., emergency button, call alert, etc.
- Radio users shall be trained on and demonstrate proficiency with all applicable mutual aid and interoperable communications resources and standard operating procedures.
- Radio users shall maintain awareness of the mutual aid, interoperability channels or talkgroups in their radios, as well as how to navigate to them when necessary.
- User agencies will make an effort to conduct ongoing refresher training for radio users periodically following their initial training (e.g., build into in-service training, dispatch centers conduct random tests, roll call training, on-shift training, etc.).

Lead Agency staff assists user agencies in identifying training needs and implementing training programs to meet those needs. The Lead Agency also employs a qualified training officer who is available to provide this training to authorized System users.

Procedure

This SOP does not contain specific training procedures or training modules, however, Lead Agency staff assists with radio user training when requested.

Management

Each User Agency is responsible to ensure that:

- Personnel assigned radios shall receive the appropriate training with emphasis on awareness of and how to navigate to mutual aid and interoperability channels or talkgroups (initial and ongoing refresher training).
- Only trained and qualified personnel shall operate radio equipment.
- Radio users are familiar with sections of the SOP.

4.18 Interoperability and non-CCCS Radio Users

Purpose or Objective

Establishes the minimum training standards for radio users having access to interoperable resources of the System. This ensures the proper operation of radios on the System and safeguards against improper utilization of interoperability resources.

Operational Context

System functionality and operability is maintained by ensuring that only properly trained personnel use the interoperable resources on the System for mutual aid communications. If agencies do not have appropriate training, then communications failure or a degradation of the System resources may occur.

Protocol/Standard

Radio users shall have a demonstrated knowledge of Section 6 Interoperability Standards, and have successfully completed appropriate initial and ongoing refresher training including:

- User training emphasizing:
 - The use of interoperable channels and how to navigate their radio.
 - How a user's radio experiences can be affected by the selected interoperability channel (digital, analog, non-trunked, etc.).
- Dispatch and supervisory training emphasizing:
 - The use of interoperable channels.
 - The use of patching and patch channels.
 - The use of cross band repeaters and gateway devices.
 - The use of RF control stations.
 - How a user's radio experiences can be affected by the selected interoperability channel (digital, analog, non-trunked, etc.).

Radio users with access to interoperable channels must be familiar with all applicable mutual aid and interoperable requirements and procedures.

Procedure

This SOP does not contain specific training procedures or training modules.

Management

The Lead Agency will provide training materials upon request for initial training and ongoing refresher training. Additionally, as resources permit, the Lead Agency will assist user agencies

with developing plans and methods on incorporating ongoing radio refresher training into various activities for the most effective delivery to personnel. The Lead Agency also employs a qualified training officer who is available to provide this training to authorized System users.

Agencies requesting and/or using the interoperable talkgroups are responsible to ensure that:

- The use of mutual aid/interoperability channels and talkgroups is properly coordinated and approved through the Control One.
- Radio users successfully complete appropriate initial and on-going refresher training and demonstrate knowledge of proper communications procedures before being allowed to operate the interoperable resources.
- Radio users are familiar with all applicable interoperable sections of this manual.
- Radio users are familiar with all applicable mutual aid requirements and interoperable SOPs.

4.19 System Upgrade Notification

Purpose or Objective

Establishes notification procedure prior to major System upgrades.

Protocol/Standard

System software upgrades will be performed as needed contingent upon available funding and/or technical requirements. The Lead Agency will be responsible for ensuring that all System user agencies that may be impacted by the upgrade are notified by email and/or other written form.

Recommended Procedure

Planned upgrade procedures will be communicated to all System users as follows:

- At least 30 days prior to a planned major System upgrade that will cause a System or site outage, the Lead Agency will notify all System user agencies that may be impacted by the upgrade.
- The Lead Agency will send an email reminder to all potentially impacted System user agencies a week prior to the System upgrade.
- Control One will communicate upgrade instructions and status to all System users before, during and upon completion of the upgrade.

User agencies must notify the Lead Agency Director in writing if the planned upgrade dates will interfere with any major planned events.

Management

The Lead Agency is responsible for managing System upgrades and the necessary notifications associated with each upgrade.

4.20 In-building Coverage (Bi-Directional Amplifiers)

Purpose or Objective

Establishes policy on usage of Bi-Directional Amplifiers (BDA) and awareness of all locations utilizing BDAs for the purpose of mitigating interference issues.

Technical Background

The System is designed for mobile and portable radio coverage but cannot provide 100% coverage in all places. BDAs are a device that aims to improve radio access within a confined space such as high-density buildings. Although the use of a BDA may improve in-building coverage, it may also create interference issues with the overall System. Tracking the locations of all BDAs will aid in quickly locating offending BDA equipment.

Protocol/Standard

It is not the intent for the Lead Agency or Governance Committee to approve or regulate BDAs. It is important for the Lead Agency to maintain a list of facilities that do have BDAs used with the System.

Any agency or department installing a BDA will provide the Lead Agency with the location of the device prior to installation if possible. This will include the physical address, emergency contact information, building name, location within the building, manufacturer and model number.

It is the responsibility of the equipment/facility owner to comply with all requirements of the FCC, including licensing, location reporting, and interference mitigation.

Recommended Procedure

Agencies installing BDAs will submit to the Lead Agency a list of locations where BDAs are installed that are supplementing the System. BDAs not supplementing the System do not need to be reported. This list will be updated periodically.

Management

The Lead Agency will maintain the list of BDAs supplementing the System. Each agency will maintain a list of BDAs within their jurisdiction along with contact information for the equipment/facility owner to allow access should the BDA interfere with the System.

4.21 Aircraft Radio Installations and Operation

Purpose or Objective

Sets the policy regarding aircraft subscriber radio installation, programming, and operation on the System.

Technical Background

Due to the elevated altitude of operation, aircraft radios have a greater coverage footprint. This allows a radio operated in the air to access sites as far away as 150 to 200 miles, while mobile radios operated in vehicles on the ground typically have ranges limited to 30 to 40 miles. Radios in aircraft operating with the System function slightly different than radios on the ground.

Due to the interference potential from the larger coverage footprint of aircraft operated radios, the FCC rules for operation of these radios limits the output power to help reduce interference, as frequency reuse is applicable in the CCCS and other radio systems.

Installation of aircraft mounted radios is governed by the Federal Aviation Administration (FAA) and permanent installations must be performed by FAA certified personnel.

Operational Context

Subscribers that acquire a large coverage footprint due to high altitude operations need to take into consideration potential interference due to frequency reuse in other systems. This could cause interference to their users. This interference could appear as an interruption, loss of communications, or as tailgating to other talkgroup transmissions on other sites.

Protocol/Standard

All permanently installed aircraft radios shall comply with the FCC 90.423 power output limitation of 10 watts, the Effective Radiated Power (ERP) being no more than 5 watts. Only unity gain antennas will be allowed.

Permanently mounted aircraft radios should be programmed with the following:

- BER threshold of 2.5%

For aircrews that are assigned portable radios, these portable radios should be programmed for the following:

- 2.5% or 2.9% BER threshold

These settings apply for both aircraft installed radios using remote mounted mobile or portable radios and Technisonic-type aircraft control panel mounted avionics packages using internal portable radios.

Procedures for landing zone areas where communications with ground personnel are conducted are recommended on a simplex, non-trunked, channel.

In addition to the SOP training requirement, training for users of aircraft radios shall include a description of the issues surrounding airborne operation of System radios including:

- Issues of potential interference to other systems due to frequency reuse;
- Personnel using portable radios in a limited capacity (observers, guests, etc.) and the potential for FAA and FCC rule violation, and interference.

Recommended Procedure

Installation and programming should be performed as outlined in this section. Operation of Aircraft landing zone coordination should be performed as outlined in this section. In-flight transmissions should be as brief as possible due to the potential interference.

Management

The Lead Agency Director will be responsible for the oversight and compliance of this standard. Due to the potential of interference issues to expand beyond a specific region or into another County, Lead Agency staff should also be notified if any interference is detected and is believed to have originated from a CCCS radio equipped aircraft.

4.22 In-building Coverage

Purpose or Objective

Establishes policy on the approval, usage and regulation of in-building coverage enhancement devices on System frequencies and the tracking of all locations utilizing these devices for the purpose of mitigating interference issues. In-building coverage systems include Emergency Responder Radio Communications Systems (ERRCS), Bi-Directional Amplifiers (BDA), and Distributed Antenna Systems (DAS).

Technical Background

The System is designed for mobile and portable radio coverage but cannot provide 100% coverage in all places. In-building coverage devices aim to improve radio access within a confined space such as high-density buildings. Although the use of in-building coverage devices may improve in-building coverage, it may also create interference issues with the overall System. Tracking the locations of all in-building coverage devices will aid in quickly locating offending equipment.

Protocol/Standard

The Lead Agency must approve and regulate in-building coverage systems on frequencies licensed to the County of Orange. It is important for the Lead Agency to maintain a list of facilities that have in-building coverage devices used with the System.

Any agency or department planning to install an in-building coverage system will submit their plans to the Lead Agency as described in the current OCSD ERRCS Guidelines document. This will include the physical address, emergency contact information, building name, location within the building, manufacturer and model number. The Lead Agency must review and approve operation of the installed in-building coverage system to ensure proper installation and operation and to mitigate any adverse effect on the System.

It is the responsibility of the equipment/facility owner to comply with all requirements of the National Fire Protection Association (NFPA), California Fire Code (CFC) and Federal Communications Commission (FCC) including licensing, location reporting, and interference mitigation.

Recommended Procedure

Agencies planning to install an in-building coverage system shall contact the Lead Agency for guidance and to begin the approval process. All agencies shall submit to the Lead Agency a list of locations where BDA, DAS or other ERRCS systems are installed that are supplementing the System. In-building coverage devices not supplementing the System do not need to be reported. This list will be updated periodically.

Management

The Lead Agency will manage the In-Building Coverage policy and maintain the list of in-building devices supplementing the System. Each agency will maintain a list of in-building coverage devices within their jurisdiction along with contact information for the equipment/facility owner to allow access should the equipment interfere with the System.

5.0 CONFIGURATIONS AND ALLOCATION**5.1 Zone and Talkgroup Naming Standards****Purpose or Objective**

A well-defined method of naming radio programming zones and talkgroups/channels aids in user interoperability by allowing all users to understand the designated use of individual talkgroups/channels and how to find those talkgroups/channels in their radio.

Operational Context

In addition to agency-specific zones and talkgroups, all System users have certain talkgroups/channels programmed into their radios that are common to all System users to allow for operational interoperability. The ability to quickly locate these common talkgroups/channels for interoperability requires a uniform programming methodology to place the talkgroups/channels in specific zones in all radio on the System.

Protocol/Standard

The Lead Agency, in conjunction with User Agencies, and with the authority of the Governance Committee has established the zone and talkgroup naming structure used by all System users. The zone/talkgroup/Channel names and radio template structure is provided in the Official Communications Handbook (Radio Code Book) for each System Discipline (Law, Fire, Lifeguard/Marine Safety, Public Works).

Requests for additional zones or talkgroups must be submitted to the Lead Agency for consideration and analysis as to their potential impact on the System.

Management

The Lead Agency shall maintain the Official Communications Handbook and associated records related to zone and talkgroup/channel naming.

5.2 Radio IUID Allocation

Purpose or Objective

Allocates radio Item Unit Identification number (IUID) ranges for the individual agencies. This allows the Lead Agency to manage the pool of IUIDs as radio users and console positions are configured. This simplifies the management of the IUIDs and provides an easier indication of what IUIDs belong to which agency in the event that a radio user alias is not available.

Technical Background

These IUIDs are the same IUIDs that users type in for call alert pages. Also, these are the IUIDs that are displayed on the subscriber radios if the "ID Display" feature is enabled. These IUIDs are also displayed at the console if the console alias feature is not available.

Operational Context

The Lead Agency will allocate radio IUID ranges to agencies based on the number of units the agency will have active on the System and will be shown on the master agency IUID list.

Protocol/Standard

Only radio IUIDs allocated to an individual agency can be used in the programming of that agency's radios and consoles. The Lead Agency is responsible for the programming of all radios on the System.

Procedure

The Lead Agency maintains the master list of IUID distribution and will allocate IUIDs to agencies based on each agency's radio count and need. If an agency requires additional IUIDs beyond the initial allocation, a request shall be made to the Lead Agency. The Lead Agency will evaluate the request and conduct an analysis to determine impact to the System. Upon completion of the analysis, the Lead Agency may approve or deny the request, or ask for additional information.

Management

The Lead Agency manages the IUID ranges for day-to-day activities, and manages the IUID ranges for reserve or future allocation.

5.3 Fleetmap Standards

Purpose or Objective

Defines the process used to document the Fleetmap information for the effective management of the System.

System Fleetmap configuration information is classified as 'Restricted Information' and is not released to the public.

Technical Background

The Fleetmap is parameter information programmed into the System infrastructure and into the subscriber radios to control how those radios perform on the System.

The Fleetmap spreadsheet is a documented matrix of the talkgroups in the System and the departments or agencies that use and control user access to these talkgroups. The Fleetmap contains the following information:

- Talkgroup Name – Name of the talkgroup as it is programmed into the System.
- Talkgroup Alias – Abbreviated naming of the talkgroup to fit within the 8 or 14 character radio display.
- Talkgroup ID – Numerical designation of the talkgroup in decimal and/or hexadecimal.
- Failsoft Channel – The System channel designated for the talkgroup when in the failsoft mode.
- Owner – The primary user agency with access control of the talkgroup.
- Priority – Priority level of the talkgroup.
- On Console – If the talkgroup is available as a console resource.
- Trunked Alternate – A talkgroup to be used when the user's primary system is unavailable.

Operational Context

The Lead Agency will establish and manage the Fleetmap database information for all users of the System.

Protocol/Standard

A detailed matrix is maintained by the Lead Agency on the System database. Each agency's radio representative maintains a Fleetmap spreadsheet containing data on their talkgroups and the users for whom they are responsible.

Procedure

If an individual agency desires to make updates and changes to their Fleetmap standards, the changes shall be requested through the Lead Agency.

- The Lead Agency will evaluate any requests for changes and conduct an analysis to determine its feasibility and impact on the System.
- The Lead Agency will decide if the request will be approved or denied and proceed accordingly with notification to the requesting agency.

The disclosure of the Fleetmap configuration information, including talkgroup IDs, user IDs, user privileges and other related System information could substantially jeopardize the security of the System. This disclosure makes it more susceptible to sabotage and unauthorized access to the contents of confidential voice and data communications. Therefore, the master Fleetmap data shall be classified as 'Restricted Information' and is not available to the general public except by formal written request to the 800 MHz CCCS Governance Committee.

Management

The Lead Agency manages the Fleetmap and System programming for all agencies.

5.4 Subscriber Template Management

Purpose of Objective

Defines the process that is used to document the radio subscriber template information for the effective management of the System. The System contains a large number of talkgroups to support the various agencies that subscribe to the System. Subscriber template configuration information is classified as 'Restricted Information' and is not released to the general public.

Technical Background

The subscriber template is parameter information programmed into the individual subscriber radios to control how those radios perform on the System.

An agency's subscriber template is developed and maintained by the Lead Agency with the input of each agency's radio representative. This is to ensure the agency gets the talkgroups, features, and functionality desired from the radios, while maintaining the overall functionality and integrity of the System.

The radio subscriber template is usually specific to a particular agency, but an agency can elect to have different versions of the template based on the department's needs and operations.

The templates normally contain the following information:

- Radio Configuration – Specific information related to a particular model of radio, including but not limited to: button assignment, display options, menu items, and other radio wide parameters.
- Conventional – Personality information that determines the radio's operation in the conventional mode such as frequencies, tones, and signaling options.
- Trunking – Identifies System and talkgroup specifics that the subscriber radio has access to, as well as System and unit-specific ID numbers relating to the radios operation.
- Scan – Defines the limits and lists of the subscriber radio's scan function, when equipped.
- Zone Assignment – Where talkgroups are combined into specifically labeled 'zones' within the radio that represent or reflect operations of a particular agency or operation. The zone designation reflects an acronym, which should easily identify the zone as belonging to a particular agency.

Operational Context

The Lead Agency creates and manages all subscriber templates to ensure uniformity and proper operation on the System.

Protocol/Standard

User Agencies may have multiple subscriber templates based upon their operational needs. The Lead Agency shall maintain a subscriber template spreadsheet for each of the agency's template versions.

The Lead Agency will work with each user agency to develop the subscriber templates for that agency. All subscriber template creation and modification shall be done by the Lead Agency. The Lead Agency shall maintain all associated documentation for each subscriber template.

Procedure

If individual agencies desire to make updates and/or changes to their subscriber templates, those change requests shall be submitted to the Lead Agency for review. The Lead Agency will approve or deny the request after reviewing impact to the System and other users. If approved, the costs for template change and subsequent reprogramming of subscriber radios will be borne by the requesting agency.

The disclosure of the subscriber template configuration information, including talkgroup IDs, user IDs, user privileges and other related System information could substantially jeopardize the security of the System. This disclosure makes it more susceptible to tampering, sabotage, unauthorized use, jamming, hacking, unauthorized access to the contents of confidential voice and data communications. Therefore, the subscriber template spreadsheets shall be classified as 'Restricted Information' and are not available to the general public except by formal written request to the 800 MHz CCCS Governance Committee.

Management

The Lead Agency manages all subscriber templates and programming for all agencies and maintains records of the process. Access is strictly controlled and is considered 'Restricted Information'.

5.5 Talkgroup Assignments

Purpose or Objective

Defines the assignment/usage of agency-specific, common and interoperable/mutual aid talkgroups and resources, and provides a standard so that the Lead Agency will have a firm guideline on allowing particular talkgroups programmed into radios.

Operational Context

Talkgroups are considered assigned by the agency for which the talkgroup was specifically created. The process for pre-defined sharing authorizations is explained in Section 5.6.

Recommended Protocol/Standard

There are three types of talkgroups that are programmed into the System:

- **Agency-Specific** – Created for, and controlled by, individual agencies for their day-to-day operations. These talkgroups cannot be accessed by other System users without express permission granted by the assigned agency. The process for obtaining this permission is outlined in Section 5.6.
- **Common Resources** – Talkgroups/channels created for common use among discipline specific agencies (law, fire, general) as needed. These talkgroups/channels are not controlled by any individual agency but are available for use by all Partner Agencies and are coordinated by the Control One.

- **Interoperable/Mutual Aid Resources** – These talkgroups/channels are established interoperable or mutual aid resources available to all System users based upon specific discipline (law, fire, general) and allow communications with non-CCCS System agencies as needed. These talkgroups/channels include the ability to be patched to non-800 MHz resources for greater interoperability. These talkgroups/channels are coordinated locally through the Control One.

Procedure

- The Lead Agency will control all talkgroup generation and access parameters. Agencies shall immediately notify the Lead Agency when changes to an agency-specific talkgroup are required or the talkgroup is no longer required.

Management

The Lead Agency is responsible for the management of the Talkgroup Ownership policy.

5.6 Talkgroup Sharing

Purpose or Objective

Defines how System Partner Agencies can permit other agencies to access to their agency-specific talkgroups.

Technical Background

Radios must be P25 compliant and compatible with the System. Refer to Section 4.13 of this SOP for additional details on subscriber equipment standards.

Operational Context

Partner agencies have the authority and control to define who is allowed access to their agency-specific talkgroups/channels. This process is accomplished with a formal written request to the Lead Agency from the requesting agency which is passed to the agency-specific talkgroup owner for approval. The request should include the specific talkgroup name desired and the intended purpose and potential users of the talkgroup.

Protocol/Standard

Agency-specific talkgroups/channels shall not be programmed into any other radios without the written permission from the controlling agency. Documented written approval letters shall be maintained by the Lead Agency for each talkgroup sharing agreement.

Procedure

The Lead Agency working with the talkgroup 'owner' will process the request and, upon approval, make the necessary modifications to the requesting agency template. The Lead Agency will maintain all supporting documentation regarding the requested change. All costs associated with the template change and reprogramming will be borne by the requesting agency.

Management

The Lead Agency is responsible for the management of this procedure.

5.7 Talkgroup and Radio User Priorities

Purpose or Objective

Establishes varying priority levels for talkgroups to assure the most critical talkgroups on the System are granted a channel as quickly as possible when the System is experiencing busy conditions.

Technical Background

The System priorities can be managed both at the radio user level and at the talkgroup level.

Operational Context

Priority levels in the System are managed at the talkgroup level. The goal is to distribute priorities across the System talkgroups in a way that maximizes the ability for critical groups to communicate and minimizes the number of talkgroups with high priority.

5.9 Failsoft Assignments

Purpose or Objective

Creates and assigns System resources in a manner which maximizes System utility to users consistent with each user's mission and needs for radio communications during certain System failure situations.

Technical Background

When the System's main controllers detect certain failure conditions in the radio System, all available channels revert from a trunking mode into a conventional repeater type of operation that is given the term 'failsoft'. During failsoft, talkgroups are assigned to a specific radio channel (frequency) if so programmed, which allows the users to continue voice communication while repairs are made to the System.

There are a limited number of channels available in the System, which results in a number of talkgroups being combined on each channel while in failsoft. This requires the radio users to share those channels between numerous agencies. This congestion of radio traffic happens only during the failsoft condition.

If a talkgroup is not given a failsoft assignment, radios using that talkgroup will hear the low pitched 'out-of-range' tone when the System is in failsoft, and will not be able to communicate on that talkgroup.

Operational Context

The radio programming template failsoft assignments are configured to balance the ability for users to achieve an acceptable level of communications while maintaining the individual agency's privacy when possible. While in the failsoft condition, effected radios will display the

word 'FAILSOFT' on the radio display and emit a short high-pitched tone every 10-15 seconds to indicate to the user that normal trunked operation is unavailable.

Protocol/Standard

It is the policy of the Lead Agency to provide a failsoft assignment for every 'primary' talkgroup on the System to prevent loss of communications for users. Failsoft channel assignments are based on the needs of System users consistent with each user's mission and need for radio communications.

The Lead Agency makes determinations concerning Failsoft channel assignments.

During a Failsoft condition, dispatchers may need to announce instructions to radio users and remind them that operations may be combined among several agencies and to implement radio discipline to reduce radio traffic.

Management

The Lead Agency is the responsible authority for failsoft assignments and management. Agencies desiring additional information on failsoft assignments may request the information from the Lead Agency.

5.10 Scanning

Purpose or Objective

Identifies operational procedures and responsible authorities governing scanning System talkgroups.

Technical Background

The network infrastructure and subscriber units are configured to permit managed user scanning of talkgroups. Including a talkgroup in a non-priority scan list does not necessarily result in the user hearing traffic on that talkgroup. Talkgroups are only active if there is at least one user affiliated who has the talkgroup of interest as their selected channel.

Subscriber units can scan a talkgroup, a talkgroup in another zone, or another trunked radio system if compatible. An entire radio can be set up as receive only.

Operational Context

Scanning by multiple subscriber units can quickly overwhelm a trunked radio system creating system busies. As a result, scanning on the System has been limited to the Fire Services as a legacy feature allowing scanning of their Dispatch Talkgroup and primary tacticals.

Protocol/Standard

Before scanning and/or monitoring of System talkgroups is allowed, permission must be obtained from the Lead Agency and the agency 'owning' the talkgroup. Scanning must also be approved by the requestor's agency in their template design.

Scanning can only be enabled in the programming template by the Lead Agency.

Management

The Lead Agency is responsible for authorizing, programming and managing scanning in subscriber templates.

5.11 Emergency Button

Technical Background

The emergency button feature allows a radio user to send an emergency notification by pressing a button on the radio. The notifications audibly and visually alert dispatch console positions that have the initiating radio's talkgroup in their active configuration. Other subscriber radios on the same talkgroup also receive the emergency notification once the 'emergency' radio is keyed which will display the IUID (or alias if available) of the radio generating the emergency.

Emergency calls are also automatically assigned the highest priority available by the System controller and are the first available from the queue if the System is in a busy situation.

Operational Context

The orange button on a portable or mobile radio will be programmed with the emergency feature for all agencies. Each agency should establish their own policy on how this feature might be used, taking into consideration how it will impact the System and other users including the Control One. The emergency feature can be used to alert dispatch and other users of an emergency situation and simultaneously allow the activated radio to have priority over other subscriber radios on the same talkgroup.

Protocol/Standard

The use of the emergency button as an emergency signaling option shall be available to any agency on the System, subject to certain conditions and provisions including:

- Agencies must provide training to all users to ensure the safe and effective use of this feature. The Lead Agency can also provide training and training materials.
- It is the individual agency's responsibility to determine how an emergency alarm will be deployed for their operation and the subsequent response to the alarm.
- If a user is temporarily assigned a radio other than their normal issued equipment, it is essential that their designated monitoring point be made aware of the radio identification to cross-reference it to the correct user in the event an emergency button activation occurs.
- All agencies implementing the emergency feature shall have a plan in place to respond to emergency button activation.

All emergency button response plans must include the following:

- An established radio monitoring point with the necessary console hardware/software to receive, display and acknowledge the alert.
- Established monitoring point must be capable of identifying which radio user pushed the button and capable of responding to the user in need. (Dispatch Center or Control One)

- In the event that the monitoring point is not the same agency as the radio user, an agreement on policy, monitoring, use, and response, shall be in place among the agencies.
- Established monitoring points shall be available during any/all hours that personnel are using the System, or have an established after-hours arrangement with another monitoring point.
- No dispatcher shall clear an emergency without ascertaining what action is necessary to handle said emergency and taking the appropriate actions to do so.

Control One receives all emergency button activations and will contact originating radio user's agency for follow-up when activations occur on common/interoperable talkgroups that are not assigned specifically to the agency in question.

Management

The Lead Agency will manage the overall Emergency Button policy. Agencies desiring to use the emergency key function shall coordinate with agency resources that receive the emergency calls. The receiving agencies shall have an appropriate plan in place and documented as to the process to handle the emergency calls.

5.12 Encryption

Purpose or Objective

Establishes guidelines for the use of encryption on the System.

Technical Background

Encryption is an option on digital radio equipment that must be specially ordered and manually configured. System users may or may not be capable of encryption depending on their equipment configuration and operational needs. AES is the approved standard for encryption on the System.

Operational Context

The use of encryption in the System is strapped to the specific talkgroups determined by the System users to provide secure communications. Encryption is not a feature that can be enabled or defeated at the user level. Each talkgroup is pre-determined to be either encrypted or clear and is programmed as such in the subscriber template.

Radios transmitting with encryption cannot be heard by non-encrypted radios.

An encrypted talkgroup that is patched to a non-encrypted talkgroup or channel is no longer considered secure communications as the encrypted audio is decrypted when pushed over the patched non-encrypted talkgroup/channel. Likewise, audio fed to an internet streaming application will not be secure.

Protocol/Standard

Only the Lead Agency is authorized to program encryption into radios on the System.

Each agency shall determine if encryption will be used on its own agency-specific talkgroups.

Certain common/interoperable talkgroups allocated to specific disciplines such as law/fire will be encrypted in all System radios. Non-encrypted common/interoperable talkgroups will also be available to System users who do not have encrypted radios.

Care should be taken when assigning encrypted talkgroups to incident communications to ensure all applicable users have encrypted radios.

Management

The Lead Agency manages the encryption policy and the programming of encryption into all radios on the System.

6.0 INTEROPERABILITY STANDARDS

6.1 Interoperable Communications Requirements

Purpose or Objective

Establishes a minimum requirement for interoperable communications resources for all radios using the System.

Technical Background

For the purpose of this document, the terms 'mutual aid' and 'interoperability' will be used interchangeably. The term 'channel' will refer to a conventional resource.

The planners of the System recognized the need to make common interoperable talkgroups available to all subscribers primarily for interagency and incident command communications. Therefore, in addition to agency-specific talkgroups, the System also provides talkgroups that are common to like-disciplined agencies (law, fire, public works, lifeguard) as well as talkgroups that are available to all System users to provide interoperability between disciplines.

In addition to common System talkgroups, subscriber radios will also be programmed with local, state and national conventional interoperable channels. Most of these conventional interoperable channels are not encrypted but there are a few 700MHz encrypted channels available in encryption-capable radios.

Operational Context

Interoperable talkgroups & channels are used when there is a need to coordinate activities between different agencies and/or personnel assigned to work an event. Efforts should be made to utilize the lowest level of interoperable talkgroup/channel first if possible. For example, OC law agencies needing to coordinate with other law agencies should use the CCCS law interoperability talkgroups/channels before considering national level interoperable channels. If the coordination includes agencies that do not have access to the CCCS interoperable law talkgroups, statewide or national interoperable channels would be selected.

Additional information on the operational use of these interoperable talkgroups/channels can be found in the 'Official Communications Handbook' (Radio Code Book).

Protocol/Standard

All radios will be programmed to include the 'general use' interoperable talkgroups and channels located in specific zones in the radio template. These talkgroups and channels will be programmed into predetermined specific zones in all System radios to provide uniformity in programming for ease of locating the talkgroups/channels when needed.

Radio templates will also include discipline-specific interoperable talkgroups (ie. Orange, Gray, Black talkgroups for Law) in templates for all like-discipline agencies (law, fire, lifeguard, public works). These discipline-specific interoperable talkgroups/channels will be programmed into predetermined specific zones in all like-disciplined agency radios to provide uniformity in programming and ease of use.

Additional information on the location of these interoperable talkgroups/channels in the radio programming templates can be found in the 'Official Communications Handbook' (Radio Code Book) for each discipline.

Procedure

Coordination of all interoperable talkgroups and channels in Orange County is managed by the Control One. Any agency requiring interoperable talkgroups or channels should contact Control One for assistance with selecting and reserving these resources to meet their needs.

Management

The Lead Agency is responsible for managing this policy and ensuring interoperable channels are available and operational.

The Countywide Coordinated Communication Center (Control One) is responsible for managing the assignment and use of the interoperable talkgroups and channels in Orange County.

6.2 Radio Console Patching of Talkgroups/Channels**Purpose or Objective**

Establishes policy for use of a console patch between System talkgroups and/or other resources on the dispatch console.

Technical Background

Most public safety communications/9-1-1 centers have the capability to initiate a console patch but patches that include a common System resource shall be accomplished on a console at Control One. Console patches can be established between multiple System talkgroups and/or between a System Talkgroup and a non-System resource. The resources can be conventional or trunked but must be an existing radio resource on the dispatch console.

Patches can be established without a radio dispatch console by using a deployable audio gateway, such as an ACU-1000. Approval is required prior to creating any patch. A talkgroup can only be in one patch at a time. A conventional channel can only be in one patch at a time.

Great care must be used in deciding what talkgroups and other resources can be patched together as a patch can have an unexpected consequential impact on other System resources.

The patch shall be monitored for continued coordination through Incident Command and/or dispatch personnel.

Operational Context

Console Patches should only be used when there is an operational need for communications between personnel that cannot be accomplished using common communications resources. Use of conventional resources in a patch must be in compliance with the rules governing mutual aid channel usage. Console patching will only be permitted when approved by agency Watch Commander/Incident Commander and after notification to the Control One supervisor.

A patch involving agency-specific talkgroups/channels can be initiated on the local agency's console with approval by that agency's Watch Commander.

Any patch involving a common System resource should be initiated by Control One.

Protocol/Standard

Each agency must develop written console patch and/or gateway device patch procedures addressing their unique operation and resource capabilities. These procedures shall be consistent with this policy. All communications center personnel shall receive initial and continuing training on the use of this procedure.

Procedure

When an incident requires interagency coordination that is not available on a common talkgroup or channel, a request for a patch can be initiated. If the desired resource to be patched is a local agency resource and their agency-specific talkgroup/channel, the requesting agency can initiate the patch on their local console with their Watch Commander's approval and notification to Control One.

If the desired resource to be patched is a common System resource, the patch request must be directed to Control One after obtaining local agency Watch Commander approval. Control One will then initiate the patch from their console.

Before initiating a System patch, check to make sure the radio resource being patched is not already being used by another agency.

Radio console patches shall be used only if other suitable means for interagency communicating are unavailable or insufficient.

Any time a console patch has been established, someone in the requesting agency's communications center must continually monitor the patch to address and mitigate communications problems.

Management

The Lead Agency is responsible for managing this policy. All agencies electing to use console patching are responsible for establishing and managing internal patch procedures and complying with this policy.

6.3 Use of the Statewide and National Interoperability Channels

Purpose or Objective

Defines the procedures for the use of the conventional Statewide and National interoperable radio channels for communications between radio users of disparate radio systems and/or different frequency bands.

Technical Background

The FCC has designated certain VHF, UHF, 700 MHz & 800 MHz frequency pairs to be used exclusively for conventional interoperable communications between public safety radio users. Each frequency band includes a calling/hailing channel to be used in contacting the coordination center for the local operational area. Additionally, each frequency band includes channels for tactical operations in both repeater and direct "talkaround" modes. In the Orange County Operational Area, these channels are coordinated by the Control One.

All CCCS Partner Agency radios include many of the 700 MHz and 800 MHz interoperability channels in their standard radio programming template. Additional information on these channels, including channel names and general use, can be found in the discipline specific Orange County Official Communications Handbook (Radio Code Book) available to Partner Agencies through the Lead Agency.

The Lead Agency also maintains repeater systems with Interoperable channels in the VHF and UHF frequency bands which are available to CCCS Partner Agency users through a gateway patch on the Control One radio console. This allows CCCS radio users to be patched to a non-800 MHz radio system for interoperable communications with the users of that system.

Operational Context

These designated interoperable communications resources can be used for day-to-day interagency coordination, for urgent or emergency mutual aid situations, and/or for other purposes where coordination between radio users on separate 800 MHz radio systems or non-800 MHz radio systems must communicate to perform assigned duties.

These channels shall not be used for regular communications between radio users with full access to the CCCS, except when authorized and assigned by Incident Command.

Protocol/Standard

The 700 MHz and 800 MHz interoperability channels are programmed into the radio template of all CCCS subscriber radios. These channels may be used when traveling outside the coverage area of the CCCS System and are used to communicate with another 800 MHz radio system with base and/or mobile radios on those channels.

Control One shall monitor the interoperability hailing/calling channels at all times.

Procedure

When an incident requires the use of a Statewide or National 700 MHz or 800 MHz interoperability resource, the requesting unit or agency will contact Control One to request the assignment of an interoperable tactical channel. Control One will assign an appropriate channel and monitor for any issues.

When an incident requires the use of a Statewide or National VHF or UHF interoperability resource, the requesting unit or agency will contact Control One to request the assignment of a tactical radio channel in the appropriate frequency band. Control One will initiate a patch between the requested VHF or UHF resource and the 800 MHz talkgroup/channel used in the patch.

Control One shall monitor all interoperability hailing/calling channels 24/7 to provide immediate assistance when requested.

Management

The Lead Agency will manage this policy and the coordination and maintenance of interoperable radio resources in Orange County.

CCCS agencies are responsible for providing training to their personnel on the proper use of these Statewide and National Interoperable communications resources.

6.4 Control Station Usage on Interoperability Channels

Purpose or Objective

Establishes procedures for the use of control stations for gateway patching.

Technical Background

A control station is a radio that is set up like a portable or mobile radio, typically with a limited number of talkgroups or conventional radio channels. It can be connected to a radio console or used stand alone.

A control station can function on only one talkgroup or conventional channel at a time.

Use of a control station with a radio console to patch System resources can have a wide area impact. This type of patch can be easily accomplished, but may take up multiple trunked radio channels, causing the System to experience busies or possibly create radio interference. Control station usage must comply with parameters listed on the agency's FCC license.

Operational Context

There are a number of uses for control stations including:

- Installed at an agency that does not have a dispatch console to communicate with a conventional repeater or trunked radio system.
- Connected to a dispatch console at a communications center.

- Installed in a Mobile Communications Unit/Vehicle.
- Installed at an Incident Communications Center or Command Post.

Protocol/Standard

Radio control stations are permissible in the following circumstances:

- Connected to a radio console to be used to access the System by non-System user agencies for interoperability purposes.
- Installed in a MCU/MCV.
- Installed temporarily in an Incident Communications Center or Command Post.
- Connected to a radio console to be used to access the System by user agencies for interoperability purposes.
- Used with an audio logger to record transmitted or received audio.

All communications personnel performing the dispatch function shall be trained on the usage and constraints of the control station. They should receive continued training to maintain proficiency and understanding of the procedures.

A radio technician, COMT or other authorized person shall be involved in the configuration, installation and testing of control stations, whether a temporary or permanent installation.

Limitations

- Control stations should not be used to patch a System talkgroup to another System talkgroup except when approved by the Communications Center Supervisor and the Control One Supervisor.
- Control station antennas must not exceed 20' in height. If an antenna requires more height than 20' to access the System or mutual aid repeater, then a FCC license is required.
- No control station antenna may exceed 200' in height.
- Control stations should use Yagi (directional) antennas when possible.
- Antennas should use the lowest gain possible.
- Control station power should be kept as low as possible.

Procedure

Any agency wanting to use one or more control stations at the same location is only permitted to use that configuration if the design is compliant with this SOP. The process for obtaining permission is to submit a written request for control station usage to the Lead Agency Director.

- The request shall describe the location, desired talkgroups/channels, antenna height, power, antenna type, antenna gain and feed line type of each control station.
- The Lead Agency may approve, deny or request modifications to the request.

Management

The Lead Agency will manage this policy.

Each Dispatch Agency Manager will ensure their personnel are properly trained on the use of control stations for gateway patching.

6.5 Required Monitoring of Interoperability Channels

Purpose or Objective

Establishes procedures for monitoring mutual aid/interoperability channels at communications centers and command posts.

Operational Context

Monitoring of mutual aid channels is imperative for the benefit of users needing assistance. Many channels have been identified to use for interoperability but not all of them will be monitored when not in use. Due to the fact that these Statewide and National interoperable channels do not belong to any one agency, there is no channel 'owner' monitoring them. As a result, a designated monitoring center should be established in each Operational Area.

Protocol/Standard

Control One is the designated monitoring center in Orange County for all Statewide and National interoperability calling/hailing channels available. Control One will monitor and respond to any unit requesting assistance on the calling/hailing channel and assign an appropriate tactical channel as necessary.

Dispatch Centers are responsible for monitoring any Statewide or National Interoperable channel assigned to them for an incident. The local Dispatch Center will monitor and respond to any communications traffic on the assigned interoperable channel until the completion of the incident.

Once the incident has been terminated and the interoperable resource is no longer needed, the Dispatch Center will notify Control One and release their responsibility for monitoring the tactical channel.

Management

The Lead Agency will manage this policy. The Emergency Communications Coordinator will work with Control One to identify specific interoperable channels to be monitored 24/7 by Control One.

Each Dispatch Agency Manager will ensure their personnel are properly trained on the use of Statewide and National interoperability resources.

7.0 MAINTENANCE RESPONSIBILITIES

7.1 System Maintenance

Purpose or Objective

Defines the System maintenance responsibilities and roles. The maintenance levels for the 800 MHz Radio System and its subsystems shall be set to a standard to protect the overall functionality and integrity of the System for all users.

Operational Context

The 800 MHz CCCS System is a complex network of radio sites and equipment that require highly trained engineering and technical personnel to constantly monitor the System and intervene as required to prevent System failure and quickly restore the System should any equipment experience failure. The CCCS Governance Committee has designated the Lead Agency as the primary agency responsible for the maintenance of the System. Agreements between the Lead Agency and maintenance contractors are at the Lead Agency's discretion, but the Lead Agency is ultimately responsible for the System maintenance.

Recommended Procedure

Any maintenance issues affecting the System will be addressed and resolved by the Lead Agency. The Lead Agency may, at its discretion, involve contract vendors in the process as necessary

For emergency and urgent repairs, the Lead Agency may request and expect cooperation from support resources (e.g. – support staff and/or parts) from other agencies to restore equipment/systems to normal operation.

For day-to-day maintenance, the Lead Agency or its contract vendor shall maintain the equipment.

Repair of any equipment not normally maintained by the Lead Agency requires the notification and consent of the owning agency.

The Lead Agency and/or their contracted service providers are responsible for:

- FAA registrations, FCC ASR registrations and FCC licenses, ensuring that equipment is properly licensed and copies of the licenses are posted at the sites as required by regulations.
- Maintaining equipment within the limits of County of Orange FCC licenses.
- Notifying the responsible personnel of equipment and location issues that require attention.
- Managing the inventory of the radio subscriber and infrastructure equipment.
- Ensuring that equipment at the tower sites that is not part of the System inventory shall be clearly labeled to indicate agency ownership.
- Routine equipment maintenance logs are kept at the sites.
- Maintaining current copies of all as-built documentation at each site and at the Lead Agency office. Lead Agency is responsible for ensuring the accuracy of all as-built data related to the infrastructure equipment and any changes shall be immediately documented. Lead Agency shall distribute the updated information as required.
- Coordinating, implementing and/or overseeing configuration changes affecting the System infrastructure.

- Any work being scheduled affecting the System and/or subsystems performance and reasonable notification to the System's users of same.
- Ensuring all technicians assigned to work on System equipment have successfully completed appropriate training on the equipment. Training requirements are referenced in the training section of the SOP.
- Following a preventive maintenance plan as defined in the preventative maintenance section of the manufacturers' manuals.
- Maintaining a list of the qualifications and contact information of technical staff in the event of an emergency.
- Maintaining a list of the available spare parts/equipment pertaining to the System and subsystems.
- Ensuring any equipment upgrades or changes affecting normal operations of the System are discussed and approved by the Governance Committee.
- Determining how critical an equipment failure is operationally, determining the appropriate action, and escalating or de-escalating the repair process as needed.

Management

The Lead Agency is responsible for managing the maintenance of the System equipment and sites and managing the repair responsibilities in emergency situations.

7.3 Maintenance / Repair Notifications

Purpose or Objective

Defines the procedure for notifications of scheduled and unanticipated maintenance activities having an impact on normal System operations, System interruptions, and System outages.

It is the policy of the Lead Agency to provide guidelines for user notifications for any maintenance actions having a potential for System interruptions.

Technical Background

Typically, equipment functionality can change when hardware and software configuration alterations or other maintenance activities are performed. Advanced notification of planned maintenance activities that impact the normal operation of the System allows user agencies and subscribers to make preparations as needed. Notification will also be made to user agencies when a catastrophic failure happens.

If the notification process is difficult and lengthy, it can become a barrier to making notification to user agencies.

Failure to make proper notification to user agencies can result in unneeded confusion, disruption or loss of public safety communications, and possible compromise of any special operations communications.

Operational Context

Affected agencies shall be notified of maintenance activities that impact their subscribers on the System. Agency notification of radio maintenance activities to their individual subscribers is at the discretion of the user agency's designated representative.

Protocol / Standard

The Lead Agency is responsible for monitoring the System on a 24-hour basis, through various methods including on-site staff in the System Watch unit. Maintenance activities, planned or unplanned, that could impact the subscribers usage of the System requires notification to the affected agency's radio representatives.

In the event of planned maintenance, all efforts should be made to conduct this type of activity during off-peak hours where radio utilization is as low as possible. If an emergency or high priority incident is in progress at the time of scheduled maintenance, it may be necessary to reschedule or delay the maintenance until the situation has stabilized and can be safely moved to alternate talkgroups or channels.

Procedure

A reasonable advance notice shall precede planned maintenance activities that affect the agencies using the System. The notification methods shall be by phone, e-mail, radio, or any combination of the same. The notification will consist of:

- The type of planned maintenance activity.
- When the maintenance will be conducted.
- The amount of time anticipated to complete the activity.
- The anticipated impact to the System and subsystems.

If a known activity has a significant operational impact upon any specific agency, a confirmation of receipt of notification shall be obtained. It is the responsibility of the Lead Agency to ensure that all affected users are notified will in advance of any such operations. Whenever possible, these operations shall be scheduled when the normal radio traffic is slowest.

Prior to commencing the maintenance operation, personnel from the Lead Agency shall coordinate with Control One to contact each affected dispatch center's supervisor for a last minute situational briefing.

Once maintenance operations begin, if dispatch operations recognize a need to terminate the operation, or if unexpected problems occur, a communications supervisor must call Control One to have the technical staff notified of the situation.

Unanticipated maintenance or equipment failures affect the agencies on the System and require notification to the affected agency's radio representative.

Upon notification of an equipment outage, Lead Agency technical staff is expected to:

- Determine the impact of the impairment to the operation of the System. A minor failure is something that either does not affect or minimally affects user functionality. A major failure is something that seriously affects or risks user functionality of the System.

- Determine if there are internal or external factors that alter the priority of System impairment, such as weather, subscriber loading unique public safety activities or impending events, etc.
- Determine if manual intervention is required. A serious failure requires initiating repair processes regardless of the time of day. Minor failures can wait until normal business hours or other convenient time before repair. The determination is at the discretion of the Lead Agency, and shall be based on internal System functionality and external subscriber needs.
- Determine if additional external resources are required.

Once the operation or repairs are complete, Lead Agency personnel shall contact Control One for an update and user feedback.

When requested by the Governance Committee, the details of the recovery processes may be reviewed for improvements.

Management

The Lead Agency is responsible for maintaining this policy and ensuring representatives from all affected agencies are notified as appropriate. Each agency's radio representatives are responsible for notifications within their respective agencies.

7.4 System Coverage

Purpose or Objective

Establishes the requirements for regular outdoor testing and verification of System signal quality and coverage.

Technical Background

Signal coverage of the System fluctuates constantly and is influenced by many conditions including but not limited to:

- Terrain.
- Weather.
- Vegetation.
- Building Construction.
- Equipment Condition.
- Location.

Regular sampling of signal quality and strength at pre-designated locations will help to confirm adequate coverage, or if a problem might have developed in certain locations due to changes in one of the above conditions.

Operational Context

Periodic coverage testing is a critical component of System operation and maintenance, and will continue toward identifying and mitigating any signal coverage issues, including any potential effects of new building construction and development.

Protocol / Standard

Lead Agency staff performs comprehensive signal coverage test to evaluate the System's signal strength and quality across the service area. The locations and number of individual test points shall be based on the area's building density and known areas of poor coverage.

The results of each test will be compared to previous results and monitored for signal degradation. Test results will be stored on a shared data server for historical comparisons.

Management

The Lead Agency Director oversees the process, evaluates the results, develops remediation strategies, and reports significant findings to the Governance Committee.

7.5 Repair Parts Inventory**Purpose or Objective**

Establishes an inventory control procedure for infrastructure and subscriber repair parts.

It is the policy of the Lead Agency to ensure that planning is in place and available resources identified to expedite the recovery of the System and related components in the case of disaster, catastrophic failure or other major incident that affects operations of the System.

Operational Context

Lead Agency will maintain an inventory of spare parts for regular repairs to the System and subscriber radios.

Protocol / Standard

The spare parts inventory for infrastructure and subscriber units shall be kept at Lead Agency facilities for ready access when needed.

Management

The Lead Agency maintains and manages the repair parts inventory.

7.6 Disaster Recovery**Purpose or Objective**

Establishes the minimum requirements for a System disaster recovery plan.

It is the policy of the Governance Committee and Lead Agency to ensure that planning is in place and resources identified and available to expedite the recovery of the System and related components in the case of disaster, catastrophic failure or other major incident that affects operations of the System.

Operational Context

Lead Agency personnel will maintain a comprehensive plan for restoration of the System during times of disaster. If the Operational Area EOC is activated, the Emergency Communications

Coordinator (ECC) must be notified of any System problem so that it can be logged into WebEOC.

Management

The Lead Agency maintains and manages the Disaster Recovery Plan.

8.0 SITE AND SYSTEM SECURITY

8.1 Site Security

Purpose or Objective

Establishes the minimum requirement to provide site security and protect the integrity of the System's radio towers equipment shelters and equipment.

Technical Background

Security measures have the overall benefit of protecting the functionality, integrity and operation of the System. Details of specific security measures cannot be placed within a public document as this would compromise measures used in monitoring and maintaining security.

Operational Context

The physical security of equipment, facilities, and structures making up the core of the radio System infrastructure is paramount to the reliability and availability of communications carried on the System. Each site is within a fenced, gated and locked compound, with shelter entry monitored and reported to a central monitoring point. A remote controlled camera systems are installed and monitored for any unauthorized entry or security concerns.

Protocol / Standard

Access to the sites are tightly controlled and entry to those sites is granted only to those personnel with proper authorization from the Lead Agency. All personnel requiring site access must be accompanied by Lead Agency staff. Unaccompanied access to any System site is not authorized. Entry alarms for the remote sites are received at Systems Watch and sent immediately to Lead Agency technical support staff.

Procedure

Notification to Lead Agency Technical staff and Systems Watch is required of all agencies and vendors prior to gaining site access. Any person requiring access to the tower sites for any reason shall have full clearance from the Lead Agency and be accompanied and monitored by Lead Agency personnel while on site. Law enforcement personnel will be immediately notified and dispatched to any site with unexpected or unexplained alarms or unidentified personnel viewed remotely from the camera systems.

Any agency or vendor requiring access to any tower site or equipment location shall make immediate notification to the Lead Agency of urgent issues such as discharged employees or cancelled contracts.

When a site has been vandalized or broken into, the jurisdictional law enforcement agency should be notified. The person who discovers the event has the responsibility to preserve the crime scene and not contaminate it. He/she should have Systems Watch log the time when the event was discovered and any other pertinent information relating to the site/scene. Systems Watch should notify the appropriate local law enforcement agency as well as the Orange County Sheriff's Department Watch Commander and Control One. Other agencies may be notified if they own equipment at the site. Lead Agency will notify all affected agencies as soon as possible.

When the site is off the air due to a crime, the technician should refrain from making entry unless permission has been given by the Lead Agency Director due to extreme circumstances taking place that requires coverage from the site.

If a radio technician should arrive at a site and an unauthorized vehicle or person is on the property, they should back off, notify Systems Watch and call 911. The technician should give the 911 call taker the street address and advise them of the situation. If there is no cell service on site, the technician should radio the information to Systems Watch and request law enforcement response. Systems Watch personnel should immediately contact the appropriate law enforcement agency to request response. Systems Watch personnel will also notify Lead Agency supervisors and management. At no time should the technician put themselves at risk of harm.

If a technician has to respond to a vandalized remote site after normal business hours, it is recommended for safety reasons that a minimum of two persons respond to the site. Law enforcement may be requested to go to the site with the technician.

Management

The Lead Agency Director is responsible for managing this procedure.

8.2 Network Operational Security

Purpose or Objective

Establishes the specific security measures for System and subsystem equipment and to define site security policy.

Technical Background

Security measures have the overall benefit of protecting the functionality, integrity and operation of the System. Details of specific security measures cannot be placed within a public document as this would compromise measures used in monitoring and maintaining security.

Protocol / Standard

All items identified as 'Restricted Information' will be maintained in secure areas within the control of the Lead Agency and is not available outside of the Lead Agency except by formal written request.

Technical information that can compromise System security is considered 'Restricted Information'.

The System's network is protected from other data networks by isolation or by using System manufacturer specified and configured firewall with the approval of the Lead Agency.

All remote access points to the System are kept secure and are coordinated with the Lead Agency.

Passwords protect the System and subsystem equipment for the purpose of preventing unauthorized access to equipment. The Lead Agency issues and manages the passwords.

User login accounts are protected with passwords providing an appropriate level of protection. If a password is suspected of being compromised, it must be immediately updated or the user account will be disabled pending resolution.

External devices (computers, modems, routers, data storage, etc.) shall not be connected to the System network, computers, or consoles without the approval of the Lead Agency Director. Any such device must also be supplied, supported, and maintained by the user Agency's Information Technology department or service provider to ensure the most current device security software and virus protection is in place.

At no time will any personally owned device be connected to any port or connector on the System. Any such action may result in the immediate revocation of access privileges for the offender and/or agency.

It is recommended that computers used for programming or maintenance not be connected to the internet to help reduce possibility of virus infection.

A 'Group Policy' shall be implemented on the System to prevent the use of external USB ports on all dispatch consoles.

Procedure

All agencies, contractors, and personnel that require access to Lead Agency controlled sites, equipment or networks must pass a comprehensive background check before access is allowed and must be accompanied by Lead Agency staff while on site.

Violations of System security policy or procedures may jeopardize the System and result in the loss of a technician's, agency's or vendor's privileges to access the System.

System documentation is classified as 'Restricted Information'.

Management

The Lead Agency Director is responsible for the network, equipment, and site security of the System.

8.3 Software, Firmware and Document Security

Purpose or Objective

Establishes the minimum security measures and procedures to protect the integrity of the System software and programming.

Technical Background

The documentation, service and technical manuals, databases, spreadsheets and software of the System contain critical operational and technical information that could compromise the System if obtained by unauthorized personnel and is classified as 'Restricted Information'.

Operational Context

The documentation and software of the System changes as the System evolves. Those changes and revision must be documented and maintained in a central location for quick and easy access for the technical support staff.

Protocol Standard

In the best interest of public safety, all documentation, service and technical manuals, databases, spreadsheets and software of the System are considered 'Restricted Information'.

Software relating to the programming of any System component shall only be installed on authorized government owned computers or Lead Agency authorized contractors' computers.

Procedure

All items identified as 'Restricted Information' will be maintained in secure areas within the control of the Lead Agency Director. These items will only be shared with those who require knowledge of it for operational purposes. This information is not available to anyone outside of the Lead Agency. An exception may be made with a formal written request and approval from the Governance Committee. This information is not to be released to any personnel who do not have a legitimate and appropriate need for it.

Management

The Lead Agency Director is responsible for managing this procedure.

9.0 APPENDIX

9.1 Lead Agency Contact Information

Normal Working Hours – Monday-Friday 7:30AM – 4:30PM

Customer Service – 714-704-7999

- Radio repair request
- Radio programming request
- Radio/accessories purchase request
- Dispatch console repair request

Systems Watch – 714-628-7020

- Lost/Stolen radio notification
- Radio deactivation
- Radio transmission history/statistics

After Normal Working Hours

Systems Watch – 714-628-7020

- Lost/Stolen radio notification
- Radio System coverage issues
- Emergency radio repair requests
- Emergency dispatch console repair requests

Control One – 714-834-7008

- Operational issues
- Request restricted talkgroup assignment
- Interoperability assistance
- Emergency radio or console repair requests

Physical Address:OCSD/Technology Division – Administration & Radio Repair

840 N. Eckhoff St.
Suite 104
Orange, CA 92868

9.2 Glossary – Definitions and Acronyms

Item/Acronym	Definition
700MHz	For Public Safety LMR, digital P25 voice radio channels between 769/775 MHz and 799/805 MHz. Channels have 30 MHz separation between Tx & Rx when repeated. FCC designated low power channels can be used analog voice.
7CALL / 7TAC	Nationwide 700 MHz Calling and Tactical channels
800MHz	For Public Safety LMR, analog or digital voice or data radio channels between 806/816 and 851/860 MHz. Channels have 45 MHz separation between Tx & Rx when repeated.
8CALL / 8TAC	Nationwide 800 MHz Calling and Tactical channels
ACU-1000	An audio gateway device capable of connecting disparate radio systems, channels, or talkgroups together during on-scene operations, similar to a console patch between talkgroups
AES	Advanced Encryption Standard
Alias	A common alphanumeric name used to identify a radio, talkgroup, site, etc. rather than referencing the assigned 6 digit ID number
ANSI	American National Standards Institute
APCO	Association of Public-Safety Communications Officials
APCO P25	A public-safety digital radio standard

Item/Acronym	Definition
ASK	Advanced System Key
BDA	Bi-Directional Amplifier, relays radio signals into and out of a building
BER	Bit Error Rate
CCCS	Countywide Coordinated Communications System
Channel	A pair of frequencies, transmit and receive, that are used for a single communications path
Channel Bank	A device that combines multiple data and/or audio inputs into TDMA format so that it can be transmitted over microwave or T1 circuit and shared between transmitter sites
Code plug	The file containing a specific radio's programming parameters
COMC	Communications Coordinator
COML	Communications Unit Leader
COMT	Incident Communications Technician
Console Patching	Ability to connect channels via dispatch consoles
Consolette	A mobile radio mounted into a case with power supply and converted for desk-top use
Control Station	An installed radio unit, sometimes a mobile radio, normally found at a desk or common work area indoors or directly connected to a console or other fixed transmitting location
DAS	Distributed Antenna System, relays radio signals into and out of a building
Digital radio	Digital radios turns sound (by signal processing) into patterns of digits (numbers) rather than the radio waves which are used for analog transmissions.
Dispatch Console	A fixed radio operator position with multiple radio resources and features that can access any subset of talkgroups and/or conventional channels
ECC	Emergency Communications Coordinator
EIA	Electronic Industry Alliance
EMS	Emergency Medical Services
EOC	Emergency Operations Center
FAA	Federal Aviation Administration
FCC	Federal Communication Commission
Fixed	Radio equipment that is installed at a radio site or dispatch center
Fleetmap	The master spreadsheet plan of the talkgroups, zones, Failsoft assignments, alias information and other pertinent System and radio programming
FM	Frequency Modulation
Gateway	A device that allows two or more radio or voice devices to be connected together
IAP	Incident Action Plan

Item/Acronym	Definition
IC	Incident Command
ICALL	Calling Channel for ITAC
ICC	Incident Communications Center
ICP	Incident Command Post
ICS	Incident Command System
ICS 205	Incident Radio Communications Plan
ICS 217	Communications Resource Availability Worksheet
ID	Identification
Infrastructure	All of the fixed electrical and mechanical equipment, towers and building structures, generators, transmitters, controllers, antennas, microwave and ancillary equipment that comprise the operational backbone of the radio System
Inter-agency	Located or occurring between two or more agencies
Interoperability	The ability of Public Safety responders to share information via voice and data communications systems on demand, in real time, when needed, and as authorized.
Interoperable	Ability of a system to use the parts or equipment of another system
ITAC	Conventional mutual aid channel 800 Mhz
ITS	Information Technology Services
IUID	Item Unit Identification number is a unique number assigned to each individual subscriber radio authorized to have access to the System.
Lead Agency	Agency primarily responsible for maintenance, management, operation and enhancement of the CCCS System. The CCCS Governance Committee has designated the Orange County Sheriff Department Technology Division as the Lead Agency.
LMR	Land Mobile Radio
Logging	The act of recording radio conversations for replay as required
MCC	Mobile Communicaiton Center
MCU	Mobile Communications Unit
MCV	Mobile Communications Vehicle
MHz	Abbreviation for megahertz. 5 MHz = 5,000,000 Hz or 5,000 kHz. A unit of measure for the number of times a frequency makes one complete cycle in one second
Mission Critical	For mission critical applications, users have an expectation of "immediate" communication with their dispatch or command center and little to no end-to-end audio delays.
Mobile Radio	A vehicular mounted radio with an power source and antenna
Mutual Aid	Personnel, equipment, or services provided to another jurisdiction

Item/Acronym	Definition
NECP	National Emergency Communications Plan
NGOs	Non-Governmental Organizations
NIMS	National Incident Management System
OCCOPSA	Orange County Chiefs of Police and Sheriff's Association
OTAP	Over the Air Programming
OTAR	Over the Air Rekeying
P25	A suite of standards for digital radio communications for use by federal, state and local public safety agencies in North America to enable them to communicate with different vendor radio systems using a common platform
Patch	Electrically connecting two or more radio channels or talkgroups so that those users of those separate resources are able to communicate with each other
POC	Point of Contact
Portable	A lightweight, completely self-contained radio unit usually worn on user's belt
Public Safety	An agency, department, or individual directly involved with the health, safety, and/or security of the public including, but not limited to police, fire, emergency management, and medical personnel and responders
Public Service	An agency, department, or individual involved with providing non-emergency type services to the public including, but not limited to utilities, transportation, education, and other governmental services, supporting public safety
Restricted Information	Documentation, service and technical manuals, databases, spreadsheets and software of the System containing critical operational and technical information that could compromise the System if obtained by unauthorized personnel. All items identified as 'Restricted Information' will be maintained in secure areas within the control of the Lead Agency and is not available outside of the Lead Agency except by formal written request.
RF	Radio Frequency
SCIP	Statewide Communications Interoperability Plan
SEOC	State Emergency Operations Center
Simplex	Radio to radio communications on one frequency. Also called Direct
Simulcast	A type of radio communications in which voice communications are transmitted from multiple radio sites and can be received simultaneously by field units to provide wide area coverage
Site	The physical location of an antenna tower, equipment shelter and radio System infrastructure equipment
SOP	Standard Operating Procedure
SOW	Site on Wheels
Subscriber Unit	A mobile, hand held or control station radio used on a trunked radio system
System User	An individual operating a radio authorized to access the System.

Item/Acronym	Definition
System Watch	Lead Agency unit responsible for 24/7 monitoring of CCCS and responding to any System issues. This includes notifications, troubleshooting, callouts, repair, etc., resulting in System restoration.
TAC	Tactical on scene operation
Talk Around	Radio to Radio communications on one frequency, usually the same frequency on which a repeater transmits. Similar to Direct or Simplex
Talkgroup	Term usually used with trunked radio systems. A talkgroup is a predefined list of radios/users assigned a unique ID which allows them to communicate with each other over a trunked radio system.
Talkgroup Alias	Abbreviated naming of the talkgroup to fit within the 8 or 14 character radio display
Talkgroup Failsoft Channel	The system channel designated for a talkgroup when in the failsoft mode
Talkgroup ID	Numerical designation of the talkgroup in decimal and/or hexadecimal
Talkgroup Name	Name of the talkgroup as it is programmed into the system
TIA	Telecommunications Industry Association
Trunking/Trunked	The automatic and dynamic sharing of a number of communications channels between large numbers of radio users
UHF	Ultra High Frequency – Range of 300 to 3,000 MHz for public safety LMR usually refers to two bands. 380 to 460 MHz (low) and 460 to 512 MHz (high).
UPS	Uninterruptible Power Source – a battery back-up device that provides emergency power to connected equipment when utility power is not available.
User Agency	An agency authorized to operate a radio on the System.
VHF	Very High Frequency – For public safety LMR, usually refers to VHF High Band with a range of 136 to 164MHz. VHF Low Band has a frequency range below 100MHz.
Zone	An area in the radio / template containing positions for 16 individual talkgroups or conventional radio channels which is normally labeled by an acronym that closely represents the owner agency

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	800 MHz Backbone Cost Sharing - Cost Allocations based on Radio Counts															
2																
3	FY 21-22 COST ALLOCATION															
4																
5																
		FY 21-22 RADIO COUNT						FY 21-22 Annual Payment								Financial - Attachment #2
		LAW EQUIP.	FIRE EQUIP.	LIFEGR D EQUIP.	PW EQUIP.	TOTAL	ALLOCATION PERCENT (60/40)	OPERATIONS	BACKBONE INFRASTR. (1)	800 MHz SUSTAIN. FUND (1)	TOTAL (60/40)	TOTAL Straight Radio Count	FY 20-21 PAYMENT	FY 20-21Radio Counts)	# CHANGE	
6	CITY/AGENCY															
7	ALISO VIEJO	42	0	0	12	54	0.41%	\$12,987	\$2,199	\$1,034	\$16,220	\$18,756	\$ 17,079	54	0	\$ (858)
8	ANAHEIM	1081	459	0	363	1,903	14.35%	\$457,668	\$77,493	\$36,452	\$571,614	\$660,962	\$ 599,967	1,897	6	\$ (28,353)
9	BREA	227	87	0	38	352	2.66%	\$84,655	\$14,334	\$6,743	\$105,732	\$122,259	\$ 105,635	334	18	\$ 97
10	BUENA PARK	232	0	0	59	291	2.19%	\$69,985	\$11,850	\$5,574	\$87,409	\$101,072	\$ 92,035	291	0	\$ (4,626)
11	COSTA MESA	380	157	0	111	648	4.89%	\$155,843	\$26,388	\$12,413	\$194,643	\$225,067	\$ 204,944	648	0	\$ (10,301)
12	CYPRESS	144	0	0	33	177	1.34%	\$42,568	\$7,208	\$3,390	\$53,166	\$61,477	\$ 55,664	176	1	\$ (2,497)
13	DANA POINT	54	0	0	4	58	0.44%	\$13,949	\$2,362	\$1,111	\$17,422	\$20,145	\$ 17,079	54	4	\$ 343
14	FOUNTAIN VALLEY	127	64	0	63	254	1.92%	\$61,087	\$10,343	\$4,865	\$76,295	\$88,221	\$ 80,017	253	1	\$ (3,721)
15	FULLERTON	331	144	0	34	509	3.84%	\$122,414	\$20,727	\$9,750	\$152,891	\$176,789	\$ 160,033	506	3	\$ (7,142)
16	GARDEN GROVE	406	0	0	67	473	3.57%	\$113,756	\$19,261	\$9,060	\$142,077	\$164,285	\$ 149,596	473	0	\$ (7,519)
17	HUNTINGTON BEACH	518	197	79	164	958	7.23%	\$230,397	\$39,011	\$18,351	\$287,759	\$332,739	\$ 302,672	957	1	\$ (14,912)
18	IRVINE	570	0	0	165	735	5.54%	\$176,766	\$29,930	\$14,079	\$220,776	\$255,285	\$ 221,390	700	35	\$ (614)
19	LAGUNA BEACH	155	98	60	68	381	2.87%	\$91,630	\$15,515	\$7,298	\$114,443	\$132,331	\$ 119,551	378	3	\$ (5,108)
20	LAGUNA HILLS	38	0	0	4	42	0.32%	\$10,101	\$1,710	\$805	\$12,616	\$14,588	\$ 13,283	42	0	\$ (668)
21	LAGUNA NIGUEL	76	0	0	12	88	0.66%	\$21,164	\$3,584	\$1,686	\$26,433	\$30,565	\$ 27,832	88	0	\$ (1,399)
22	LAGUNA WOODS	11	0	0	0	11	0.08%	\$2,645	\$448	\$211	\$3,304	\$3,821	\$ 3,479	11	0	\$ (175)
23	LAKE FOREST	89	0	0	4	93	0.70%	\$22,366	\$3,787	\$1,781	\$27,935	\$32,301	\$ 29,413	93	0	\$ (1,478)
24	LA HABRA	172	14	0	58	244	1.84%	\$58,682	\$9,936	\$4,674	\$73,292	\$84,748	\$ 77,170	244	0	\$ (3,879)
25	LA PALMA	61	0	0	11	72	0.54%	\$17,316	\$2,932	\$1,379	\$21,627	\$25,007	\$ 22,772	72	0	\$ (1,145)
26	LOS ALAMITOS	51	0	0	0	51	0.38%	\$12,265	\$2,077	\$977	\$15,319	\$17,714	\$ 16,130	51	0	\$ (811)
27	MISSION VIEJO	96	0	0	22	118	0.89%	\$28,379	\$4,805	\$2,260	\$35,444	\$40,984	\$ 36,687	116	2	\$ (1,243)
28	NEWPORT BEACH	320	122	62	119	623	4.70%	\$149,830	\$25,370	\$11,934	\$187,134	\$216,384	\$ 197,353	624	(1)	\$ (10,220)
29	ORANGE	340	215	0	104	659	4.97%	\$158,488	\$26,836	\$12,623	\$197,947	\$228,888	\$ 210,004	664	(5)	\$ (12,057)
30	PLACENTIA	152	48	0	0	200	1.51%	\$48,100	\$8,144	\$3,831	\$60,075	\$69,465	\$ 45,859	145	55	\$ 14,216
31	RANCHO SANTA MARGARITA	41	0	0	1	42	0.32%	\$10,101	\$1,710	\$805	\$12,616	\$14,588	\$ 13,283	42	0	\$ (668)
32	SAN CLEMENTE	86	0	15	5	106	0.80%	\$25,493	\$4,317	\$2,030	\$31,840	\$36,817	\$ 33,525	106	0	\$ (1,685)
33	SAN JUAN CAPISTRANO	39	0	0	2	41	0.31%	\$9,860	\$1,670	\$785	\$12,315	\$14,240	\$ 12,651	40	1	\$ (335)
34	SANTA ANA	648	0	0	151	799	6.03%	\$192,158	\$32,537	\$15,305	\$240,000	\$277,514	\$ 246,692	780	19	\$ (6,692)
35	SEAL BEACH	134	0	27	8	169	1.27%	\$40,644	\$6,882	\$3,237	\$50,763	\$58,698	\$ 53,134	168	1	\$ (2,370)
36	STANTON	57	0	0	23	80	0.60%	\$19,240	\$3,258	\$1,532	\$24,030	\$27,786	\$ 25,302	80	0	\$ (1,272)
37	TUSTIN	228	0	0	39	267	2.01%	\$64,213	\$10,873	\$5,114	\$80,200	\$92,736	\$ 83,812	265	2	\$ (3,612)
38	VILLA PARK	5	0	0	2	7	0.05%	\$1,683	\$285	\$134	\$2,103	\$2,431	\$ 2,214	7	0	\$ (111)
39	WESTMINSTER	196	0	0	59	255	1.92%	\$61,327	\$10,384	\$4,885	\$76,596	\$88,568	\$ 80,333	254	1	\$ (3,737)
40	YORBA LINDA	53	0	0	48	101	0.76%	\$24,290	\$4,113	\$1,935	\$30,338	\$35,080	\$ 31,627	100	1	\$ (1,289)
41	METRONET	0	55	0	0	55	0.41%	\$13,227	\$2,240	\$1,054	\$16,521	\$19,103	\$ 17,395	55	0	\$ (874)
42																\$ -
43	CITY TOTAL	7,160	1,660	243	1,853	10,916	82.34%	\$2,625,279	\$444,519	\$209,097	\$3,278,895	\$3,791,414	\$ 3,405,609	10,768	148	\$ (126,715)
44																
45	OCFA	0	1,916	0	0	1,916	14.45%	\$460,795	\$78,023	\$36,701	\$575,519	\$665,477	\$ 596,804	1,887	29	\$ (21,285)
46	OCTA	0	0	0	124	124	0.94%	\$29,822	\$5,049	\$2,375	\$37,247	\$43,068	\$ 39,218	124	0	\$ (1,971)
47	OC LIFEGUARD TOTAL	0	0	54	0	54	0.41%	\$12,987	\$2,199	\$1,034	\$16,220	\$18,756	\$ 17,079	54	0	\$ (859)
48	COAST COMMUNITY COLLEGE DISTRICT	12	0	0	0	12	0.09%	\$2,886	\$489	\$230	\$3,605	\$4,168	\$ 3,795	12	0	\$ (190)
49	IRVINE VALLEY COLLEGE POLICE	23	0	0	0	23	0.17%	\$5,531	\$937	\$441	\$6,909	\$7,989	\$ 7,274	23	0	\$ (365)
50	SADDLEBACK COLLEGE CAMPUS PD	18	0	0	0	18	0.14%	\$4,329	\$733	\$345	\$5,407	\$6,252	\$ 6,009	19	(1)	\$ (602)
51	CAL STATE FULLERTON	76	0	0	0	76	0.57%	\$18,278	\$3,095	\$1,456	\$22,829	\$26,397	\$ 24,037	76	0	\$ (1,208)
52	SANTA ANA UNIF. SCH. DIST. POLICE	70	0	0	0	70	0.53%	\$16,835	\$2,851	\$1,341	\$21,026	\$24,313	\$ 22,139	0	70	\$ (1,113)
53																
54	COSTA MESA SANITARY DISTRIC	0	0	0	8	8	0.06%	\$1,924	\$326	\$153	\$2,403	\$2,779	\$ 2,530	8	0	\$ (127)
55	EAST ORANGE COUNTY WATER DISTRICT	0	0	0	7	7	0.05%	\$1,683	\$285	\$134	\$2,103	\$2,431	\$ 2,214	7	0	\$ (111)
56	EL TORO WATER DISTRICT	0	0	0	2	2	0.02%	\$481	\$81	\$38	\$601	\$695	\$ 633	2	0	\$ (32)
57	GOLDEN STATE WATER COMPANY	0	0	0	1	1	0.01%	\$240	\$41	\$19	\$300	\$347	\$ 316	1	0	\$ (16)
58	IRVINE RANCH WATER DISTRICT	0	0	0	4	4	0.03%	\$962	\$163	\$77	\$1,202	\$1,389	\$ 1,265	4	0	\$ (64)
59	MOULTON NIGUEL WATER DISTRICT	0	0	0	1	1	0.01%	\$240	\$41	\$19	\$300	\$347	\$ 316	1	0	\$ (16)
60	MIDWAY SANITATION DISTRICT	0	0	0	1	1	0.01%	\$240	\$41	\$19	\$300	\$347	\$ 316	1	0	\$ (16)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Countywide Emergency Mass Notification System (AlertOC)
Memorandum of Understanding Update with the County of Orange

RECOMMENDATION: That the City Council authorize the Interim City Manager, in his role as Director of Emergency Services, to execute and manage, on behalf of the City of Laguna Hills, a Memorandum of Understanding between the City of Laguna Hills and the County of Orange to allow for the continued use of the County's Countywide Mass Notification System, referred to as AlertOC, under the terms and conditions of the County's Countywide Mass Notification System Operating Guidelines and vendor-provided Agreements, commencing on July 1, 2021, through June 30, 2024.

SUMMARY:

Over the last year and a half, the Orange County Emergency Managers Organization (OCEMO) Technology Subcommittee in collaboration with the Orange County Operational Area (OA) Technology Division conducted a standard review and revision of the existing Countywide Mass Notification System (AlertOC) Memorandum of Understanding (MOU) between the County of Orange and all participating municipalities and special districts. During this time, Captain Matthew Stiverson, in his role as Emergency Management Coordinator for the City of Laguna Hills, was a member of the OCEMO Technology Subcommittee and actively participated in this review and revision of the MOU on behalf of the City. Overall, no significant or notable changes were required. Only minor changes were made to bring the document into compliance with current standards of operation, which are already in use throughout the OA. Approval of the attached MOU with the County of Orange will allow the City of Laguna Hills to

Countywide Emergency Mass Notification System (AlertOC) MOU

September 14, 2021

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continue using AlertOC as an important communication tool with our community.

BACKGROUND:

AlertOC has been used since its inception in 2008 to contact hundreds of thousands of Orange County community members in times of emergency. Public safety agencies have employed AlertOC for a wide range of notifications, including missing children, severe weather warnings, COVID-19 information, and evacuations.

On July 22, 2008, the Board of Supervisors (Board) for the County of Orange extended the use of the AlertOC system to regional partners by approving multiple MOUs with cities and public universities in Orange County. The MOUs allowed the agencies to utilize AlertOC in accordance with the Operating Guidelines of the Countywide Mass Notification System and related vendor agreements.

Similarly, on June 18, 2013, the Board approved multiple MOUs between the County of Orange and cities, public universities, and water agencies for the use of AlertOC under the terms and conditions of the Operating Guidelines of the AlertOC and related vendor agreements for the period beginning July 1, 2013, through June 30, 2016. On May 5, 2016, the Board renewed the MOU with Orange County cities, universities, and water agencies for a five-year term from July 1, 2016, through June 30, 2021.

Over the last year and a half, the Orange County Emergency Managers Organization (OCOMO) Technology Subcommittee in collaboration with the Orange County Operational Area (OA) Technology Division conducted a standard review and revision of the existing Countywide Mass Notification System (AlertOC) Memorandum of Understanding (MOU) between the County of Orange and all participating municipalities and special districts. Captain Matthew Stiverson, in his role as Emergency Management Coordinator for the City of Laguna Hills, was a member of the OCEMO Technology Subcommittee and actively participated in this review and revision of the MOU on behalf of the City. Overall, no significant or notable changes were required. Only minor changes were made to bring the document into compliance with current standards of operation, which are already in use throughout the OA.

On June 22, 2021, the Board approved an updated version of the MOU with the Orange County cities, universities, and water agencies for a 4-year term from July 1, 2021, through June 30, 2024. Approval of this updated MOU, attached along with the Exhibits referred to therein, between the City of Laguna Hills and the County of Orange for continued use of AlertOC is recommended.

Countywide Emergency Mass Notification System (AlertOC) MOU
September 14, 2021
Page 3

FISCAL IMPACT:

The City incurs no cost for participation in and use of the AlertOC system.

ATTACHMENTS:

- Memorandum of Understanding
- Subordinate Agreement - Everbridge
- AlertOC Standard Operating Procedures
- Nondisclosure Agreement between Pac Bell and County of Orange
- Individual User Agreement

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF ORANGE
AND
PARTICIPANTS
FOR USE OF COUNTYWIDE MASS NOTIFICATION SYSTEM**

This Memorandum of Understanding, hereinafter referred to as "MOU," dated June 30, 2021, which date is stated for purposes of reference only, is entered into by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the undersigned municipalities, public universities and water agencies responsible for protecting a resident population and maintaining a dedicated public safety answering point (PSAP) within the County of Orange, hereinafter referred to individually as "PARTICIPANT" or collectively as "PARTICIPANTS."

This MOU is intended to establish governance and terms of use for a Countywide Public Mass Notification System.

RECITALS

WHEREAS, COUNTY is sponsoring a Countywide Public Mass Notification System ("System") for the primary intent of providing timely communication to the public during times of emergency; and

WHEREAS, the County is making use of the System available to all cities and agencies within the County of Orange who have the responsibility for protecting a resident population and maintaining a dedicated public safety answering point (PSAP); and

WHEREAS, COUNTY entered into Orange County Agreement No. MA-060-20010263 ("Agreement") with Everbridge, Inc., for the provision of Public Mass Notification System Services, on or about December 31, 2019 attached hereto as Exhibit A, to disseminate critical, time-sensitive emergency information to COUNTY's citizens and businesses through phone and e-mail devices for emergency notification purposes; and

WHEREAS, COUNTY agrees to provide to PARTICIPANTS access to the services provided by Everbridge, Inc. as contained in the Agreement in exchange for abiding by the terms set forth in this MOU; and

WHEREAS, PARTICIPANTS agree to uphold the same terms and conditions of the Agreement, to use the System in compliance with all usage agreements, including but not limited to the End User License Agreement, identified and incorporated herein as Exhibit A (Orange County Agreement No. MA-060-20010263, Exhibit B (Countywide Public Mass Notification System Policy and Guideline), and Exhibit C (Nondisclosure Document), and the terms of this MOU to receive the benefits under the Agreement

NOW, THEREFORE, the parties agree as follows:

I. Definitions:

“Agreement” shall refer to Orange County Agreement No. MA-060-20010263 between COUNTY and Everbridge, Inc. .

“Countywide” shall mean all geographic locations in Orange County, California.

“Contact information” shall mean PARTICIPANT and public contact data stored in the System for the purpose of disseminating communication in accordance with this MOU and its Exhibits.

“Confidential Information” shall include but not be limited to personal identifying information about an individual such as address, phone number, Social Security number, or any other identifier protected from disclosure by law, and/or any other information otherwise protected from disclosure by law, for example, the identity of a victim of a sex crime or a juvenile.

“Emergency” shall include, but not be limited to, instances of fire, flood, storm, epidemic, riots, or disease that threaten the safety and welfare of the citizens and property located within the boundaries of the COUNTY and PARTICIPANTS’ respective jurisdictions.

“Emergency information” shall mean information relevant to the safety and welfare of recipients in the event of an Emergency. Such information shall include but not be limited to instructions and directions to alleviate or avoid the impact of an emergency.

“Emergency notification situation” shall mean instances when emergency information is to be distributed through the System.

“Individual User” shall mean an agent, officer, employee or representative of PARTICIPANT that has been granted access to the System as set forth in this MOU.

“Non-emergency information” shall refer to information that is not relevant to the safety and welfare of recipients, but has been deemed to be of significant importance to a PARTICIPANT’s jurisdiction to justify the use of the System to distribute such information.

“Non-emergency notification situation” shall mean instances when a PARTICIPANT deems non-emergency information to be of significance to a PARTICIPANT’S jurisdiction and the PARTICIPANT uses the System to distribute such information.

“System” shall mean the Public Mass Notification System as provided by Everbridge, Inc. to COUNTY under the Agreement. The System is designed to disseminate information by utilizing common communications, i.e. telephone and e-mail communications to citizens and businesses as permitted under the Agreement.

Hold Harmless: PARTICIPANT will defend, indemnify and save harmless COUNTY, its elected officials, officers, agents, employees, volunteers and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") from and against any and all claims, demands, losses, damages, expenses or liabilities of any kind or nature which COUNTY, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damages to property as a result of, or arising out of the acts, errors or omissions of PARTICIPANT, its officers, agents, employees, subtenants, invitees, licensees, or contracted vendors. COUNTY will defend, indemnify and save harmless PARTICIPANT, its officers, agents, employees and volunteers from and against any and all claims, demands, losses, damages, expenses or liabilities of any kind or nature which PARTICIPANT, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damages to property as a result of, or arising out of the acts, errors or omissions of COUNTY, its officers, agents, employees, subtenants, invitees, licensees, or contracted vendors.

- III. **Term:** This MOU shall be in effect from July 1, 2021 and shall expire on December 30, 2024 unless COUNTY funding of the System becomes unavailable at which time PARTICIPANTS will be given six-month advance notice per the termination terms found in Paragraph IX. Termination, below.
- IV. **Scope of Services:** PARTICIPANTS shall receive from COUNTY access to the same services being provided by Everbridge, Inc. to the COUNTY under the Agreement. COUNTY's involvement in this MOU is limited only to extending the availability of the terms and conditions of the Agreement to the PARTICIPANTS.
- V. **Use:** Use of the System and its data, including but not limited to contact information, is governed by the terms, conditions and restrictions set forth in the terms provided in Exhibit A, B, C, and D. All PARTICIPANTS agree to the terms and conditions contained in Exhibits A, B, C, and D. COUNTY retains the right to update Exhibits A, B, C, and D as needed, in whole or in part, during the life of this MOU. Any and all revised Exhibits will be distributed to PARTICIPANTS within five business days of the revision date and shall be incorporated into this MOU. Such modifications to the Exhibits shall not be deemed an amendment for the purposes of Paragraph X. Amendments, below.

PARTICIPANT, including each of its agents, officers, employees, and representatives who are given access to the System, agrees to abide by the individual terms of each agreement and the additional conditions incorporated herein. Breach of use may result in individual user or PARTICIPANT access account termination.

PARTICIPANT agrees to require each Individual User to execute an Individual User Agreement (Exhibit D) regarding their obligations to maintain the confidentiality of login and password information; ensure that they will use the System in accordance with all applicable laws and regulations, including those relating to use of personal information; that they may be responsible for any breach of the terms of the Agreement with

Everbridge and/or this MOU; and the confidentiality provisions of this MOU. PARTICIPANT further agrees to provide a copy of the signed Individual User Agreement to COUNTY and notify COUNTY, in writing, if an individual user withdraws their consent to the Individual User Agreement at anytime during the term of this MOU.

The scope of services under the Agreement is limited to using the System to distribute business communication to PARTICIPANT inter-departmental resources and/or emergency information to the public in emergency notification situations.

All PARTICIPANTS have read and accept the terms and conditions found in COUNTY's "Countywide Public Mass Notification System Policy and Guideline (June 30, 2008)", attached hereto as Exhibit B.

- VI. Notice:** Any notice or notices required or permitted to be given pursuant to this MOU shall be submitted in writing and delivered in person, via electronic mail or via United States mail as follows:

COUNTY:

County of Orange – Sheriff-Coroner Department
Emergency Management Division
Attn: Director of Emergency Management
2644 Santiago Canyon Road
Silverado, CA 92676

PARTICIPANTS: Each PARTICIPANT shall provide to COUNTY a contact person and notice information upon entering into this MOU. Each PARTICIPANT shall notify COUNTY if there is an updated contact person.

Notice shall be considered tendered at the time it is received by the intended recipient.

- VII. Confidentiality:** Each party agrees to maintain the confidentiality of confidential records and information to which they have access a result of their use of the System and pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this MOU. All information and use of the System shall be in compliance with California Public Utilities Code section 2872. No party shall post confidential information as part of a mass notification unless the law allows such information to be released.
- VIII. Termination:** The COUNTY or any PARTICIPANT may terminate its participation in this MOU at any time for any reason whatsoever. If any PARTICIPANT chooses to terminate its participation in this MOU, the terminating PARTICIPANT shall provide written notification in accordance with Paragraph VII. Notice, above. Such notice shall be delivered to the COUNTY 30 days prior to the determined termination date. A terminating PARTICIPANT shall uphold the obligations contained in Paragraph II. Hold Harmless, in its entirety and Paragraph VIII. Confidentiality, above. Upon termination, PARTICIPANT agrees to inform each PARTICIPANT user to stop using the System and

to relinquish all System access, user accounts, passwords and non-PARTICIPANT data to COUNTY immediately. PARTICIPANT may choose to delete and/or export non-public PARTICIPANT (aka inter-departmental) owned contact information, as well as, export resident provided contact information prior to termination. Resident provided contact information acquired through PARTICIPANT sources shall remain in the System and available to the County for regional or multi-jurisdictional notification use as needed.

Should COUNTY discontinue its funding for the System, which shall be grounds for COUNTY's termination of its participation, COUNTY shall give PARTICIPANTS one month advance courtesy notice prior to terminating the Agreement. All other reasons for terminating by COUNTY shall be valid upon providing notice to the PARTICIPANTS. Upon termination by COUNTY, this MOU shall no longer be in effect.

Termination by a PARTICIPANT shall not be deemed an amendment to this MOU as defined in Paragraph X. Amendments, below.

- IX. Amendments:** This MOU may be amended only by mutual written consent of the parties involved unless otherwise provided for in this MOU. The modifications shall have no force and effect unless such modifications are in writing and signed by an authorized representative of each party. Termination by a PARTICIPANT or adding a new PARTICIPANT to this MOU shall not be deemed an amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the dates opposite the signatures.

COUNTY OF ORANGE

By: _____ Don Barnes, Sheriff-Coroner County of Orange	Date: _____
By: <u>Wendy Phillips</u> Wendy Phillips (May 21, 2021 08:43 PDT) Wendy Phillips, County Council County of Orange	Date: <u>May 21, 2021</u>

PARTICIPANT: _____

By: _____ Authorized Signature	Date: _____
_____ Print Name and Title	

1_MOU Alert OC Mass Notification Final Draft (Reviewed by COCO)

Final Audit Report

2021-05-21

Created:	2021-05-21
By:	Janell Harriman (jharriman@ocsd.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIV5WZcUzTZoGZeuqwnr97kt_1qN8JVox

"1_MOU Alert OC Mass Notification Final Draft (Reviewed by COCO)" History

-  Document created by Janell Harriman (jharriman@ocsd.org)
2021-05-21 - 3:29:12 PM GMT- IP address: 12.24.53.132
-  Document emailed to Wendy Phillips (wendy.phillips@coco.ocgov.com) for signature
2021-05-21 - 3:30:32 PM GMT
-  Email viewed by Wendy Phillips (wendy.phillips@coco.ocgov.com)
2021-05-21 - 3:31:18 PM GMT- IP address: 206.194.127.242
-  Document e-signed by Wendy Phillips (wendy.phillips@coco.ocgov.com)
Signature Date: 2021-05-21 - 3:43:11 PM GMT - Time Source: server- IP address: 206.194.127.242
-  Agreement completed.
2021-05-21 - 3:43:11 PM GMT

County of Orange Subordinate Contract # MA-060-20010263

with Everbridge, Inc.,

for a Public Mass Notification System (PMNS)

This Subordinate Contract MA-060-20010263 for a Public Mass Notification System (PMNS) (hereinafter referred to as “Contract”) is made and entered into upon execution of all necessary signatures between Everbridge, Inc., having its principal place of business at 155 N. Lake Ave., Suite 900, Pasadena, CA 91101 (referred to as “Contractor”), and the County of Orange, operating through its Sheriff-Coroner Department, a political subdivision of the State of California, with a place of business at 320 N. Flower St., Suite 108, Santa Ana, CA 92703 (hereinafter referred to as “County”), which are sometimes individually 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 herein as though set forth in full:

- Attachment A – California Multiple Award Schedule (CMAS) Contract 3-12-70-2909A, Supplemental No. 1 and Amendment No. 2
- Attachment B – Scope of Services
- Attachment C – Compensation and Pricing Provisions
- Attachment D – Everbridge Technical Support Services Guide (November 14, 2018 Update)
- Attachment E – Functional Requirements

RECITALS

WHEREAS, the State of California has issued California Multiple Award Schedule (“CMAS”) Contract No. 3-12-70-2909A (“CMAS Contract”) for provision of a Public Mass Notification System (PMNS) by Contractor, which per its most recent renewal is set to expire on July 18, 2024; and

WHEREAS, the County requires a PMNS, and the Contractor has represented that its proposed PMNS shall meet or exceed the County’s requirements; and

WHEREAS, County and Contractor desire to enter into a Contract for Contractor to provide a PMNS under the CMAS Contract, attached hereto as Attachment A, and as further set forth in the Scope of Work, attached hereto as Attachment B; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation and Pricing Provision, attached hereto as Attachment C; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for a PMNS with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

- **Administrator:** Government official, employee or agency responsible for the day-to-day responsibility and oversight for the mass notification system, including design, development, coordination, implementation, monitoring and evaluation.
- **Application program interface (API):** A set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application, or other service.
- **Coding Accuracy Support System (CASS):** Coding Accuracy Support System (CASS) is a certification system from the United States Postal Service (USPS) for address validation.
- **Critical Infrastructure Information (CII):** Those systems that are so vital to a nation that their incapacity or destruction would have a debilitating effect on national security, the economy, or public health and safety.
- **Cyber-protection:** The prevention of damage to, unauthorized use of, or exploitation of, and, if needed, the restoration of electronic information and communications systems and the information contained therein to ensure confidentiality, integrity, and availability. Includes protection and restoration, when needed, of information networks and wireline, wireless, satellite, public safety answering points, and 911 communications systems and control systems.
- **Data:** Any information, algorithms, or other content that the County, the County's employees, agents and end users upload, create or modify using the goods/services pursuant to this Contract, including but not limited to email addresses, telephone numbers, and geo-coded E911 data. Data also includes user identification information and metadata which may contain Data or from which the County's Data may be ascertainable. Personal Data shall include personal information, as defined by Civil Code Section 1798.3.
- **Data Breach:** Any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- **Deliverable:** Tangible and intangible information, material, services, or goods that must be provided to the County under the terms of the Contract.
- **Documentation:** The term "Documentation" shall mean, with respect to any particular items: (i) all of the written, printed, electronic, or otherwise formatted materials that relate to such items, or any component thereof; (ii) all user, operator, system administration, technical, training, support, and other manuals and all other written, printed, electronic, or other format materials that represent, demonstrate, explain or describe the functional, operational or performance capabilities of such items; and (iii) all specifications, materials, flow charts, notes, outlines, manuscripts, writings, pictorial or graphical materials, schematics, and other documents that represent, demonstrate, explain or describe such items.
- **ESRI mapping:** (Environmental Systems Research Institute) is an international supplier of geographic information system (GIS) software, web GIS and geodatabase management applications.
- **Failure modes:** A failure mode is a cause of failure or one possible way a system can fail. When a system has many potential ways of failing, it has multiple failure modes or competing risks.
- **Geo-coding:** Provide geographical coordinates corresponding to (a location).
- **Geo-targeting/targeted:** The practice of delivering content to a user based on his or her geographic location.
- **Human Error:** Any action or inaction on the part of a Contractor's employee or agent that prevents the accomplishment of the goods'/services' intended functions and the services specified in the Scope of Work.
- **IPAWS:** FEMA's Integrated Public Alert and Warning System (IPAWS) is an internet-based capability that federal, state, local, tribal, and territorial authorities can use to issue critical public alerts and warnings.
- **Notification:** A communication distributed to the public and internal responders/relevant personnel that contains important, timely, accurate, and accessible information regarding an actual or potential

emergency or incident, including the cause, size and current situation thereof; resources committed and response status of the emergency management organization; and other matters of general interest to the public, responders, and additional stakeholders (both directly affected and indirectly affected). Categories of notification may include: update, alert, advisory, activation, watch or warning.

- **Registrant:** Member of the public who is enrolled or enrolling in the system.
- **Security incidents:** The potentially unauthorized access to Personal Data or Non-Public Data the Contractor believes could reasonably result in the use, disclosure or theft of the County's unencrypted Personal Data or Non-Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach.
- **State of California and/or State:** As used in Attachment A (CMAS Contract), "State of California" and "State" shall mean the County, its employees and authorized agents and representatives.
- **System:** Automated computerized mass notification system for emergency public and internal responder/relevant personnel notifications, including via cell phone, email, and text.
- **Technical Failure:** A malfunction in the vendor's hardware or software which prevents the accomplishment of the services specified in the Scope of Work. A malfunction of the hardware prevents the accomplishment of the hardware's intended functions and services specified in the Scope of Work. A malfunction of the software prevents the accomplishment of intended services even though the hardware may be functioning properly. Technical failures include, but are not limited to, an improper or incomplete conversion or upgrade of the hardware or software.
- **User:** Government employee or affiliated volunteer who has the ability to log-in to the system for administrative purposes (e.g., maintaining contact lists, sending notifications, monitoring notification results, etc.). Includes employees and contractors of other public entities who are authorized by the County to access the system pursuant to a Memorandum of Understanding between the County and those public entities.
- **WEA/EAS:** Wireless Emergency Alerts/Emergency Alert System.

ARTICLES

1. **Scope of Contract:** The terms and conditions of this Contract, including those in its Attachments, specify the terms and conditions by which the County will procure services in connection with the CMAS Contract from the Contractor, hereinafter referred to as "PMNS" or "Services," as more fully detailed in Attachment B, Scope of Work.
2. **Precedence:** In the event of a conflict between the terms and conditions in this Contract and terms and conditions in the Attachments, the conflict shall be resolved by giving precedence first to the terms and conditions of this Contract, then the terms and conditions of any Attachments. In the event of a conflict between the language of any Attachments, precedence shall be given in the following order:
 - a. This Contract
 - b. Attachment B (Scope of Work)
 - c. Attachment E (Functional Requirements)
 - d. Attachment C (Compensation and Pricing Provisions)
 - e. Attachment A (CMAS Contract)
 - f. Attachment D (Everbridge Technical Support Services Guide).
3. **Term of Contract:** This Contract shall commence December 31, 2019, and shall be effective through and including December 30, 2020, unless otherwise terminated by County. Contract may be renewed for up to **four (4)** additional one-year terms, upon mutual agreement of both Parties and upon successful renewal of the CMAS Contract No. 3-12-70-2909A. Each renewal of this Contract

may require approval by the County Board of Supervisors. The County does not have to give a reason if it elects not to renew.

4. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
5. **Contingency of Funds:** Contractor 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; 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.
6. **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 Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
7. **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 trial to another county.
8. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' 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 (4) 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.

Contractor: Everbridge, Inc.
 155 N. Lake Ave., Suite 900
 Pasadena, CA 91101
 Attn: Joanna Burlison
 Ph: 888-366-4911
Joanna.burlison@everbridge.com

County: Sheriff-Coroner Department/Emergency Management Division
 2644 Santiago Canyon Rd.

Silverado, CA 92676
 Attn: Michelle Anderson
 Ph: 714-628-7158
MAnderson@ocsd.org

Assigned DPA: County of Orange
 Sheriff-Coroner Department/Purchasing Services Unit
 320 N. Flower Street, 2nd Floor
 Santa Ana, CA 92703
 Attn: Maria Ayala, Procurement Contract Specialist
 Ph: 714-834-6360
Mayala@ocsd.org

9. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor 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 Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor 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). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of 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 Contractor 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 occurrence
Network Security & Privacy Liability	\$1,000,000 per claims-made
Technology Errors & Omissions	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on 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, agents and*

employees as Additional Insured's, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT..

- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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, agents and employees* as Additional Insured's for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) 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, agents and employees* or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for 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 Contractor's Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interest's clause also known as a "separation of insured's" clause (standard in the ISO CG 0001 policy). Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor 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 Contractor 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 Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County

incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, 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 Contractor'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.

10. **Indemnification:** To the fullest extent permitted by law, Contractor 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, costs (including without limitation reasonable attorneys' fees, court costs, alternative dispute resolution costs, associated investigation and administrative expenses), damages, fines, judgments, losses, or liability of any kind or nature, including but not limited to personal injury, death, or property damage, arising from or related to the services, products or other performance provided by Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
11. **Security Requirements:**
 - A. Contractor shall, with respect to all employees of Contractor performing services hereunder:
 1. Perform background checks as to past employment history.
 2. Inquire as to past criminal felony convictions.
 3. Ascertain that those employees who are required to drive in the course of performing services hereunder have valid California driver's licenses and no DUI convictions within two (2) years prior to commencement of services hereunder.
 4. Perform drug screening to determine that such employees are not users of illegal controlled substances as defined by federal law.
 - B. Contractor shall not assign to County property any Contractor personnel as to whom the foregoing procedures indicate:
 1. Inability or unwillingness to perform in a competent manner.
 2. Past criminal convictions for theft, burglary or conduct causing property damage or mental or physical harm to persons.
 3. Where such employee's duties include driving a vehicle, absence of a valid California driver's license or a DUI conviction within the prior two (2) years.
 4. Usage of illegal controlled substances as defined by federal law.

- C. If any of the problems identified with respect to Contractor's employees are discovered after assignment of an employee to County property, or if County otherwise reasonably deems an assigned employee unacceptable, Contractor shall remove and replace such employee at the County property.
- D. Nothing herein shall render any employee of Contractor an employee of County.

THE CONTRACTOR'S PERSONNEL REQUIREMENTS:

All employees must pass the County's background check and meet all requirements as set forth below:

1. All personnel to be employed in performance of the work under this Contract shall be subject to security clearance. Clearance must be updated and renewed every twelve (12) months from original date of clearance.
2. No person, who is required to enter a secured facility of the Sheriff, shall be assigned to perform work under this contract that has not received prior clearance from the Sheriff-Coroner Department.
3. Within fifteen (15) days of the effective date of this Contract, Contractor shall prepare and submit a complete and accurate "Contractor Security Clearance" information form for all Contractor's employee who will be working on or who will need access to the Sheriff-Coroner's facilities to perform work covered by this Contract. County project manager shall provide form(s) to Contractor's project manager. Contractor is also responsible for ensuring that anytime an employee is assigned to work on Sheriff-Coroner's facilities under this contract that a Security Clearance form is submitted and approved prior to that employee requiring access to such premises for providing services under this contract.
4. Contractor shall inform employees assigned to perform work within secured facilities of the Sheriff-Coroner that the employee is required to inform Contractor if/when any information provided on the security clearance form changes. Contractor shall submit an updated security clearance form whenever there is a change in information provided by an employee. Contractor shall be responsible for ensuring to submit Security Clearance forms in order to renew the Security Clearance(s) every twelve months. Renewal forms shall be submitted at least ten (10) County working days prior to the expiration of an existing clearance; a security clearance is valid for 12 months from the date of issuance. If Contractor is submitting an updated form due to a change in information, said form shall be submitted within in 10 county working days of the employer becoming aware of the updated information.
5. Contractor Security Clearance information forms will be provided by County Project Manager upon request and will be screened by the Sheriff-Coroner's Department.
6. Contractor Security Clearance information forms shall be thoroughly and accurately completed. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

7. County will not give Contactor the reason an individual's clearance is denied, but will provide explanation to individual affected via U.S. Mail.

E. GENERAL SECURITY REQUIREMENT-AT WORKSITE:

1. When performing work at a Sheriff-Coroner facility, all work areas shall be secured prior to the end of each workday.
2. Workmen shall have no contact, either verbal or physical, with inmates in any facility while performing work under this contract. Specifically:
 - a. Do not give names or addresses to inmates.
 - b. Do not receive any names or addresses from inmates.
 - c. Do not disclose the identity of any inmate to anyone outside the facility.
 - d. Do not give any materials to inmates.
 - e. Do not receive any materials from inmates (including materials to be passed to another individual or inmate).
3. Contractor's personnel shall not smoke or use profanity or other inappropriate language while on site.
4. Contractor's personnel shall not enter the facility while under the influence of alcohol, illegal controlled substances as defined under federal law, or other intoxicants, and shall not have such materials in their possession.
5. Failure to comply with these requirements is a criminal act and can result in prosecution.
6. Contractor's personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all tools, equipment, and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.
7. Contractor's personnel shall follow any special security requirements issued by the on-site contact person or escort Deputy.
8. Contractor's personnel shall report either to the on-site contact person when leaving the facility, temporarily or at the end of the workday.
9. Contractor's personnel shall immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the on-site contact person or any Sheriff's Deputy.
10. Contractor's personnel shall securely close and check all gates and doors to ensure that they are tightly closed and locked as they enter and exit various areas of the County facilities.
11. Contractor's personnel shall restrict all activities to the immediate work site and adjacent assigned areas necessary to performing work under this Contract.
12. Contractor's personnel shall remain with the assigned escort at all times, unless otherwise directed by the on-site contact person.

F. POTENTIAL DELAYS/INTERRUPTIONS:

1. Contractor shall acknowledge that the primary purpose of the detention facilities is the safe and secure operation of those facilities.
 2. Contractor's personnel who enter a Sheriff facility but have not passed the security screening, or who have falsified the security screening information are subject to immediate removal from the facility. Contractor's personnel who are assigned to work in a Sheriff facility who are determined to have outstanding wants or warrants may be detained by the Sheriff.
 3. Contractor's personnel shall immediately comply with all directions and orders issued by Sheriff's personnel, other than changes regarding the quality or quantity of work, which will be controlled by County's project manager.
 4. Contractor's personnel may be delayed or denied access to the facility due to unforeseen events that may affect the availability of security escorts.
 5. Contractor's personnel may be ordered to leave a facility prior to the completion of their work or the end of the workday by unforeseen incidents occurring within secure environments. Such unforeseen incidents may also cause Contractor's personnel to be held inside the facility until the incident is resolved by the Sheriff's personnel.
 6. Contractor may be subject to an inventory requirement where the Contractor shall supply an inventory list of all tools. The Facility will use this list for verification of tools entering and exiting security. Any and all time required to comply with the tool inventory and control program will not be considered a compensable delay and no requests for equitable adjustment in time or additional compensation for this time will be considered.
12. **Clear Water Act Provision:** Contractor shall be in compliance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), and Executive Order 11738.
 13. **Energy Policy and Conservation Act Provision:** Contractor shall follow mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 14. **Certifications:** Homeland Security Grant: Contractor is informed and understands that this Contract may be funded by federal Department of Homeland Security grant funds, including Homeland Security Grant funds through the California Governor's Office of Emergency Services (Cal OES). Contractor agrees to the following in relation to executing this Contract.
 - a. Audit Records - With respect to all matters covered by this agreement all records shall be made available for audit and inspection by the California Office of Emergency Services and/or Department of Homeland Security, the grant agency, and/or their duly authorized representatives for a period of three (3) years from the termination of this Contract.
 - b. Contractor will comply, with all requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), as applicable.

- c. Contractor will comply, with all requirements of the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable.
 - d. Contractor will comply, with all requirements of the Contract Work and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable.
15. **Liquidated Damages:** It is agreed by and between Contractor and the County that if the services are not fully and completely performed within the terms of the Contract, including the failure to provide a fully functional PMNS, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage that the County will sustain by reason of such delay and/or failure to completely perform, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount of \$1,700.00 for each and every day of delay and/or failure to provide a fully functional PMNS.

In the event the liquidated damages as set forth herein are not paid by Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this contract.

This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.

If provision of services under the Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays caused by the County, the time of performance of this contract will be extended commensurate with the time required for the extra services and/or delays directly attributable to the County's failure to perform, and no liquidated damages will accrue during the period of such extension.

If this contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving Contractor a right to extra time for performance.

-Signature Page to Follow-

Signature Page

The Parties hereto have executed this Contract# MA-060-20010263 for a Public Mass Notification System on the dates shown opposite their respective signatures below

Contractor*: Everbridge, Inc.

By: _____ Title: _____
 Print Name: _____ Date: _____

Contractor*: Everbridge, Inc.

By: _____ Title: _____
 Print Name: _____ Date: _____

**If the contracting party is a corporation, (2) two signatures are required: (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____
 Print Name: _____ Date: _____

Approved by the Board of Supervisors: _____

Approved as to Form
 Office of the County Counsel
 Orange County, California

By: _____
 Deputy

ATTACHMENT A**California Multiple Award Schedule (CMAS) Contract 3-12-70-2909A,
Supplemental No. 1 and Amendment No. 2****Attachment: Subordinate Agreement - Everbridge (2561 : Countywide Emergency Mass Notification System (AlertOC) MOU)**

ATTACHMENT B

SCOPE OF WORK

I. INTRODUCTION

The Orange County Sheriff's Department (OCSd) is headquartered in Santa Ana, California. With about 3800 employees, OCSd serves thirteen contract cities and the unincorporated areas of Orange County. This includes about 700,000 residents in 350 square miles. OCSd's Emergency Management Division provides emergency management and preparedness services to the unincorporated areas of Orange County and supports the efforts of the Orange County Operational Area (OA). There are currently over 100 jurisdictions in the OA encompassing all County departments and agencies, public and private organizations, and the general population within the boundaries of Orange County.

The County administers and maintains a vendor-provided public mass notification service called AlertOC, which is offered to all 34 cities in the County, County agencies, Orange County Fire Authority, water districts, and the University of California Irvine for emergency public notification and internal responder notification. This system includes an opt-in portal for residents to register their cell-phone, email and text devices for emergency notifications. In addition, E911 data is purchased quarterly from telephone service providers, uploaded to the system. Countywide, public emergency and safety efforts are coordinated and provided through a combination of county and city police, fire, healthcare, and public works departments.

II. SCOPE OF WORK

Contractor shall provide a PMNS that will include state of the art technology and will adhere to all industry standards, best practices, and applicable laws. Requirements include: high efficiency, robust capacity, ease of use, comprehensiveness, and a focus on accessibility for the whole community population. Support for additional languages and for the hearing and visually impaired community shall be a component of the new system. Additional functional requirements are listed in Attachment E, Functional Requirements, and are incorporated into this Scope of Work. Contractor's PMNS shall meet or exceed these requirements, except as otherwise indicated therein.

Contractor's PMNS shall be a fully redundant, geographically dispersed SaaS solution with routine maintenance, enhancements and upgrades provided by the Contractor at no additional cost. The PMNS will automate the key steps for responding to a critical event. It will aggregate threat data from third party and internal sources so the County can assess risk, and locate people in areas of threat and those needed to respond. The PMNS will then enable the County to execute pre-defined processes based on the type of threat for who should be contacted and how, what message to send, and who to escalate to if a responder is not available. Contractor's platform will then send out notifications and instructions via text, voice, email—over 100 modalities—in 15 languages as needed, organize conference bridges for people to collaborate, and analyze return messages. Automation will enable these steps to be completed quickly, highly reliably and at scale.

The critical communications and enterprise safety applications to be provided to the County via this PMNS software contract include Mass Notification Base for State & Local Government with Unlimited Domestic Usage, Mass Notification for Transportation, Community Engagement, and

Incident Communications. These shall be easy to use and deploy, secure, highly scalable, and reliable. A description of each of these, including their key capabilities, is contained in Attachment A, the CMAS Contract.

In addition, Contractor shall provide the following:

- An additional organization and Community Engagement/Visitor Engagement keywords will be added to County's account.
- Consulting services, including but not limited to technical assistance regarding set-up, use, customization, and optimization of the various PMNS features.
- Annual Maintenance and Support shall be provided as stated herein, including Attachment D, Everbridge Technical Support Services Guide, and Attachment E, Functional Requirements.

III. QUALITY ASSURANCE

Contractor will provide commercially-sound quality assurance practices to ensure the PMNS is operating in compliance with County specifications and requirements. Contractor's quality assurance will cover all major system features, including:

1. Successful operation of System without any errors, specifically in the areas of:
 - Tiered Administration
 - User creation and management
 - County-wide data and map import, reconciliation and maintenance processes and routines
 - Citizen opt-in data processes and routines
 - Custom and geographic call list generation
 - Outbound telephone message launch
 - Outbound e-mail message launch
 - Use of surveys
 - Monitoring of outbound session activity
 - Validation of built-in and ad-hoc generated reports
 - Accessibility from within the County's network
 - Accessibility from the Internet
 - IPAWS integration
 - Message throughput
 - Translation services (registration portal and message creation)
2. System (Hardware and Software) meets all requirements set forth herein and in Attachment E (Functional Requirements) to the County's satisfaction.
3. System is compatible with County Information Technology infrastructure (i.e., network and telephone environment and systems).

IV. ADMINISTRATION

Security Incidents, Data Breaches, Technical Failures, Human Error and Other Claims

- 1) Upon discovery or reasonable belief of any Security Incident, Data Breach, Technical Failure, or Human Error (collectively "Incident(s)"), Contractor shall notify County by the fastest means available and also in writing. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such an Incident(s).

Contractor's notification shall identify:

- The nature of the Incident(s);
 - Any Data accessed, used or disclosed;
 - The person(s) who accessed, used, disclosed and/or received Data (if known);
 - What Contractor has done or will do to quarantine and mitigate the Incident(s); and
 - What corrective action Contractor has taken or will take to prevent future Incident(s).
- 2) Contractor will provide daily updates, or more frequently if required by the County, regarding findings and actions performed by Contractor until the Incident(s) has been effectively resolved to the County's satisfaction.
 - 3) Contractor shall quarantine the Incident(s), ensure secure access to Data, and repair the system as needed.
 - 4) If the Contractor causes or knowingly experiences a breach of the security of County's Data containing personal information, as defined by Civil Code Section 1798.3, Contractor shall immediately report any breach of security of such system to the Orange County Sheriff's Department Emergency Management Division personnel assigned as lead program manager following discovery or notification of the breach in the security of such Data. The County shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the County or any person or entity under the control of the County, Contractor shall bear any and all costs associated with the County's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the County and Contractor in the applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.
 - 5) Contractor shall conduct an investigation of the Incident(s) and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the County, its agents and law enforcement.
 - 6) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, County-approved third party perform an information security audit. The audit results shall be shared with the County within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the County with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

Corrective Action

In the event any goods or service provided by the Contractor in the performance of the Contract should fail to conform to the requirements in this Contract, it shall become the duty of the Contractor to immediately advise the County of the failure and correct the performance of goods or services, without expense to the County. If corrective action (including but not limited to patches, bug fixes, updates) is taken by the Contractor to remedy Incident(s) in the provision of

similar PMNS in other jurisdictions, such corrective action shall be provided to the County at no additional cost if such corrective action is needed for the Contractor to meet its obligations under this Contract.

Notice Regarding Other Jurisdictions

Contractor shall promptly notify the County Project Manager upon discovery or reasonable belief of the following: (a) Incident(s) known or reasonably known to have occurred in the provision of similar PMNS in another jurisdiction; (b) any claim or action against, or any loss by, Contractor that involves or may reasonably be expected to involve similar PMNS; (c) the initiation of any government investigation that may result in a finding that Contractor is not in compliance with all applicable federal, state and local laws.

Responding to Legal Requests

Contractor shall promptly notify the County upon receipt of any legal requests, including but not limited to subpoenas, court or administrative agency orders, service of process, or requests by any person or entity (other than Contractor's employees), which in any way might reasonably require access to the County's confidential Data. Contractor shall notify the County by the fastest means available and also in writing, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Thereafter, Contractor shall comply with such legal requests only to the extent required by applicable law. In responding to legal requests, Contractor shall take measures to protect Personal Data or Non-Public Data, the disclosure of which would violate Contract terms, court orders, and/or applicable state or federal law. Such protective measures may include, but are not limited to, seeking protective orders or filing the Data under seal. Contractor shall not respond to legal requests directed to the County unless authorized in writing to do so by the County.

Legal Proceedings

Upon request by the County, Contractor shall make appropriate employees available to appear in court, submit to examination under oath, and cooperate in the investigation or settlement of a claim. This applies in criminal, civil or administrative legal proceedings in response to requests or demands for testimony or records concerning information acquired in the course of an employee performing official duties or because of the employee's official status regardless of whether the person would otherwise be subject to service of a subpoena or other legal process in the State of California.

ATTACHMENT C

COMPENSATION AND PRICING PROVISIONS

1. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for PMNS services as set forth in Attachment B, "Scope of Work."

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment 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 Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Paragraph 33, Contract Modifications, of the CMAS General Provisions – Information Technology.**

2. **Fees and Charges:** County will pay fees in accordance with the provisions of this Contract. Payment shall be as follows:

<u>Item No.</u>	<u>Item description</u>	<u>Annual Rate:</u>
01	Annual Fees	\$ 458,050

Household Count:	1,250,000
Employee Count:	50,000

QTY	Product Code	Description	GSA Classification	Price
2	101-11-11-0254-000	Mass Notification Base - Tier 11	GSA Product	USD 356,299.56
1	101-11-11-0240-000	Mass Notification Base - Tier 12	GSA Product	USD 33,700.44
1	101-11-11-0258-000	Mass Notification Base for Transportation - Tier 3	GSA Product	USD 5,000.00
1	101-01-11-0206-000	Incident Management - Incident Communications - Tier 7	GSA Product	USD 100.00
63	101-01-11-1001-000	Everbridge Additional Organization	GSA Product	USD 100.00
1	101-01-11-1027-000	Everbridge Community Engagement - Tier 7	GSA Product	USD 49,700.00
10	100-09-11-1038-000	Additional CE/VE Keywords – 1	Open Market	USD 100.00
50	101-00-22-8301-000	Consulting Services - Per Hour	GSA Product	USD 13,000.00

Pricing Summary:

Year One Fees:	USD 445,000.00
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One-time Implementation and Setup Fees:	USD 0.00
Professional Services:	USD 13,000.00
Total Year One Fees Due:	USD 458,000.00

3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the price agreement. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
4. **Firm Discount and Pricing Structure:** Contractor 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.
5. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
6. **Payment Terms – Payment in Advance:** Invoices are to be submitted at least sixty (60) days in advance of each annual contract renewal to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

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 goods or services.

7. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address, if different from 1 above
 - c. Contractor's Taxpayer ID Number
 - d. Name of County Agency/Department
 - e. Delivery/service address
 - f. Master Agreement (MA) or Purchase Order (PO) number

- g. Agency/Department's Account Number
- h. Date of invoice
- i. Product/service description, quantity, and prices
- j. Sales tax, if applicable
- k. Freight/delivery charges, if applicable
- l. Total

Invoice and support documentation are to be forwarded to:

County of Orange
Sheriff-Coroner Department
Emergency Management Division
2644 Santiago Canyon Road
Silverado, California 92676
Attn: Michelle Anderson

9. **Payment (Electronic Funds Transfer (EFT))**

The County offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the agency/department representative listed in Section 9. Notices. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.

ATTACHMENT D**Everbridge Technical Support Services Guide (November 14, 2018 Update)****Attachment: Subordinate Agreement - Everbridge (2561 : Countywide Emergency Mass Notification System (AlertOC) MOU)**

ATTACHMENT E

FUNCTIONAL REQUIREMENTS

Functionalities available in the core of the PMNS include full mobile support, communication deployment capabilities, centralized contact data storage and management, geographic targeting and mapping, and secure infrastructure to ensure client data security. In addition, Contractor shall do the following:

- Maintain multiple, globally-dispersed data centers
- Operate multiple Network Operations Centers with 24X7 staffing and monitoring
- Deliver seamless scaling to deal with the unexpected peaks
- Enable multi-modal support for over 100 contact methods including SMS, voice, email, digital signage, PC alert systems, and sirens

The following are the functions of the PMNS that the Contractor shall provide, as indicated by an “X” in the “Yes” column. Where a function is not currently available, as indicated by an “X” in the “No” column, Contractor shall consider and be responsive to County’s technical tickets. All available functions are included in the Scope of Work (Attachment B) at no additional cost to the County except where noted below.

#	Function	Yes	No	Additional Comments/Specifications
1.	The system will not require the County to purchase or	X		As a SaaS solution, no County hardware is required for installation of the system. Contractor will maintain all communication over HTTPS (Port 443) using its valid 2048-Bit TLS 1.2 security certificate, which effectively secures the traffic from the client environment into the secure Contractor infrastructure. Thus, any computer system capable of using a web browser that supports TLS 256-Bit encryption will be able to access and leverage the notification platform without issue. County shall be able to access the system from popular computer operating systems, such as Microsoft Windows, Linux, and Mac OS, as well as from popular smart phones and tablets.
2.	The system will not require the County to purchase or lease dedicated phone lines.	X		
3.	The system will not require the County to purchase or incur ongoing maintenance costs.	X		Contractor will provide routine upgrades, updates, and enhancements free of charge for the life of the contract with no interruption in service.

4.	The system will be redundant with 99.99966% uptime on multiple mirrored sites in geographically disparate locations. Data center ratings will be provided and call network monitor systems established.	X		Contractor will provides service at 99.99% or greater uptime.
5.	The system will include cyber-protection measures including appropriate notification protocols if intrusion is detected or if data breach occurs.	X		Contractor will enable active monitoring, intrusion detection, and logging of all events, on all components, within all tiers of the SaaS infrastructure. Contractor's monitoring tools will consist of both network-based IDS devices scanning all network traffic, and host-based probes that are designed to detect any activity outside of normal application traffic and performance. If a monitor detects any unusual or suspicious activity, the monitoring tool will generate an automated alert that will be immediately investigated by Contractor's on-call support team.
6.	The service will have an available application programming interface (API) service with documentation available for API calls and functions such as contact management.	X		Contractor will provide a fully functional Restful JSON based API. As part of the API, County will be able to utilize various methods to update contact information (GET, DELETE, PUT, and POST) as well as initiate a broadcast through the API. There will be no additional cost to access the API for managing data. If County does not have the staffing resources to build the integration, professional services to build the integration can be purchased from Contractor at an additional cost.
7.	The system will have full and complete IPAWS integration and functionality including WEA/EAS.	X		Contractor will remain certified as a gateway for IPAWS/CMAS. County and other authorized clients, such as government entities, will need to provide their COG ID (Common Operating Group ID), the Common Name (Logon Name), and the digital certificate provided by FEMA within the settings of the Contractor's system. Once this information has been provided, County will be able to send notifications and include the Publish to IPAWS/CMAS as a deployment option – or simply target IPAWS/CMAS separate from any other target population.
8.	The system will be configured with multiple IPAWS credentials (e.g., multiple jurisdictions that have independent codes can load their certificates into the system)	X		

9.	The system will support geo-targeted notifications.	X		Contractor will support utilizing the GIS interface for creating all notification types, including standard notifications, polling notifications, and conference bridges.
10.	The system will have ESRI mapping interface to allow County to select multiple contiguous or non-contiguous areas for notification.	X		System will allow users to upload shape files from ESRI in ZIP and KML formats to target specific geographic areas. In addition, ESRI will be offered as a standard base map layer option.
11.	The system will incorporate raster (e.g., satellite) imagery in its mapping function.	X		The system will provide base map layers using Google, Bing, and ESRI, and County may configure the solution to support a client map server as well. From a map layer perspective, the system will also provide premium weather layers that can display additional overlay information regarding weather radar and infrared satellite.
12.	The system mapping functions shall be capable of interfacing with and publishing to other web-based portals.	X		The system Universe Tab is contained within the product, but County may export shapes used for selecting the target audience for any deployment from the platform for use in other systems County may have.
13.	The system will support User-defined message templates, including pre-loaded text, audio, and video files.	X		System will allow County to create and save an unlimited number of message templates to expedite communication processes. Message templates will contain pre-recorded voice and text content that can be applied to new notifications. Broadcast templates are pre-defined notifications that contain message content, target recipients, and settings. Once saved, broadcast templates may be quickly deployed individually or as a group in under 15 seconds. Templates will be stored in a corresponding library for easy management.
14.	The system will support spontaneous uploading of audio files for notifications.	X		System will support the ability to create voice recordings in several ways.
15.	The system will support spontaneous uploading of video files for notifications.	X		System will support up to five separate attachments that may be sent to email notifications. Total attachment size cannot exceed 2 MB of data and no single attachment can exceed 2MB. Additionally, these attachments may be sent to Contractor's mobile application for smart phones and tablets.

16.	The system will be capable of sustaining a minimum volume of 50,000 phone calls simultaneously.	X		Because the system is a hosted SaaS solution, there will be no limit to the number of notifications Contractor is capable of sending and no limit to the number of contacts that can be stored with the solution. Contractor will conduct regular capacity planning (quarterly) to ensure ample capacity, performance, storage, and support to maintain guaranteed SLAs.
17.	The service will be configured with pre-set call throttling rates set by the User launching the notification, not the Contractor.	X		Contractor will provide a verifiable and configurable call throttling mechanism. The throttling settings will allow County to modify the overall speed for all calls going out or specify an area code and prefix to modify the speed for a specific area or building.
18.	The service will be configured with real-time automatic/ intelligent throttling during a call in progress to ensure a high success rate. This rate will be displayed to the notification sender and recorded so that it can be accessed and reviewed upon demand by the County.	X		
19.	The service will use multiple telephone carriers and can switch between carriers during notifications depending upon telephone network status.	X		Regardless of the target telephone provider, Contractor will utilize established telecommunication industry standards for placing telephone calls among public networks.
20.	The system will be configured to make multiple attempts to reach Registrants.	X		By default, each contact targeted with a notification from the Contractor solution will be sent notifications based on a “rotational contact methodology” whereby the contact devices (delivery methods) for any contact are notified, one at a time, and Contractor seeks confirmation/response. Should confirmation/response be received, it will be recorded in the solution and no further notifications are deployed to the recipient. If the recipient does not confirm/respond to the incoming notification, Contractor will “rotate” to the next available device and attempt to contact the recipient again (seeking response). This process will continue until all Contact Cycles are exhausted.

21.	The system will call out-of-state and international numbers.	X		All notifications deployed from the Contractor's solution require a fully defined telephone number to place the call to any landline, cellular, or VoIP telephone. This includes both domestic (10-digit telephone numbers) and international telephone numbers.
22.	The system will differentiate between human voice and voicemail/answering machine recordings.	X		Contractor fully supports this requirement through automated voicemail/answering system detection. If a live person answers the incoming call, the message will be relayed to the recipient (with the details to confirm, if enabled). If a voicemail/answering system is detected, County will have the option to configure how Contractor interacts with the voicemail/answering solution – leaving a message only; leaving a message with confirmation; or leaving no message. At no time will Contractor assume that reaching a voicemail/answering system is proof of delivery and confirmation. Thus, the system will continue to attempt to notify the intended recipient on other available devices until confirmation is received or until the Contact Cycles have been exhausted.
23.	The system will be configured with separate sub-administration accounts for each unique participating agency.	X		The platform will support an unlimited number of groups, subgroups, and groups within groups all of which are maintained in a single organization (client environment) within the Contractor's system.
24.	Each User within the sub-administration accounts will have their own password.	X		
25.	The main account (OCSD-EMD) will be notified of and can see all messages launched by the other sub-administrator accounts.	X		
26.	The system will have a highly granular sub-administration function that allows for unlimited sub-administrators to create and manage their own users and databases within a nested or silo'ed structure.	X		
27.	The system will integrate with Nixle lists, operated by individual jurisdictions.	X		

28.	The system will publish notifications automatically to social media and RSS feeds:	X		
29.	☐ Facebook	X		
30.	☐ Twitter	X		
31.	☐ Google Alerts	X		This functionality shall be provided via Community Engagement.
32.	☐ YouTube		X	
33.	☐ WhatsApp		X	
34.	☐ RSS	X		Contractor will provide a CAP RSS feed.
35.	☐ Other (specify)			

36.	Real-time results reporting and metrics will be available to Users, including, but not limited to:	X	Contractor shall provide reports for use during emergency activations as well as afterwards. The system will provide the following five types of notification reports, giving the County needed information on demand. All reports shall be capable of export. <u>Notification Dashboard Reporting (Real-time Reporting)</u> This dashboard is a reporting system that tracks notifications in real time, allowing the County to observe the results of the broadcast as they occur. The dashboard reporting screen will automatically refresh every 60 seconds, or it can be manually refreshed while the broadcast is active to provide up-to-the-second information. The County will be able to easily access detail-level reporting to see who has received and confirmed messages and who has not. <u>Broadcast Reports</u> The Detailed Broadcast Report will provide detailed breakdowns of each notification sent. Detailed Broadcast Reports will be available online through the Web-based administration console or can also be automatically e-mailed or faxed at the conclusion of a broadcast at County's request. <u>Ad Hoc Reports</u> The Ad Hoc Report will allow administrators to extract specific data from the system. Ad hoc reports can be downloaded in CSV and PDF format as well as HTML format. Users will be able to retrieve call records via a wide variety of record search and reporting options. Contractor's Ad Hoc Reporting functionality will allow County to pull reports that are important and meaningful for its specific needs, rather than merely provide static report features. <u>Event Analysis Reports</u> The system will provide the ability for multiple messages to be viewed in a single report. Reports may be filtered to include a single notification, or spanning multiple notifications. Using Event Reporting, County will be able to look at all messages/response details related to the same Event in a graphical and "top down" style. <u>Detailed Notification Analysis Reports</u> A detailed Notification Analysis report will allow County to investigate the delivery details, over time and among all users targeted, for any notification campaign launched from the platform. Details about the notification will be included, such as the settings that were configured for the deployment, confirmation status information (with pie chart representation), and the overall number of delivery attempts made over time (with line chart representation).
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37.	☐ percentage of attempted and completed notifications	X		
38.	☐ failure rates	X		
39.	☐ failure modes (with standard response definitions across sub-contracted carriers)	X		
40.	☐ time of delivery	X		
41.	☐ length of delivery	X		
42.	☐ total number delivered	X		
43.	☐ Other			
44.	Customer support must be treated as a high priority with:			
45.	☐ one primary point of contact at the company			Contractor shall offer 24x7x365 Technical Support via https://www.everbridge.com/customers/support/ and at the email address and telephone numbers listed in Attachment D, Everbridge Technical Support Services Guide
46.	☐ 24/7/365 emergency support line (for both administrators and self-registration accounts)	X		Contractor will provide ongoing support via the Internet, e- mail, and telephone. Contractor's Technical Support will be available to the County at any time of day or night, 24x7x365. Technical Support staff members will be full-time Contractor employees located on-site who are well-versed on Contractor's system. Technical Support shall not be outsourced to third parties that do not have Contractor's expertise. Additionally, Contractor shall have support personnel deployed at all of its offices around the world.

47.	☐ live chat			
48.	☐ screen-sharing tools			Contractor support personnel will initiate a Zoom session (corporate approved standard for secure meetings and collaboration) with County to provide support if necessary.
49.	☐ one business day deadline for non-emergency support			Contractor shall meet support timelines outlined in Attachment D, Everbridge Technical Support Services Guide.
50.	The Contractor will have a transparent method for responding to, prioritizing, and implementing feature requests and modifications with a 30 day response time.			County may enter feature requests for the PMNS through Contractor's Client Services. All requests will be logged and tracked by Contractor's development team, and as more clients request similar features, Contractor may include these into the notification platform. In regard to "change management," Contractor will employ the following industry-standard practices for controlling changes to the SaaS application code or the database: ☐ Approved, detailed, written specifications from the business group Impact analysis ☐ An approval hierarchy that includes at least one company executive ☐ Queue management to ensure that all stakeholders are aware of the approved and pending changes to the system ☐ Documented approvals for applying any changes to the Development, Test, and Production environments ☐ Application code must be checked into a secure code library and checked out of this library to be applied to the Test or Production systems. ☐ Application code or database changes to the Test and Production environments require the use of highly secured passwords that are known only to the developers responsible for migrating application code or database changes. Only the DBA has access to implement database changes. ☐ Back-out procedures ☐ Specification of onboarding and maintenance windows
51.	All data entered into the system from any source will remain the property of the County; data cannot be provided or sold to other entities.	X		
52.	Registrants are not required to provide their data to the Contractor or other third party, or subscribe to or download an application in order to receive notifications through the system.	X		Contractor will support this function through its Engagement functionality, as well as through IPAWS.

53.	Contractor will obtain E911 from all carriers within the County of Orange, California.	X		County will obtain E911 from all carriers within the County and provide the data to Contractor; if, in the future, California law is updated to allow for the Contractor to receive this data directly, the County and Contractor will work together to transition this process. This will allow County to leverage existing emergency services (E911) databases that provide contact information and are updated on a monthly or quarterly, or yearly basis, allowing for a high level of accuracy.
54.	Contractor will geo-code all E911 data following a mutually agreed upon systematic process.	X		Regardless of the method used to manage the data, if a physical address is supplied to the Contractor's platform, Contractor will geo-code the address and determine the Latitude/Longitude coordinates for the location. These coordinates will then be used to drop a pin on the map (color of the pin will be defined by County and based on Record Type, as described above) in the Universe tab for recognition and inclusion in notification deployments. System will allow County to also specify the precision level of the GIS information utilized in the Contractor's solution through the Precision GIS functions, which can enhance the level of accuracy and will allow the County to directly handle "centroid" geocoding challenges they may experience.
55.	The system will have more than one geo-coding system or process.	X		System will allow geocoding to be conducted using Contractor's inherent geo-coding or County may leverage Precision GIS capabilities and supply its own geo-coding.
56.	The Contractor will code residential and business lines.	X		
57.	The Contractor will upload E911 data that has been geo-coded and identified as business/residential.	X		
58.	The Contractor will upload E911 data that has been geo-coded and identified as listed and unlisted.	X		

59.	The Contractor will maintain data for opt-outs from the E911 data and ensure that new uploads accommodate these opt-out requests.	X		
60.	The system will flag failed notifications for specific causes and allow the County to configure rules for failed notifications (e.g., mark failed call numbers or bounced emails to be resolved by County personnel).	X		
61.	The system will support contact lists of unlimited length.	X		
62.	The system will support nested contact lists (e.g., List 1 includes Sublist A, B, C; List 2 includes Sublist A & C; List 3 includes Sublist B & C)	X		
63.	The Contractor will analyze the results of each system use to identify if there are data management errors and identify possible improvements in data management processes.	X		County may contact Contractor's 24x7x365 tech support team with questions regarding, or for support on, data management and review of communication campaigns.
64.	The system must incorporate Coding Accuracy Support System (CASS) certified address entry in all entry portals.		X	
65.	The Contractor will host training as requested by County:			
66.	☐ in-person at system implementation		X	Not applicable (system already implemented)

67.	☐ in-person on an as-requested basis	X		Available at an additional cost
68.	☐ interactive webinar	X		Available at an additional cost
69.	☐ recorded computer based trainings	X		Contractor will provide (free) access to Everbridge University, an online learning environment that has tutorials with videos that show how the system works. Online help is built into the notification platform and will open in a new window and assist a user in the process of sending a notification.
70.	Contractor shall provide a comprehensive User guide detailing all system features and functions.	X		Contractor will provides multiple levels of documentation to assist County in the process of managing the notification system, including: ☐ Everbridge Mass Notification User's Guide–Full documentation of the features of the notification platform ☐ Everbridge Mass Notification Quick Start Guide–Focused on the areas that will allow a user to use the notification functions of the system ☐ Everbridge Mass Notification Application Programming Interface (API) Guide–Starting point for software engineers to write applications that harness the strength of the Contractor's platform allowing for full integration with County systems ☐ Everbridge University Online (Video Tutorials) ☐ Everbridge Online Help–See #69 above Everbridge One Sheets–Isolate common tasks and help a user do everything, including send a notification, edit a contact, or make a selection from the map
71.	The Contractor will provide free testing and training by the County and Sub-administrator accounts.	X		

72.	The system will have a testing environment with safeguards to ensure that training and testing do not occur using E911 data unless the User intends to do so.	X		
73.	The system will have a self-registration portal that allows both external (the public) and internal (agency employees) individuals to register multiple contact methods with and without setting up an account.	X		
74.	The system will provide the public with a single-screen interface through which Registrants can opt-in to notifications originating from multiple jurisdictions or agencies.	X		
75.	The public web interface for Registrants will be of responsive design capable of displaying clearly on mobile, tablet, and desktop devices.	X		
76.	The system's Registrant interface will meet or exceed the requirements of Section 508 of the Rehabilitation Act and Web Content Accessibility Guidelines (WCAG).	X		
77.	The system will allow Registrants to update their own contact data via an online portal or mobile application.	X		
78.	The registration portal will allow Registrants to create an account with either an email address or telephone number.	X		

79.	The registration portal will require the Registrant to validate their contact information.	X		
80.	The registration portal will incorporate CASS certified address entry and validation before allowing the Registrant to finalize.		X	
81.	The registration portal will incorporate an automatic geo-coding validation before allowing the Registrant to finalize, including allowing the Registrant to manually move the point mapped if correction is needed.	X		
82.	The registration portal geo-coding software will update parcel and address data no less than bi-annually, so as to capture newly constructed homes and businesses.		X	
83.	The registration portal will be available in at least the following languages:	X		The registration portal can be configured by County to include any language desired. County may also enable the system's Google Translate functionality, which allows the user of the page to select the desired language and all content on the page will be displayed in the selected language (auto-translation provided through Google Translate).
84.	☐ Arabic	X		
85.	☐ English	X		
86.	☐ Farsi	X		
87.	☐ Korean	X		

88.	☐ Spanish	X		
89.	☐ Vietnamese	X		
90.	Registrants will be able to choose what types of alerts to receive and what devices to receive them on, such as:	X		
91.	☐ Weather alerts	X		
92.	☐ Road closings	X		
93.	☐ School closings	X		
94.	☐ Special announcements	X		
95.	At registration, Registrants will be able to provide vulnerability data.	X		This would be configurable At Risk or Needs Identification (e.g., Bedridden, Oxygen)
96.	The system will be able to detect Video Relay Services (VRS) used by the deaf and hard of hearing community. Messages will be delayed until the VRS interpreter becomes available or the message will be looped for up to 3 minutes.		X	
97.	During an alert notification, the system will provide Registrants with language options upfront (ex. Press 1 for English, 2 for Spanish, etc.).		X	Although Contractor does not support this functionality, a similar result may be accomplished by using Contractor's automated language translation capabilities within the Scenarios.
98.	The service will support non-English character sets and right- to-left text for email and TTY messages.	X		

99.	The system will allow for configuration of automated forwarding from other systems (e.g., National Weather Service).	X		Contractor's Mass Notification platform offers SMART Weather Alerting which leverages Weather Decision Technologies' (WDT) meteorological resources to enhance and optimize over 150 severe weather alerts such as lightning, tornadoes, thunderstorms, hail, ice, snow, extreme temperatures, high winds, flash floods, and flooding. SMART Weather Alerting provides location-specific severe weather alerts at the speed of click. An automated rules engine supercharges the speed and accuracy of alert delivery, so notifications get to the right people right away. Available at an additional cost.
100.	The system will be intuitive, easy to learn, and use best practices in User interface and User design.	X		Contractor's system will provide ease of use for both message senders and recipients. The system will provide an intuitive interface that allows for administrators to send messages and navigate the system easily. For new notifications, the system will provide a single page workflow that will allow County to specify message type, message content, target audience, and deployment options (such as devices to target, number of contact cycles, etc.). County will be able to launch notifications even more quickly using Contractor's Notification Templates, whereby various elements of the notification deployment may be defined ahead of time – reducing the selection of the options to send the notification when needed.
101.	The web interface for Users will provide responsive design capable of displaying clearly on mobile, tablet, and desktop devices.	X		

102.	The system will include a mobile app for iOS and Android that allows Users to send public notifications to on-the-fly generated geo-located areas.	X		Contractor's system will support the ability to launch new and template broadcast to both individuals and groups of individuals, manage messages, and view reports from smartphones and tablet devices. Mobile app support for iOS and Android devices will be provided to County. Authentication on the mobile platform is through HTTPS connections utilizing 2048-bit encryption. No information is cached locally within the app. Contractor will also provide a universal browser interface that functions among any smartphone or tablet devices, including BlackBerry and Windows Mobile.
103.	The service will integrate with incident management systems, such as WebEOC, so that alerts can be activated from WebEOC Input or Display views.	X		The system will integrate with incident management systems via Contractor's Incident Communication and Email Ingestion functionality or through custom development using JSON-based RESTful API. Email Ingestion is available at an additional cost (Incident Communication is included in County's Scope of Work).
104.	The system will have a robust responder notification function that allows for advanced polling functions and the ability to stop calls once a set threshold of responses is reached.	X		Contractor will provide the ability to create and send quota-based notifications by using Polling Notification with Quota enabled. County will have the ability to specify a certain number of positions to be filled. Once deployed, the quota notification will start contacting the pool of candidates and continue until enough successful responses are provided to fill the quota count. Once the quota is filled, the system will automatically stop calling the group. County can use Contractor's follow-up capability to re-communicate to any desired audience—such as those who confirm receipt after the quota is filled—very quickly.
105.	The system will have the ability to directly link notification recipients to an internal conference call.	X		Contractor's system will provide Conference Notifications, whereby a notification is deployed to County recipients and if received via phone, they will join the call immediately; if received via text message, all dial-in and passcode information is included to allow the end user to connect to the call. Contractor will provide four (4) inherent conference bridge lines for County to use. County may customize Contractor's service to support its own conference systems for an additional cost.
106.	The system will provide the ability for two-way text and email communication.	X		
107.	Responses to notifications can be sent via email or text directly to the User sending the message, system administrators, or members of a User-defined group.	X		Responses and confirmations from recipients will be reported back to the Contractor's platform whereby authorized client administrators (including those that initiated the communication) may review them through Contractor's reporting options.

108.	The system will be able to export the polygon created for the notification in shape file, KML, and CSV.	X		
109.	The system will automatically send all Registrants a yearly, bi-yearly, or quarterly email reminding them to update their information. This message can be configurable by a User.	X		Contractor will schedule notifications to accomplish this upon County request. Additionally, rules or filters can be developed to only target the users that have not recently updated their contact information.
110.	The system will be able to manually bulk upload data via CSV or Excel and automatically via SFTP.	X		
111.	The system will have an audit functionality that allows authorized Users to review system access and activity for up to 18 months.	X		



Orange County Operational Area

Countywide Public Mass Notification System Standard Operating Procedures

Effective: June 30, 2008

Revised: June 30, 2021

I. PURPOSE

The purpose of this document is to outline the Standard Operating Procedures for the use and administration of AlertOC, the Orange County Public Mass Notification System, hereinafter referred to as "System". This document will provide more specific step-by-step procedures and roles and responsibilities at the regional level including describing expectation of participants. Individual jurisdictions/agencies should create and maintain and **regional concepts**. The step-by step procedures for activation and use will be maintained in a separate document maintained by each jurisdiction/agency as a part of their emergency response plans for overall planning and response efforts. A copy of these procedures shall be maintained in PrepareOC.

This document does not supersede any policy and procedures outlines in the Memorandums of Understandings signed by participating agencies, but should be used to support the use of the Orange County Mass Notification System.

II. SYSTEM DESCRIPTION

The primary intent of the Countywide Public Mass Notification System is to disseminate early warning and time sensitive information to county businesses and residents during an emergency event. The Public Mass Notification System is only one component of the County of Orange Public Warning System. As deemed fit by local authorities, the System should be used in conjunction with the other public warning mechanisms including, but not limited to, route alerting, the Emergency Alert System, sirens, and press releases.

The Mass Notification System is available 24/7 and has been pre-loaded with Orange County landline phone numbers (including unlisted) and countywide geographic maps. Additionally, citizens have the option to provide additional contact information via self-registration portal www.alertoc.org with link access from county and all participating entity websites. Upon local authority decision to activate, the System will be used to send a message, describing the situation, impacted area, and recommended action the public should take, to affected businesses and households via telephone, e-mail and/or text.

The County of Orange, Orange County Sheriff's Department is the sponsor of the Countywide Public Mass Notification System initiative and will take appropriate measures to ensure that the System is in a state of operational readiness at all times. It is the responsibility of all participating Agencies to maximize citizen benefits from the System.

While the County's intent for implementing and maintaining the System is for "emergency" use, upon consent from local authorities, cities may optionally use the System to disseminate "government-related" non-emergency notifications to citizens and organization resources within its jurisdiction. See Section V. Authorized Use and Section VIII. Cost for policy guidelines relating to non-emergency use.



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III. GOVERNANCE

The Orange County Sheriff's Department Emergency Management Division will manage the Mass Notification System as a countywide asset under the Policy and Guidance approved and recommended by the Orange County Technology Subcommittee, and agreed upon by each individual Agency when they opt into the system.

Use of the System by each Agency is contingent upon that Agency abiding by the contract with the mass notification vendor, and the protocols established by the Emergency Management Council and Operational Area Executive Board.

The System utilizes the 9-1-1 database to complete the notifications. The use of the 9-1-1 database is regulated by the California Public Utilities Code (CPUC) sections 2872 and 2891.1. The information contained in the 9-1-1 database is confidential and proprietary and shall not be disclosed or utilized except by authorized personnel for the purpose of emergency notifications. Any agency in violation of this regulation is subject to criminal charges as described in the CPUC.

The Orange County Sheriff's Department Emergency Management Division is responsible to ensure that the provisions of the contract are implemented properly. Authorized users must respect the integrity of the database, understand the privacy issues and fully comply with the policies and protocols outlined in this document. If violations of the MOU and this approved policy document are made by any individual or Agency, the Orange County Sheriff's Department reserves the right to disable that individual's or Agency's login(s).

IV. OVERVIEW OF GENERAL SYSTEM FEATURES

At minimum, the Orange County Sheriff's Department shall acquire and maintain a Public Mass Notification System capable of meeting the following requirements.

- A. Licensed for use throughout the County's entire region
- B. Capacity to send a 45 second message to 10,000 residents and businesses within 10 minutes
- C. Capacity to send messages via phone, e-mail and text
- D. Accessible via the public Internet
- E. Provides audit trail logging and reporting
- F. GIS map interface for geographic call list generation
- G. Citizen self-registration web portal (available in over 100 languages))
- H. Interactive phone survey technology and reporting
- I. IVR based notification setup and execution



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V. AUTHORIZED USE

The Mass Notification System is designed to be a countywide asset, available to all Agencies that have a dedicated public safety answering point (PSAP) and/or a resident population they are responsible for making protective action recommendations.

An Agency may participate in the countywide System at no charge when used for emergency purposes until June 2025.

Agencies authorized to join the system at no cost are limited to the incorporated cities in the Orange County Operational Area, County agencies and departments, the Municipal Water District of Orange County and Orange County Retail Water Agencies. Each participating Agency must sign a MOU and will maintain, at minimum, a Local Agency Administrator responsible for implementing and administering use of the System at the local level.

Cities

Cities wishing to participate may do so by having an authoritative representative sign the "Orange County Public Mass Notification System" MOU. Upon signing the agreement, the Agency will be provided a local administrator account, a vendor provided user manual and initial training. Throughout the term of the agreement, the Agency may use the System to send an unlimited number of emergency notifications to the public as well as an unlimited number of emergency and non-emergency inter-department messages. Each participating City shall develop and maintain written procedures to identify and address the Agency's specific use of the System within the scope of this policy guide. Each participating City shall maintain a level of training for their users consistent with the County of Orange and Orange County Operational Area Alert and Warning Plan.

County Users

Unincorporated areas of Orange County will have emergency messaging to the public launched by the Orange County Sheriff's Department. All other county agencies may have access to utilize the system for interdepartmental use. Each participating County agency shall develop and maintain written procedures to identify and address the Agency's specific use of the System within the scope of this policy guide and provide this guideline to the Orange County Sheriff's Department Emergency Management Division. Each participating County agency shall maintain a level of training for their users consistent with the County of Orange and Orange County Operational Area Alert and Warning Plan.

Water Retail Water Agencies

The Municipal Water District of Orange County and Orange County Retail Water Agencies wishing to participate may do so by having an authoritative representative sign the "Orange County Water Retail Agency Public Mass Notification System" MOU. Upon signing the agreement, the Agency will be provided a local administrator account, and the Orange County Sheriff's Department, Emergency Management Division in collaboration with the Municipal Water District of Orange County – Water Emergency response Organization of Orange County (WEROC) will provide a user manual and initial training. Throughout the term of the agreement, the Agency may use the System to send emergency notifications to the public by



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utilizing pre-established GIS shape files or the system's interactive map feature to identify their water users. Each participating agency shall develop and maintain written procedures to identify and address the Agency's specific use of the System within the scope of this policy guide. Each participating agency shall maintain a level of training for their users consistent with the County of Orange and Orange County Operational Area Alert and Warning Plan.

Emergency Use

Use of the Mass Notification System for emergency activity contains two components: (1) the need to disseminate critical, safety-related information to individuals regarding emergency events occurring now, follow up information regarding the event and termination of the emergency event., and (2) communicating with safety-responder staff, volunteers and involved parties about the emergency event.

As a general rule, the System is to be used when the public is being asked to take some action (e.g. evacuate, prepare to evacuate, shelter in place, boil tap water before drinking, local assistance centers and other follow up information, re-entry to an area after evacuation orders have been lifted or termination of the emergency because the danger has passed).

Emergency Public Notifications are limited to:

1. Imminent or perceived threat to life or property
2. Disaster notifications
3. Evacuation notices
4. Public health emergencies
5. Public safety emergencies
6. Any notification to provide emergency information to a defined community

The following criteria should be utilized to assist with determining the need to issue an alert:

1. Severity. Is there a significant threat to public life and safety?
2. Public Protection. Is there a need for members of the public to take a protective action in order to reduce loss of life or substantial loss of property?
3. Warning. Will providing warning information assist members of the public in making the decision to take proper and prudent action?
4. Timing. Does the situation require immediate public knowledge in order to avoid adverse impact?
5. Geographical area. Is the situation limited to a defined geographical area? Is that area of a size that will allow for an effective use of the system, given the outgoing call capacity?
6. Are other means of disseminating the information inadequate to ensure proper and time delivery of the information?
7. Is the message being sent follow up information to an emergency event in progress?

If the answer to ALL of these questions is "Yes", then an activation of the Mass Notification System for emergency purposes may be warranted.

To assist with trigger points for potential message use topics refer to Attachment A



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Emergency Responder Notifications are limited to:

1. Contacting first responders to advise of an emergency
2. Contacting first responders to report for duty due to an emergency
3. Contacting key staff regarding an emergency or crisis situation
4. Contacting agency employees/DSWs to report at a different time or location (or provide an update) due to an emergency
5. Exercises

Emergency considerations:

1. Notification shall clearly state situation is an emergency
2. Message length shall not exceed 60 seconds
3. It is highly recommended all messages are recorded using a real voice and not the computer transcriber.
4. Message shall have a call back number specific to the agency issuing the notification.
5. It is highly recommended to provide a phone number or website where the public can obtain additional or updated information
6. An all clear notification should be sent when applicable

A. Inter-Department Communication

City and County Agencies may use the Mass Notification System for non-emergency inter-departmental business communication as needed, without cost. It is recommended that individual Agencies identify where this would add value to their operations and establish separate written protocols and procedures for this use.

B. Non-Emergency Public Use

No agency shall use the Mass Notification System for non-emergency public announcements unless a separate contract with the vendor is established. Non-emergency use shall be consistent and in compliance with the non-emergency guidelines included within. Any agency in violation of this term may have their use of the system suspended. Additionally, E 911 data is not allowed to be utilized for non emergency use except for testing according to the law California Public Utilities Code (CPUC) sections 2872 and 2891.1 and violators may be subject to criminal enforcement. Jurisdictions will be limited to utilizing the self-registering portal entry data only when launching non-emergency messages.

Agencies who contract to use the countywide System for non-emergency activity agree to give precedence to emergency notification call-outs by delaying or terminating non-emergency notification sessions if needed to increase emergency message success. The primary concern for point of failure in this situation is not the Mass Notification System, but the telephone port capacity of local phone providers responsible for delivering calls to residents. Cost associated with non-emergency public notifications is the responsibility of the local Agency, See section VIII.1

Non-emergency **public** notification use is **prohibited** for any of the following purposes:

1. Any message of commercial nature



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2. Any message of a political nature
3. Any non-official business (e.g. articles, retirement announcements, etc.)
4. To send a message to an E911 obtained data source; see Section III, Governance, for additional information relating to E911 data use restrictions

C. Confidentiality

Agencies shall be responsible for: (i) ensuring that users maintain the confidentiality of all user login and password information; (ii) ensuring that users use the service in accordance with all applicable laws and regulations, including those relating to use of personal information; (iii) any breach of the terms of this policy or the vendor agreement by any user; (iv) all communications by users using the service; and (v) Ensuring users have completed an appropriate background check and undergone annual security awareness training.

Protecting confidential information contained within the system against accidental or unauthorized use, modification, dissemination, or destruction.

Immediately notifying the Orange County Sheriff's Department of any security incident that could lead to the unauthorized access, use, modification, dissemination, or destruction of CI contained within the system.

Through the "Memorandum of Understanding between the County of Orange and Participants for use of Countywide Mass Notification System," each agency is bound in writing to the confidentiality obligations sufficient to permit agencies to fully perform its obligations under this policy or the vendor agreement.

VI. AUTHORIZED SYSTEM USERS

A. Public Notifications

In general, use of the system in most cities is the responsibility of the local law enforcement agency. Since law is responsible to make alert, notification and evacuation orders. However, others may also be authorized to make notifications will be officials including , emergency management, fire and city manager departments.

County Administrator: The Orange County Sheriff's Department will act as the Countywide Public Mass Notification System County Administrator. County Administrator responsibilities are covered in section IX. System Administration and Operation.

County User: Orange County Sheriff's Department Emergency Communication Division (9-1-1 dispatch), Control One and Emergency Management Division personnel will be setup as "County" users. County Users will have permission to access and launch emergency notifications to all jurisdictions within Orange County consistent with County Operational Area public safety response guidelines. All other county agencies will have permission to execute inter department notifications.

The Orange County Emergency Operations Center, when activated will be responsible for all public notifications to unincorporated areas during an emergency. For day to day use of the system for public safety incidents including but not limited to hazmats, felony crimes with



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suspects still at large, the Orange County Sheriff's Department Commander will be responsible for execution of messages.

Local Agency Administrator: A minimum of one designated Local Agency Administrator will be required for each Agency participating in the countywide System. Local Agency Administrator responsibilities are covered in section IX. System Administration and Operation.

Local Agency User: Participating Agencies may have an unlimited number of Local Agency Users. Local Agency Users will have access to resident contact records within their jurisdiction as well as neighboring jurisdictions with an established MOU agreement. Local Agency Users will be authorized and managed by the Local Agency Administrator and may have varied system permissions.

Any City jurisdiction who has contracted police services shall grant and provide access to their jurisdictions system in order to launch messages in a timely manner.

- Water agencies are identified as local users under the Orange County Sheriff's Department Emergency Management Division.

Inter-Department User: Inter-departmental users will have permission to inter-departmental contact information only and are authorized to use the system solely for inter-departmental communication including but limited to first responder or volunteer call-outs. Additional user for special contact groups including In House Special Services (IHSS), access and functional need cliental may be established with prior authorization from the Orange County Sheriff's Department to ensure no vendor contract violations are occurring.

VII. ACTIVATION OF THE SYSTEM

Each City Jurisdiction is responsible for launching messages to affected citizens and businesses within their jurisdiction. Determination of authority to request activation of the Mass Notification System rest with local officials, not with the County of Orange or the Orange County Sheriff's Department Emergency Management Division. Water agencies are responsible for launching messages to affected citizens and businesses as identified in their service district. The following is protocol to be followed when an emergency message is launched anywhere in Orange County.

A. Public Notifications

1. The County of Orange is authorized to use the System to send notifications of regional emergencies to any and all residents within the Operational Area (example: Countywide quarantine order for a health alert). Upon sending a countywide notification, Orange County Sheriff's Department Emergency Management Division will, as soon as possible, advise the appropriate local Agency that mass notifications have been sent by the County to residents of their cities. Pre-notification to emergency managers by email or WebEOC of this AlertOC activation before actual delivery of the message will occur if possible.
2. Other than regional emergency notifications, public notifications are the responsibility of the individual City/Local Government. In the event that the geographical location of an incident requires a message to be delivered to multiple jurisdictions, the responsible Agency will inform each individual Agency so that they can send the message to those



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affected within their own jurisdiction. Exception: Small unincorporated neighborhoods embedded within City limits will receive mass notification of local city emergency activity from City Officials. This does not include the unincorporated areas of Rossmoor, Midway City, Cowan Heights, Lemon Heights, all canyons, Coto de Caza and Trabuco Canyon areas. Any of the fore mentioned unincorporated areas by names, coordination will have to occur with the Orange County Sheriff's Department/Watch Commander when the EOC is not activated.

3. For a City wishing to send or receive messages to or from a neighboring Agency during time of a multi-jurisdictional incident, an MOU should be established between both parties that grants permission for the handling Agency to send emergency notification to residents within the affected Agency. (Exception will be made for cities who have contracted law enforcement services. No MOU will be required and access SHALL be granted).
 - a. In the event no MOU has been established, the local city agency will contact the Police Watch Commander who is the 24 hour warning point for all cities for approval and coordination.
4. Water agencies sending information to the public will do so only to pre-loaded GIS shape files containing their service areas. This procedure must occur due to the overlapping jurisdictional boundary areas. Water agencies will launch messages under the Orange County user account. Pre-notification to the Water Emergency Response of Orange County (WEROC) emergency manager, and impacted city emergency managers will occur prior to the launch of the message by email containing the AlertOC message before actual delivery of the message will occur.
 - a. The WEROC Emergency Manager is responsible to notify and provide the information to the OA/County Emergency Manager since the identification information will show the County of Orange as the initiator.
5. In the event a participating Agency is unable to send out an **emergency** message, the Orange County Control One Coordinated Communications Center is available to act on the local Agency's behalf. Agencies that do not have a current MOU with the County may also request Control One to send out an emergency message. Control One will not be available to send internal notifications. All rules and guidelines are applicable. It is still the responsibility of the local agency with the primary responsibility of the incident to receive approval for adjacent jurisdictions on multi jurisdictional events. Attachment B is the launch form containing all information required in order to launch a message. Authority to request mutual aid assistance from Control One must be requested by a Lieutenant or above (same protocols as requesting a Code Alex).
6. If the Operational Area EOC is activated, agencies may request to utilize the Orange County Information Hotline 714-628-7085 as the identification phone number for residents and businesses to call to obtain additional information. Agencies are requested to send a copy of the AlertOC script to the OA EOC before the message is launched, if possible.
7. Participating Agencies are authorized to develop pre-established notification lists and messages to meet their individual needs. These lists may include special populations (e.g. in-home care, schools, etc) or those susceptible to certain risks (e.g. homes within dam inundation zone). It is the responsibility of the participating Agency to create, maintain and update these lists.



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B. Emergency Response and Inter-Department Notifications:

1. Each participating Agency is authorized to create employee/volunteer and department call lists and pre-recorded messages.
2. Any non-city agency wishing to create specialty groups which still contain public contact information (ex: special needs callouts) may do so with prior consent. However, any activation of information to any of these groups needs to be coordinated to ensure clear, concise and accurate information is being dispersed. During emergencies, messages will be coordinated with the Operational Area, Orange County Sheriff's Department Emergency Management Division.
3. It is the sole responsibility of each participating Agency to maintain these lists and to launch notifications as deemed necessary.

VIII. COSTS

The County of Orange agrees to fund the System for notifications classified as "emergency use". The County of Orange also agrees to continue to purchase updated E911 telephone data and geographic maps.

Costs associated with use of the System for non-emergency activity is the responsibility of the local Agency through separate contract with the mass notification Vendor.

IX. SYSTEM ADMINISTRATION/OPERATIONS

Individual Agencies are responsible for providing logins and procedural training to key individuals within their Agency responsible for using the Mass Notification System.

A. County Administrator

The Orange County Sheriff's Department will assign and maintain a designated Mass Notification Program Administrator responsible for overall acquisition, accessibility, maintenance, compliance and management of all components required to provide an effective countywide mass notification system.

The County Administrator is responsible for:

1. System acquisition and contract management.
2. Policy management and as needed modification (in consultation with public safety, emergency management and emergency response personnel.)
3. Audit compliance: routine monitoring of System use to insure policy and contract compliance.
4. Access management: record management of signed MOU from each participating Agency, distribution of local administrator accounts and updated local administrator contact list.
5. Data management: E911 data acquisition, update and compliance monitoring. Countywide map file acquisition, update and overall geo-coding.
6. Testing: facilitate routine System-wide test exercise, document overall test results and recommend and execute, as needed, corrective action at the County level.
7. Public education campaign: initiate and facilitate public education campaign aimed at making the public aware of the countywide public mass notification system initiative and citizen web portal.



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8. System support: provide support to Local Agency Administrators.

B. Local Agency Administrator

Participating Agencies agree to appoint a designated Mass Notification Local Administrator responsible for leading, coordinating, monitoring and optimizing use of the Mass Notification System at the local level. Local Agency Administrator shall act as the Agency's central point of contact and will work collaboratively with the County Administrator to insure local use of the system is within policy and MOU guidelines.

Local Agency Administrator is responsible for:

1. Contract acquisition if Agency will use the system for non-emergency purposes.
2. Local Agency Mass Notification Operating Procedure development and management.
3. Use compliance: routine monitoring to ensure System is used within the conditions and terms of this document and associated MOU.
4. Access management: local user account distribution and management, including an annual audit of accounts; attestation that all admins & end-users are authorized to continue accessing the system. Record management of MOU(s) and signed end user P&P.
5. Data management: perform routine data management, error-correcting and data integrity updates to System contact and geo-coded map data.
6. Testing: facilitate routine local System test exercise, document local test results and recommend and execute, as needed, corrective action at the local level.
7. Public education campaign: initiate and facilitate public education campaign aimed at making the local community aware of the intended use of the Mass Notification System and citizen web portal.
8. System support: provide support to local Agency end-users.
9. Training: ensuring end users complete security awareness training that covers at a minimum the following areas: proper protection, handling, dissemination, and destruction of confidential information (CI); threats, vulnerabilities, and risks associated with handling of CI; social engineering; system responsibilities and expected behavior; account usage and management – including password creation, protection, and frequency of changes; system usage – allowed vs. prohibited; incident response; physical security; email protection – phishing threats and business account compromise
10. Incident Response: Local Agency Administrator is responsible to immediately notify OCSD of any incidents that could lead to the unauthorized or accidental use, modification, disclosure, or destruction of any information contained within the system.

X. INFORMATION SYSTEMS AND SUPPORT

The Orange County Sheriff's Department will acquire and maintain 24x7x365 vendor support for the Mass Notification System. Participating Agencies are authorized to contact vendor support as needed.

XI. ROUTINE TESTING

The Mass Notification System will be tested monthly. Monthly testing will be geared towards insuring that use of the System in an emergency is optimized and users are familiar with operation.



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The Mass Notification System will have an annual regional test. This includes testing operational readiness, activation procedures and system effectiveness as well as validating data and system processes. Through the annual test exercise, System administrators and users will be able to observe the mode of operation to augment and refresh System and process knowledge.

Specific test exercise routines, roles, responsibilities and schedule will be detailed in the Operational Area Standard Operating Procedure document.

By signing the Mass Notification System MOU, participating Agencies agree to take part in Mass Notification countywide test exercises.

XII. DEFINITIONS

1. **System** – All components of the Mass Notification System including hardware, software, access portals, contact data and GIS maps.
2. **Resident** – Comprises households and businesses.
3. **IVR** – Interactive Voice Response is a phone technology that allows a computer to detect voice and touch tones using a normal phone call. This technology will allow a user of the Mass Notification System to launch a message to a pre-defined call list when a pc or internet connection is not available.
4. **Emergency** - “Emergency” shall include, but not be limited to, instances of fire, flood, storm, epidemic, riots, or disease that threaten the safety and welfare of the citizens and property located within the boundaries of the county and participants’ respective jurisdictions.



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Revision History:

Revision Date	Author	Description
April 18, 2008	PMNS Policy Committee	Document originated
May 19, 2008	PMNS Executive Review Team	Non-emergency session termination in Section V., Item C.
June 16, 2008	Teara LeBlanc	Exception clause in Section VII, Item A., bullet 2.
May 2010	Vicki Osborn	Revision of all sections
June 2012	Raymond Cheung	Revision for OCSD transition
May 2013	Raymond Cheung	Revision for new vendor contract
May 2016	Raymond Cheung	Added confidentiality item to Section V., Item C. and allowed non-emergency use in Section V., Item B. and Section VIII.
June 2021	Harmon Ward	Revision for new contract Revision of Sections II, III, IV, V, IX, and XI.



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Attachment A – Alert OC Trigger Points Guidelines (Placeholder)

Type of Incident	Description	Meets Public Safety Criteria
Active Shooter	A shooting with armed individual or individuals is occurring in a known area.	Yes
Boil Water Orders	An unsafe water supply issue requiring the public to boil water before use.	Yes
Building Fire	A fire occurring in an urban area requiring evacuation or shelter in place for the immediate area.	Yes
Violent Crimes	Violent crimes that just occurred such as robbery, assault, murder, etc.	Yes
Felony Suspect at Large	Law enforcement is currently searching for a felony suspect that is suspected to be in a certain area.	Yes
HazMat	Hazardous Materials incidents that require a fire/hazmat response and may include evacuations or shelter-in-place orders.	Yes
Health Orders	Any public health order made pursuant to County Health Officer recommendations.	Yes
Missing Adult (920A) with special circs	12- 17 yrs with decreased mental capacity or medical condition	Yes
Missing Child (920C)	12 yrs or younger ***Discussion add Amber alert triggers	Yes
Missing Juvi (920J) with special circs	18 yrs and older 12- 17 yrs with decreased mental capacity or medical condition	Yes
Severe Weather Related	Weather warnings that forecast an occurring or imminent threat to public safety or coincide with protective action recommendations such as voluntary or mandatory evacuation orders.	Yes
Evacuation or Shelter-in-Place	Voluntary or mandatory evacuation or shelter-in-place orders.	Yes
Wildland Fire	A fire occurring in a wildland urban interface area requiring immediate evacuation or shelter-in-place.	Yes
Road Closures	Unplanned road closures due to an emergency situation.	Yes
Planned Events	Road closures due to community events planned in advance.	No

NONDISCLOSURE AGREEMENT

NONDISCLOSURE AGREEMENT BETWEEN PACIFIC BELL TELEPHONE COMPANY dba SBC CALIFORNIA, AND THE COUNTY OF ORANGE, CALIFORNIA

THIS AGREEMENT, effective this 26th day of June, 2008, ("Effective Date") is between PACIFIC BELL TELEPHONE COMPANY dba SBC CALIFORNIA, a California corporation (hereinafter "SBC California"), County of Orange (hereinafter "Customer") and NTI Group, Inc. (hereinafter "Subcontractor").

1. Customer has requested Neighborhood Call service from SBC California under SBC California's Tariff, CAL.P.U.C. NO. A9.2.6 and agrees to comply with all provisions of SBC California's Tariff, CAL.P.U.C. NO. A9.2.6.
2. Customer has identified Subcontractor as its agent for obtaining Neighborhood Call subscriber information from SBC California for provision of community alerts and notifications to citizens as defined in California Public Utilities Commission Code Sections 2872 and 2891.1 and as allowed in SBC California's Tariff, CAL.P.U.C. NO. A9.2.6. In the event Customer elects to no longer use Subcontractor for obtaining Neighborhood Call subscriber information, Customer shall provide SBC California written notice of such change 30 days in advance of Subcontractor's agency status being terminated by Customer.
3. Subcontractor certifies that it has reviewed the terms and conditions of the SBC California Tariff, CAL. P.U.C. NO. A9.2.6 for Neighborhood Call and specifically A9.2.6B.2.b which stipulates in part: "The Neighborhood Call database information provided to Customer pursuant to this tariff is confidential and proprietary and such information will be held in confidence and only used and disclosed to Customer's employees or its subcontractors and agents with a need to know for purposes of providing a community alert and notifications to citizens as defined in California Public Utilities Code Sections 2872 and 2891.1. Customer agrees that each of its employees, subcontractors or agents receiving or having access to the Neighborhood Call database information will be informed that such information is subject to the terms and conditions of this tariff and the Neighborhood Call database information will remain the property of Pacific; that the Neighborhood Call database information will be treated with the same degree of care as Customer affords to its own highly confidential and proprietary information; and that the Neighborhood Call database information will not be reproduced in any manner, unless otherwise specifically authorized in writing by Pacific. Upon request, Customer will promptly return to Pacific all Neighborhood Call database information in a tangible form or certify to Pacific that such information has been destroyed."
4. Subcontractor agrees to comply with each of the obligations contained in SBC California's Tariff, CAL. P.U.C. NO. A9.2.6.B.2.b for Neighborhood Call Tariff. Notwithstanding the preceding sentence, Subcontractor agrees that no Neighborhood Call subscriber information will be shared with any non-employee of Subcontractor, whether it be a subcontractor or agent, without the written authorization of Customer and the execution of a Nondisclosure Agreement with SBC California.
5. This Nondisclosure Agreement shall be in effect from the Effective Date until such time that Customer terminates its request for Neighborhood Call service from SBC California or Customer elects to no longer use Subcontractor for obtaining Neighborhood Call subscriber information. Subcontractor's duty to keep the Neighborhood Call subscriber information confidential shall continue beyond the term of this Nondisclosure Agreement until such time that Subcontractor returns to SBC California all Neighborhood Call subscriber information in a tangible form or certifies to SBC California that such information has been destroyed.
6. Nothing contained in this Nondisclosure Agreement shall be construed as granting or conferring any rights by license or otherwise in any Information.
7. This Nondisclosure Agreement shall benefit and be binding upon the parties hereto and their respective subsidiaries, affiliates, successors and assigns.
8. This Nondisclosure Agreement shall be governed by and construed in accordance with the laws of the State of California, irrespective of its choice of laws principles.

[SIGNATURE PAGE FOLLOWS]

PACIFIC BELL TELEPHONE COMPANY dba
SBC CALIFORNIA

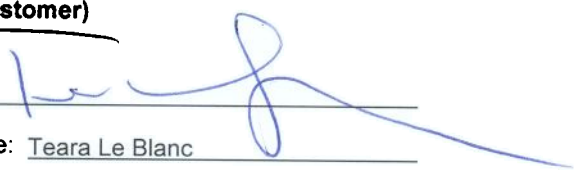
By: _____

Print Name: _____

Title: _____

Date Signed: _____

XXXX (Customer)

By:  _____

Print Name: Teara Le Blanc

Title Program Manager

Date Signed: June 30, 2008

XXXX (Subcontractor and/or Agent)

By: _____

Print Name: _____

Title: _____

Date Signed: _____

Public Mass Notification System
Individual User Agreement

1. _____ (hereinafter "USER") is an agent, officer, employee or representative of _____, (hereinafter "PARTICIPANT").
2. PARTICIPANT is a signatory to a Memorandum of Understanding ("MOU") between with the County of Orange ("COUNTY") for Use of Countywide Mass Notification System ("SYSTEM").
3. As an agent, officer, employee or representative of PARTICIPANT, USER has been granted access to the System by PARTICIPANT and is deemed an Individual User under the MOU.
4. USER understands that as an Individual User, USER may only use the SYSTEM in the manner described in the MOU, the Everbridge GSA Approved End User License Agreement, and in accordance with the requirements of the law. .
5. By signing this Individual User Agreement, USER hereby further expressly agrees to the do following things:
 - a) to maintain the confidentiality of login and password information;
 - b) to use the System in accordance with all applicable laws and regulations, including those relating to use of personal information;
 - c) to be responsible for any breach of the terms of the Agreement with Everbridge and/or the MOU between PARTICIPANT and COUNTY caused by the Individual User; and
 - d) to maintain the confidentiality of all records and information to which the Individual User may have access as a result of their access to the System pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this MOU; and
 - e) that all information transmitted and the use of the SYSTEM by USER shall be in compliance with California Public Utilities Code section 2872.
6. USER also acknowledges having been provided the opportunity to review the GSA Approved End User License Agreement with Everbridge, the MOU and California Public Utilities Code section 2872, prior to signing this Individual User Agreement, and hereby agrees to abide by both the letter and intent of those documents.
7. USER may withdraw their consent to terms contained within this Individual User Agreement at any time by notifying PARTICIPANT in writing. USER acknowledges, however, that withdrawing USER's consent will result in immediate termination of USER's right and ability to access the SYSTEM.

By signing this Individual User Agreement, USER acknowledges having thoroughly read the foregoing, and hereby consents and agrees to the above terms and conditions.

Dated: _____

Signature

Printed Name

Email Address



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Chair and Agency Members
FROM: Melissa Au-Yeung
Deputy City Manager
ISSUE: Approval of Minutes for August 24, 2021, Regular Meeting

RECOMMENDATION: That the Planning Agency approve the Minutes for the August 24, 2021, Regular Meeting.

ATTACHMENTS:

- 210824 PA Minutes

5. PLANNING AGENCY

Mayor Pezold recessed the City Council Meeting, and acting in capacity as Chair, called the Regular Meeting of the Planning Agency of the City of Laguna Hills, California, to order at 8:17 p.m.

5.1. ROLL CALL OF PLANNING AGENCY MEMBERS

Attendee Name	Title	Status	Arrived
Erica Pezold	Chair	Present	
Don Sedgwick	Vice Chair	Present	
Janine Heft	Agency Member	Present	
Bill Hunt	Agency Member	Remote	
Dave Wheeler	Agency Member	Present	

5.2. PUBLIC COMMENTS

There were no Planning Agency public comments on non-agendized items.

5.3. APPROVAL OF MINUTES**5.3.1 Approval of Minutes for July 13, 2021, Regular Meeting**

Recommendation: That the Planning Agency approve the Minutes for the July 13, 2021, Regular Meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Janine Heft, Agency Member
SECONDER:	Dave Wheeler, Agency Member
AYES:	Erica Pezold, Chair; Don Sedgwick, Vice Chair; Janine Heft, Agency Member; Bill Hunt, Agency Member; Dave Wheeler, Agency Member

5.4. ADMINISTRATIVE REPORTS

There were no Planning Agency administrative reports.

5.5. PLANNING AGENCY PUBLIC HEARINGS

There were no Planning Agency public hearings.

PLANNING AGENCY ADJOURNMENT

Chair Pezold adjourned the Planning Agency Meeting at 8:18 p.m. Mayor Pezold, Mayor Pro Tempore Sedgwick, Council Member Heft and Council Member Wheeler were present. Council Member Hunt was present via teleconference.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Public Hearing for Zoning Text Amendment No. (RZNE) 0005-2021, an Amendment to Title 9 (Zoning and Subdivisions) of the Laguna Hills Municipal Code to Update Regulations Related to Accessory Dwelling Units in Accordance with State Law

RECOMMENDATION: That the City Council continue the noticed Public Hearing for Zoning Text Amendment No. (RZNE) 0005-2021, an amendment to Title 9 (Zoning and Subdivisions) of the Laguna Hills Municipal Code to update regulations related to Accessory Dwelling Units in accordance with State law to the regular City Council meeting to be held on September 28, 2021, at 7:00 pm, or as soon thereafter as possible.

SUMMARY:

This is the time and place previously scheduled and noticed for the Public Hearing regarding Zoning Text Amendment No. (RZNE) 0005-2021, an amendment to Title 9 (Zoning and Subdivisions) of the Laguna Hills Municipal Code to update regulations related to Accessory Dwelling Units in accordance with State law. Due to the resignation of Community Development Director, David Chantarangsu, this matter is to be continued to the regular City Council meeting of September 28, 2021, at 7:00 pm, or as soon thereafter as possible.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Kenneth H. Rosenfield P.E.
Interim City Manager/Director of Public Services

ISSUE: Legislative Update for the 2021-2022 Regular Session of the California State Legislature and League of California Cities Recommended Legislation

RECOMMENDATION: That the City Council approve the issuance of letters to the Governor in opposition to specified legislation and approve a support letter to the League of California Cities for the equitable distribution of sales tax

SUMMARY:

The City has advocated on a total of 12 bills during the 2021-2022 Regular Session of the California State Legislature. This report summarizes the outcomes of those bills, as well as recommended City actions for bills that the City opposed but still passed the legislative process. In addition, a summary of a draft Resolution from the League of California Cities (Cal Cities) to the California State Legislature pertaining to the equitable redistribution of local sales tax is highlighted in this report and recommended for approval. Staff recommends that the City Council approve the recommended City actions as noted in this report.

BACKGROUND:

Since January of this year, the City has advocated and taken official positions on numerous bills throughout the 2021-2022 Regular Session of the California State Legislature. In total, the City Council advocated and took an official position on twelve bills this year.

In March, the City Council identified seven bills that were of interest to the City. Later, in June, the City Council took an official position on an additional five bills. The remainder of this report provides a summary of those bills that passed the legislative process and have been submitted to the Governor to be signed into law or vetoed. Additionally, a summary of a Draft Resolution from Cal Cities to the California State Legislature pertaining to a redistribution of sales taxes is included in this report.

Outcome of City-Advocated Legislation

During the 2021-2022 Legislative Session, the City has actively advocated for or against a total of 12 bills that the City Council identified as important to the City and the Laguna Hills community. A summary of each bill, along with its outcome, is described below. Regarding bills that the City officially opposed, a veto request letter is recommended be sent to the Governor on or before Sunday, October 10, 2021, which is the last day for the Governor to sign a bill into law or veto it.

Senate Bill (SB) 9 (Atkins) – Housing development: approvals

Outcome: Passed and submitted to the Governor to be signed into law or vetoed.

City Position: Oppose.

Recommended City Action: Draft and submit a veto request to the Governor.

Summary: This bill would have significant implications for housing development in Laguna Hills. In essence, SB 9 would rezone the majority of parcels within single-family residential zones to allow for urban lot splits and allow for the creation of up to six, eight, or ten units on a single parcel when combined with existing Accessory Dwelling Unit (ADU) law, without local discretionary hearing or review. Furthermore, this bill would exempt such developments from the California Environmental Quality Act (CEQA) environmental review process.

More specifically, for parcels in single-family residential zones, this bill would permit a partial or full tear down of an existing single-family residential home to create two separate residential units, both of which would be eligible to be sold. Related to parking, the City could require off-street parking of up to one space per unit, unless the parcel is located within one-half mile of either a high-quality transit corridor or a major transit stop as defined under the Public Resources Code. SB 9 would also allow for a single parcel located in single-family residential zone to be split into two equal parcels of a

minimum of 1,200 square feet and prohibits the City from imposing requirements that would physically preclude the construction of two units to be built on each split lot.

SB 10 (Wiener) – Planning and Zoning; Housing Development; Density

Outcome: Passed and submitted to the Governor to be signed into law or vetoed.

City Position: Oppose.

Recommended City Action: Draft and submit a veto request to the Governor.

Summary: This bill would authorize a local government to pass an ordinance to zone any parcel for up to 10 units of residential density per parcel, at a height specified in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined. This bill, as currently written, provides an agency with the option to rezone property for additional housing but does not mandate such an action.

SB 74 (Borgeas) – Keep California Working Act.

Outcome: Not passed.

City Position: Support.

Recommended City Action: None.

Summary: This bill would establish the Keep California Working Grant Program (Program) under the Office of Small Business Advocate within the Governor's Office of Business and Economic Development and allocate \$2.6 billion dollars to the Office of Small Business Advocate to distribute the grant awards and administer the Program. The Program would award grants to small businesses and nonprofit entities that have met specified criteria, including that the entity has experience economic hardship resulting from the COVID-19 pandemic and has been operating since December 1, 2019.

As envisioned, grant awards may be used only for specified purposes, including payroll costs, health care benefits, paid sick, medical, or family leave, insurance premiums, utilities, working capital, rent, and mortgage payments that are not prepayments. The Office of Small Business Advocate would determine the amount of a grant award based on the annual gross revenue of the entity. The grant awards range from \$5,000 to \$60,000.

SB 75 (Bates) – Southern California Fentanyl Task Force.

Outcome: Not passed.

City Position: Support.

Recommended City Action: None.

Summary: This bill would require the California Attorney General to establish and chair the Southern California Fentanyl Task Force. The bill would require the task force to develop information, make recommendations, and report findings to the Department of Justice and to the Legislature regarding matters relating to the fentanyl crisis in southern California communities. The task force would be responsible for identifying strategies to combat the fentanyl crisis in local communities.

SB 75, as written, would establish the membership of the task force to include one representative from the Department of Justice, one representative from the Department of the California Highway Patrol, and one representative from each of the following counties to be selected by the sheriff of each county: The County of Los Angeles, the County of Orange, the County of Riverside, the County of San Bernardino, and the County of San Diego. The bill would require the task force to hold its first meeting no later than July 1, 2022, and 4 times annually thereafter, as specified. The bill would require the task force to prepare and submit to the Legislature and to the department, on or before January 1, 2025, a report regarding the findings and recommendations of the task force, including a request to the Legislature to enact legislation in accordance with the findings and recommendations of the report.

SB 210 (Wiener) – Automated license plate recognition systems: use of data.

Outcome: Not Passed.

City Position: Oppose.

Recommended City Action: None.

Summary: Current law authorizes the Department of the California Highway Patrol to retain license plate data captured by license plate reader technology, also referred to as an automated license plate recognition (ALPR) system, for not more than 60 days unless the data is being used as evidence or for the investigation of felonies. Additionally, current law authorizes the department to share that data with law enforcement

agencies for specified purposes and requires both an ALPR operator and an ALPR end-user to implement a usage and privacy policy regarding that ALPR information. This bill would include in those usage and privacy policies a requirement that, if the ALPR operator or ALPR end-user is a public agency and not an airport authority, ALPR data that does not match a hot list be destroyed within 24 hours.

SB 278 (Leyva) – Public Employees’ Retirement System: disallowed compensation: benefit adjustments.

Outcome: Not passed.

City Position: Oppose.

Recommended City Action: None.

Summary: This bill would require the City to directly pay retirees and/or their beneficiaries disallowed retirement benefits. Under the Public Employees’ Pension Reform Act (PEPRA), a “disallowed benefit” is a retirement benefit to which both the employer and employee contributed but is no longer legal.

Under current law, once a benefit is determined to be a disallowed benefit for non-retirees, both the employer and the employee cease making future payments on the disallowed benefit, and past contributions from the employee are returned to the employee while the employer receives credit for its past contributions. For retired employees that received a disallowed benefit, CalPERS is responsible for obtaining the overpaid benefit.

SB 278 would abdicate CalPERS’ responsibility to properly calculate and administer retiree benefits. Furthermore, this bill would potentially create significant liability for the City related to retiree benefits.

SB 556 (Dodd) – Street light poles, traffic signal poles: small wireless facilities attachments.

Outcome: Passed.

City Position: Oppose.

Recommended City Action: Draft and submit a veto request to the Governor.

Summary: This bill would prohibit a local government or local publicly owned electric

utility from unreasonably denying the leasing or licensing of its street light poles or traffic signal poles to communications service providers for the purpose of placing small wireless facilities on those poles. SB 556 requires local governments to make space available to telecommunications providers without recognizing local authority to manage the public right-of-way. The bill creates ambiguity in the fees cities can charge for access to their infrastructure by not incorporating the Federal Communications Commission's adopted regulations pertaining to valid fees and fee collection.

SB 617 (Wiener) – Residential solar energy systems: permitting.

Outcome: Not passed.

City Position: Oppose.

Recommended City Action: None.

Summary: This bill would require the City implement an online automated permitting platform that verifies code compliance and instantaneously issues permits for solar and solar-plus-storage systems by 2023. The bill would require cities to amend a certain ordinance to authorize a residential solar energy system and an energy storage system to use the online, automated permitting platform.

Assembly Bill (AB) 259 (Davies) – Protecting Our Restaurants Tax Credit.

Outcome: Not passed.

City Position: Support.

Recommended City Action: None.

Summary: This bill would allow a credit under the Corporation Tax Law to a qualified taxpayer – an establishment that has received an alcohol license – in an amount equal to 50% of the annual fee paid or incurred by an owner or operator of the qualified taxpayer for an alcohol license. The tax credit would be applicable for taxable years beginning on January 1, 2020, but before January 1, 2022.

AB 259 would provide financial assistance to restaurants that have faced significant financial burden as a result of business closures and increased operational costs related to the COVID-19 pandemic.

AB 339 (Lee) – State and local government: open meetings.

Outcome: Not passed.

City Position: Oppose.

Recommended City Action: None.

Summary: This bill would require the City, for all public meetings, to provide the public with an opportunity to attend the meeting and comment during the meeting via a call-in or internet-based service option, both of which are required to have closed captioning services. Additionally, AB 339 would require the City to provide translation services for the 10 most-spoken languages in California other than English. If time restrictions are imposed during public comment, a person commenting in a language other than English would be required to receive double the amount of time as a person giving a comment in English. Under this bill, the City would be required to translate agendas and instructions for accessing the meeting to be translated into languages for which 5% of the City's population are speakers.

As currently written, this bill would impose a state-mandated local program on the City. If the bill is passed and signed into law, it would certainly have a financial impact on the City. To meet the standards of the bill, the City would have to retain translation services, closed captioning services, and may be required to purchase new telephone and internet services and equipment.

AB 602 (Grayson) – Development fees: impact fee nexus study.

Outcome: Not passed.

City Position: Oppose.

Recommended City Action: None.

Summary: This bill would require, on and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study to follow specific standards and practices, including, but not limited to, 1) that prior to the adoption of an associated development fee, an impact fee nexus study be adopted, 2) that the study identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is necessary, and 3) if the study is adopted after July 1, 2022, either calculate a fee levied or imposed on a

housing development project proportionately to the square footage of the proposed units, or make specified findings explaining why square footage is not an appropriate metric to calculate the fees.

AB 970 (McCarty) – Planning and zoning: electric vehicle charging stations: permit application: approval.

Outcome: This is an active bill in committee process that may be considered on or after the September 3, 2021, deadline to pass bills in accordance with Assembly Rule 77.

City Position: Oppose.

Recommended City Action: Draft and submit a veto request to the Governor if the bill is passed.

Summary: This bill would require applications to install electric vehicle (EV) charging stations to be deemed completed within five (5) business days by a local government if the application has not been deemed incomplete or a written correction notice has not been issued. Furthermore, the bill would require an application to install an electric vehicle charging station to be deemed approved if 20 business days after the application

Cal Cities Draft Resolution to the California State Legislature on Sales Tax Distribution

At its Annual Conference on September 22-24, 2021, Cal Cities will present to its membership a Draft Resolution calling on the California State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.

In early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales being entirely allocated to the jurisdiction in which the warehouse fulfillment center is located. Whereas previously, much of the sales tax would be allocated to a countywide pool based on point of delivery.

The Draft Resolution from Cal Cities calls on the California State Legislature to pass legislation that provides an equitable distribution of the Bradley Burns 1% local sales tax, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities, but also provides a fair share to cities that do not and/or cannot have a fulfillment center within their jurisdiction.

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September 14, 2021
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ATTACHMENTS:

- Cal Cities Draft Resolution on Sales Tax Distribution

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES
FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL
SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE
PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO
CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST
CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT
AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ the specific city where the warehouse fulfillment centers ~~is are~~ located as opposed to going into ~~a~~ countywide pools that ~~is are~~ shared with all jurisdictions in ~~those counties that County~~, as was done previously; and

WHEREAS, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~a~~ fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from ~~those that~~ centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by the ~~center~~, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Melissa Au-Yeung
Deputy City Manager

ISSUE: Resignation of Council Member Hunt - Discussion of Filling City Council Vacancy Pursuant to Government Code Section 36512

RECOMMENDATION: That the City Council take action by no later than November 13, 2021, to approve one of the following options to fill the vacancy in office created by Council Member Hunt's resignation:

1) Option 1. Appoint a qualified individual to fill the vacancy in office, either through a direct appointment or by following an application and interview process. If the Council fills the vacancy by appointment, the appointed person would serve on an interim basis until the November 2022 General Municipal Election and thereafter until the elected person has been qualified. The person elected to fill the vacancy at the November 2022 General Municipal Election would hold office for the unexpired balance of the term of office. Council Member Hunt was elected in November of 2020 for a four-year term that expires in November 2024. Therefore, following the completion of the appointed person's interim term, the person elected at the November 2022 General Municipal Election to fill the vacancy would serve until November 2024.

2) Option 2. Call for a special election. A special election must be held on the next regularly established election date not less than 114 days from the call of the special election, which is April 12, 2022. Calling for a special election requires the person elected to fill the vacancy to hold office for the remainder of the unexpired term. In this case, the person elected at the special election would hold office until November 2024.

City Council Member Resignation Discussion of Filling Council Vacancy

September 14, 2021

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SUMMARY:

Effective September 14, 2021, the Honorable Bill Hunt will resign his position as a City Council Member. As a result, the City Council must address the issue of filling the vacancy. Government Code Section 36512(b) requires the City Council to take action within 60 days from the commencement of the vacancy and sets forth the options that the City Council may choose to fill the vacancy. Under State law, the City Council has until November 13, 2021 to choose to either make an appointment or call for a special election, as discussed below.

On September 9, 2021, Council Member Hunt submitted a letter of resignation to the City Clerk,¹ which makes effective his resignation from the City Council on September 14, 2021. A copy of Council Member Hunt's September 9, 2021 letter of resignation to the City Clerk is provided as Attachment "A". An effective resignation creates a vacancy. The vacancy commences on the effective date of the resignation. There is no legal requirement for the City Council to take action to accept the resignation.

As a result, by operation of the terms of the letter submitted by Council Member Hunt to the City Clerk, his resignation is effective on September 14, 2021, creating a vacancy in his seat on the City Council. This announcement requires the City Council to consider the alternatives for filling the vacancy created by Council Member Hunt's resignation.

Under State law, if a vacancy occurs on a city council, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call for a special election to fill the vacancy. The City Council's decision on which procedure the Council will use to fill the vacancy must be made by no later than November 13, 2021, according to the statutory deadline. Therefore, Staff recommends that the City Council take action by no later than November 13, 2021, to approve the use of one of the following options to fill the vacancy: 1) fill the vacancy by appointment, either through a direct appointment or by following an application and interview process, or 2) call for a special election

BACKGROUND:

Government Code Section 36512 governs the filling of council vacancies for general law cities. Pursuant to Government Code Section 36512, if a vacancy occurs on a city

¹ Government Code Sections 1770(c) and 1750(f).

council, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call for a special election to fill the vacancy. Therefore, the City Council has two alternative courses of action to consider:

1. Appoint a Qualified Individual to the Vacant Office, Either Through Direct Appointment or by Following an Application and Interview Process.

a. Filling Vacancy by Appointment.

The City Council may take action to appoint a qualified individual to fill the vacancy. If the Council selects the appointment procedure, the Council may choose to a) make a direct appointment of an individual to the vacancy, or b) may wish to consider establishing an application and interview process. Although not legally required, it is common for cities to conduct an application and interview process in connection with the filling of a city council vacancy by appointment. There is no legal requirement that the Council use any particular method of selection for making the appointment. The Council does not, for example, have any obligation to appoint someone who ran in the last election; however, that is not precluded. It is common in such situations, however, for a council to notice the vacancy and to invite applications from interested residents.

If the Council decides to conduct interviews of qualified candidates following the completion of an application process, it must be done at a noticed public meeting. The appointment must be made during either a regularly scheduled meeting or a special meeting of the City Council. State law does not authorize closed session meetings for purposes of interviewing candidates or discussing city council vacancies. The decision to appoint must be made by, and no later than, November 13, 2021. Any person appointed to fill a vacancy possesses all of the rights and powers and is subject to all of the liabilities, duties, and obligations of the officer whose vacancy he or she fills.²

b. Term of Appointment.

In the event the City Council decides to proceed by way of appointment, the person appointed to fill the vacancy would hold office on an interim basis only, until the next General Municipal Election, which is scheduled for November 8, 2022. The person elected to fill the vacancy at the November 2022 election will hold office for the remaining two years of Council Member Hunt's term of office, until November 2024.

² Government Code Section 1777.

City Council Member Resignation Discussion of Filling Council Vacancy

September 14, 2021

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Council Member Hunt was first elected as a Member of the City Council in 2020 for a four-year term. As such, Council Member Hunt is still serving in the first half of his term of office. Under State law, if a city council decides to fill a vacancy by appointment for a council member who is serving in the first half of the term of office, the person appointed to fill the vacancy holds office until the next General Municipal Election is completed and the person elected to fill the vacancy has been qualified. The person elected to fill the vacancy holds office for the unexpired balance of the term.

Should the City Council appoint someone to fill Council Member Hunt's seat, the person appointed will serve on the City Council until the November 2022 General Municipal Election. Thereafter, the person elected to fill the vacancy will hold office until November 2024.

c. Appointment Process.

If the Council proceeds by way of a direct appointment, it may choose to simply appoint a qualified individual to the vacant office after deliberation and a majority vote³. Alternatively, the Council may wish to consider establishing a formal application and interview process, which may include addressing such issues as the following: a) public notice inviting applications for appointment to the Council; b) development of an application process, criteria for qualified candidates, and schedule, along with whether candidates should be required to complete and submit an application packet including a City application form, a questionnaire, and a California Fair Political Practices Commission Form 700, Statement of Economic Interests; and c) development of an interview process and schedule, including development of a set of questions for the Council to ask qualified candidates during scheduled interviews conducted at noticed public meetings. Again, there is no legal requirement that the Council use any particular method of selection; however, Staff does recommend that with either alternative, an established process should be followed.

2. Call for the Filling of a Vacancy by Special Election.

If the City Council decides not to fill the vacancy by appointment, then the Council must call for a special election to be held on April 12, 2022. Government Code Section 36512(b) provides that in the event a special election is called to fill a vacancy, the special election shall be held on the next regularly established election date not less

³ A person is not eligible to hold office as a city council member unless he or she is an elector of the City of Laguna Hills and a registered voter of the City.

than 114 days from the call of the special election.

The Elections Code provides established election dates on which an election can be lawfully held. Section 1002 of the Elections Code states, “Except as provided in Section 1003, notwithstanding any other provisions of law, all state, county, municipal ... elections shall be held on an established election date.” Elections Code Section 1000 sets forth the established election dates, which are:

- (a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The second Tuesday of April in each even-numbered year.***
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
- (e) The first Tuesday after the first Monday in November of each year.

The following statewide elections set forth in Elections Code Section 1001 would also be considered established election dates.

- (a) An election held in November of an even-numbered year.
- (b) An election held in June of an even-numbered year that is not evenly divisible by four and in March of each even numbered year that is evenly divisible by four.

Because 2022 is an even number that is not evenly divisible by four, the available established election dates are April 12, 2022; June 7, 2022; and November 8, 2022. State law requires the City Council to hold a special election to fill a vacancy on the next regularly established election date, which, in this instance, is April 12, 2022. If the City holds a special election, the person elected to fill the vacancy is only permitted to serve for the remainder of the unexpired term of Council Member Hunt’s term of office, until November 2024. An all mail-in ballot special election may be an option; however, as a practical matter that does not appear to be a conventional approach to filling a council vacancy and additional research would be required.

3. Alternatives.

The City Council may receive and file this report and postpone the decision on which

City Council Member Resignation Discussion of Filling Council Vacancy

September 14, 2021

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option to choose and continue this item to a future meeting or continue the item and direct staff to return with additional information. The City Council has 60 days from the effective date of the resignation, which is November 13, 2021, to either 1) fill the vacancy on an interim basis with an appointment, or 2) call for a special election.

FISCAL IMPACT:

Option 1: An appointment process to fill a vacancy on the City Council on an interim basis would not result in any increased fiscal impact beyond assigned staff time and associated legal review.

Option 2: If the City Council calls for a special election to be held on April 12, 2022, the anticipated cost of calling and conducting an election is \$141,252 - \$163,398.

ATTACHMENTS:

- Attachment A - Council Member Hunt's September 9, 2021 Letter of Resignation

Bill Hunt
City Council Member, City of Laguna Hills
 25292 Sheriff Rd., Laguna Hills, CA 92653

Melissa Au-Yeung, City Clerk
 Honorable Mayor & Members of the City Council
 City of Laguna Hills
 24035 El Toro Road
 Laguna Hills, California 92653

September 9, 2021

Mayor Erica Pezold and Members of the Laguna Hills City Council,

Effective September 14, 2021, I hereby resign from the Laguna Hills City Council. I have been truly blessed to have served Laguna Hills as a Parks and Receptions Commissioner and for the short time I was able to serve on the City Council. The Bible teaches us, "To every *thing there is* a season, and a time to every purpose under the heaven". Over the last few months numerous factors in my personal life have led my wife Debbie and I to decide it is time for us to move from California and on to the next chapter in our lives. I have been truly blessed to live in this state since 1984, and in Laguna Hills since 1992. I met and married the love of my life here, raised our four children here in this city, and served Orange County for over two decades as an Orange County Deputy Sheriff.

All of my interactions with the city staff, going back for more than 20 years, has been nothing short of professional. I commend them all for their dedication and commitment, and thank them for their service to this city.

Finally I want to thank my fellow council members for their leadership, patience and support. I leave knowing the city of Laguna Hills is in good hands. My fellow council members are truly committed to the best possible future for this city and will fight hard to ensure a bright future for Laguna Hills. Our prayers will be with you as we move on to the next chapter of our lives, and I ask for your prayers, as well.

May God Bless you, Laguna Hills, and America!

Respectfully Submitted,



Bill Hunt

CC: Ken Rosenfield, Interim City Manager
 Greg Simonian, City Attorney



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: David Reynolds
Deputy City Manager/Community Services Director
ISSUE: Renovation of the "LH" on the Hill Monument

RECOMMENDATION: That the City Council provide direction on the final design and renovation of the "LH on the Hill" monument and direct Staff to prepare plans and specifications and a budget amendment to implement the project.

SUMMARY:

Previously, Staff engaged the public to provide input on the design of "LH on the Hill" and also worked with a professional landscape architect, Richard Fisher Associates, on design options. Seven proposals were received from the public. These proposals and Mr. Fisher's design options were presented to the Parks and Recreation Commission on August 4, 2021. Thank you, letters were sent to the seven proposers to acknowledge their input, and to convey appreciation for their participation in this process. On August 24, 2021, the City Council was presented with a staff report that highlighted the "LH on the Hill" proposals from the public, the LH design concepts from Richard Fisher Associates, the Parks and Recreation Commission's recommendation, and Staff's recommendation. At the August 24, 2021, City Council meeting, the City Council approved Option A but directed Staff to bring back more details on the design for such items as coloring of letters, size and layout of the letters, and lighting of letters. In response to the City Council's direction, this report is provided for a further review of the design concept. The revised design modifications are attached to this report as Exhibit 1.

BACKGROUND:

At the August 24, 2021, City Council meeting, Staff and Landscape Architect Richard Fisher presented options to the City Council on replacing the “LH on the Hill” monument located southerly of Alicia Parkway across from the Laguna Hills Community Center and Sports Complex. In the discussion about the readability and general visibility of the concrete-paver letters as proposed at the August 24th City Council meeting, the direction provided by the City Council was to explore the enlargement of the new lettering, review of the lettering layout design, further evaluate the effective level of illumination by the proposed solar-powered lighting system, and provide further graphic simulation of what the lettering would look like from the Laguna Hills High School (LHHS) Stadium Grandstands. The revised design modifications are attached to this report as Exhibit 1. The August 24th Staff Report is attached as Exhibit 2 for information.

Professional Landscape Architect Richard Fisher Associates has conducted further design modifications on the Conceptual Plan presented on August 24th, and summarizes these modifications as follows:

- Enlarged the concrete-pad lettering from 4’ wide to 8’ wide and from 40’ tall to 52’ tall. The overall layout has been modified from a 36’ X 58’ footprint to a new 64’ X 74’ footprint. This enlarges the layout by a factor of 2.25 times larger than previously presented.
- Prepared three images of the lettering; one representing all white letters, a second representing black center and white border letters, and a third representing the gold with black trim, in response to the option of the lettering matching the LHHS logo color scheme.
- Modified the lettering layout from a connected-letter design to the separation of the two letters by an 8’ spacing between letters.
- If white lettering is the selected choice of the City Council, the concrete pad components can be painted with a high-reflective white paint to increase the level of visibility from a significant distance away.
- Modified the conceptual design of a solar-powered lighting system, to include:
 - Increased dual pole light concept to include (2) 30’ high poles to both illuminate the enlarged lettering layout and increase the illumination level.

-
- Adding glare-control shields to the lighting design to protect the residents above the Letter Display from light glare.

The latest modifications by Mr. Fisher led him to develop the new layout as represented in the attached graphics. The proposed lettering design now indicates using (4) 24"X24" concrete stepping pads for an 8' letter width (rather than the 4' width previously presented) and elongating the length of the letters from 40' to 52'. The overall lettering now uses (380) 24" X 24" concrete pavers, in lieu of the earlier concept using (144) of the concrete pavers.

Following direction to Staff, this project will be returned to the City Council, at a future date, for approval of the construction plans, a budget amendment and authorization to go to bid. The project construction is anticipated to take a period of 16 weeks.

FISCAL IMPACT:

This renovation project is currently unfunded and a future budget amendment will be required. It is anticipated that costs will be approximately \$30,000 for the lettering installation. The inclusion of a solar-powered illumination system will cost approximately \$35,000. The total necessary budget for this project, including estimated design services, construction management and construction is on the order of \$85,000. The anticipated maintenance to keep the area clear of weed overgrowth and potential removal of graffiti should be less than \$500 per month.

ATTACHMENTS:

- Exhibit 1 - Design Consultant's Concept Images and Site Plans
- Exhibit 2 - August 24 2021, Staff Report

EXHIBIT 1

Design Consultant's Concept Images and Site Plans



ENLARGEMENT

WHITE CONCRETE
PAVERS



LAGUNA HILLS HILLSIDE DISPLAY | RENDERING

LAGUNA HILLS, CA



ENLARGEMENT

BLACK W/ WHITE TRIM
CONCRETE PAVERS



LAGUNA HILLS HILLSIDE DISPLAY | RENDERING

LAGUNA HILLS, CA



ENLARGEMENT

GOLD W/ BLACK TRIM
CONCRETE PAVERS



LAGUNA HILLS HILLSIDE DISPLAY | RENDERING

LAGUNA HILLS, CA

EXHIBIT 2

August 24, 2021, Staff Report and Attachments:
“Renovation of the LH on the Hill Monument”



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: August 24, 2021
TO: Mayor and Council Members
FROM: Dan Meehan
Community Services Superintendent
ISSUE: Renovation of the "LH" on the Hill Monument

RECOMMENDATION: That the City Council approve Option A for the renovation of the LH on the hill monument and direct Staff to prepare plans and specifications and a budget to implement the project.

SUMMARY:

In response to the significantly deteriorated large "LH" letter display monument, on the hillside southerly of Alicia Parkway and opposite the Laguna Hills Community Center & Sports Complex, this report is provided as a summary of recent proposals and study activities to renovate the display into a community monument which will have a much longer lifespan. On August 4, 2021, this item was presented to the Parks and Recreation Commission to present the LH ideas as submitted by the public in response to a City call for suggestions, to review recommendations of a Professional Landscape Architect and to solicit input from Commission members. The Commission recommended two options for the renovation of the LH on the hill monument be forwarded to the City Council for review and selection.

BACKGROUND:

In the Spring of 2015, Eagle Scout candidate, Daniel Green, completed his "LH" project of installing these two letters on the open space hillside on the southerly side of Alicia Parkway and opposite the Community Center. The installation provided the letter layout measuring 58 feet in height and a total width of 36 feet. The letters were constructed of white gravel infill surrounded by wood borders to stabilize the gravel material. The LH

Renovation of the "LH" on the Hill Display

August 24, 2021

Page 2

was visible from the Laguna Hills High School (LHHS) campus. This project became a source of pride in the community. Now, six years later, this display has deteriorated beyond recognition or repair.

The City recently initiated a process of community input for design ideas, combined with a professional review and collaboration, to seek a more permanent solution to the letter display which could become once again visible from the Community Center and Sports Complex, from Laguna Hills High School, and from passers-by.

In response to the call for "LH on the Hill" monument suggestions, the City received seven (7) submittals; six from local city residents and one from a professional sign company. Attached to this staff report is a spreadsheet which briefly summarizes the individuals' proposed materials and suggestions for this project to replace the current deteriorated LH letters. These submittals varied from relatively simple installations (very similar to the original project), to elaborate electronic lighted letters, and to large vertical wood letters similar to the "Hollywood Sign".

Half of the proposed design concepts would require a significant financial commitment by the City for the respective installations. Several installations would require the inclusion of some form of a security system to protect the elaborate equipment from vandalism, as this site is well-removed from routine observation, particularly at night. A very creative suggestion would include a significant complex of highly-developed trails, water features, entry steps, botanical garden, and a parking lot to support this contributor's anticipated traffic of interested public members visiting this site. Several of the suggestions would require electrical services, some would also require recycling water systems, and most would require regularly-scheduled landscape maintenance.

Utilizing the practical criteria of an LH monument project that would have a low initial cost and limited ongoing maintenance requirements, the City retained Professional Landscape Architect Richard Fisher Associates to evaluate and rate each community member provided design concept. Although creative and interesting, the subsequent evaluation of the seven submittals all fell short of meeting the two criteria (low initial cost and limited ongoing maintenance). As a part of the presentation of this item to the City Council, the Richard Fisher will be prepared to respond more specifically to any questions which City Council members may have relative to this evaluation of community submittals.

The review by Mr. Fisher, including consultation with a contractor, led him to develop two recommendations as follows: 1) Option A, using 24"X24" concrete stepping pads;

Renovation of the "LH" on the Hill Display

August 24, 2021

Page 3

and 2) Option B, using 4'X8' sheets of marine plywood. Please see the attached graphic renderings of these two options.

These options were presented to the Parks & Recreation Commission. The subsequent Commission action was to bring forth Option A but with two different methodologies for renovation of the Hillside Display and an Option B. Option A is further described as follows:

- Option A: Following site clearing and fine grading of the original site, install an underlying aggregate base, followed by installing tightly-joined 24"X24" pre-cast concrete pads to create four feet wide letter widths throughout the LH monument display.
 - This recommended Option would include the uniform use of a series of light grey "Linen" colored 24" X 24" concrete pads, which, following the installation of the concrete modules, would be painted with a reflective white paint, to optimize the visibility of the lettering beyond sunset hours. In the event of graffiti painting of the letters over the life of the display, the concrete pads would simply be repainted to cover any graffiti vandalism. Option A methodology will be intact for a significant number of years, with little or no maintenance.
- Option A-1: In addition to the installation of the concrete pad letters, the Parks & Recreation Commission's recommendation is that the City Council consider whether to illuminate the Hillside Display. The addition of lighting would significantly increase the evening readability of the "LH" from the LHHS campus but at an additional cost.

From a very preliminary evaluation, it appears that the installation of an underground electrical service-based illumination system would be in the range of \$200,000 or more. Another approach could be to design and install a solar-powered illumination system, which appears to be in the cost range of \$15,000-\$20,000, but will likely provide less illumination levels.

The Parks & Recreation Commission also recommended for City Council consideration, the following Option B:

Renovation of the "LH" on the Hill Display

August 24, 2021

Page 4

- Option B: The second alternative methodology for City Council consideration is to instead approve the option of the proposing Eagle Scout, Josh Hayden, where he proposes to construct the lettering display of artificial field turf. For his Eagle Scout project, his proposal is to use black artificial turf for the letters, with white artificial field turf borders.
- Mr. Fisher has expressed a concern that this approach will have a similar lifespan as the original installation, and contracted staff will be required to provide maintenance services on this display on a reoccurring basis.

Following direction to Staff, this project will be returned to the City Council, at a future date, for approval of the Construction Plans and authorization to go to bid. Once approved for rehabilitation, the project re-construction is anticipated to take a period of 30 days, if no illumination system is included. With the addition of lighting, a longer period will be required due to the ordering and manufacturing of the lighting system.

FISCAL IMPACT:

This Renovation Project is currently unfunded. It is anticipated that costs will be approximately \$15,000 for Option A and minimal funding and/or staff support needed for Option B. In addition, the inclusion of an illumination system will cost between \$20,000 (solar-powered) and \$200,000 (for underground electrical-powered) service.

ATTACHMENTS:

- Attachment 1 - Proposals from Community Members
- Attachment 2 - Design Consultant's Concept Images and Site Plans

Attachment 1 - HILLSIDE DISPLAY - CITY OF LAGUNA HILLS
PROPOSALS FROM COMMUNITY MEMBERS

Submittal	From	Date	Proposed Design
1	Debbie Lenkowski	6/7/2021	Elevated Letters (like Hollywood Sign), of white painted wood. Paint wood once each year.
2	Lia Peters	6/16/2021	Stones that glow in the dark, after absorbing sunlight during the day. Surround with new wood borders
3	Patrice Mills*		Light up sign with solar-powered lights
4	Poly Bocchino*		Use white tiles held in place. Use the school logo.
5	Josh Hayden	6/24/2021	(As Eagle Scout Project) Create letters using artificial field turf. Letter body in black; with white border. Secure with landscape spikes.
6	Neal Patel	6/2021	Letters of painted wood planks. Lettering Display would be one component in a complex of parking lot, hiking trail, water fountain, botanic garden.
7	Kevin Kondrot, Day One Services	7/6/2021	Black Solar Panels (black during daylight; changing colors at night). Letters elevated 30" above grade. 90' diameter gravel bed of white quartz rock below lettering, secured with geo stabilizing grid over geo fabric to prevent weed growth.

* These project comments were listed on the City's Facebook page. No proposal was provided.

Proposals Received



Debbie Lenkowski

Dan Meehan

From: Rec Dept
Sent: Tuesday, June 22, 2021 8:41 AM
To: David Reynolds
Cc: Dan Meehan
Subject: FW: Laguna Hills - LH

From: Debbie Lenkowski <debbie.lenkowski@yahoo.com>
Sent: Monday, June 7, 2021 4:06 PM
To: Rec Dept <recdept@lagunahillsca.gov>
Subject: Laguna Hills - LH

To Who it may concern:

I believe the letters LH should be elevated similiar to the Hollywood sign in LA. Big white letters made of wood, painted white to stand up.

Better to maintain than on the ground where weeds can grow over the letters. Low maintenance too. Just spray white once a year! They can stand high above the weeds!

Sincerely,
Debbie Lenkowski
Laguna Hills Resident

[Sent from Yahoo Mail on Android](#)

[[[External E-mail]]]

ATTENTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF LAGUNA HILLS. USE CAUTION WHEN OPENING ATTACHMENTS OR LINKS.

Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)

Lia Peters

Dan Meehan

From: Rec Dept
Sent: Tuesday, June 22, 2021 8:41 AM
To: David Reynolds
Cc: Dan Meehan
Subject: FW: LH On The Hill
Attachments: Screenshot 2021-06-16 1:25.27 PM.png

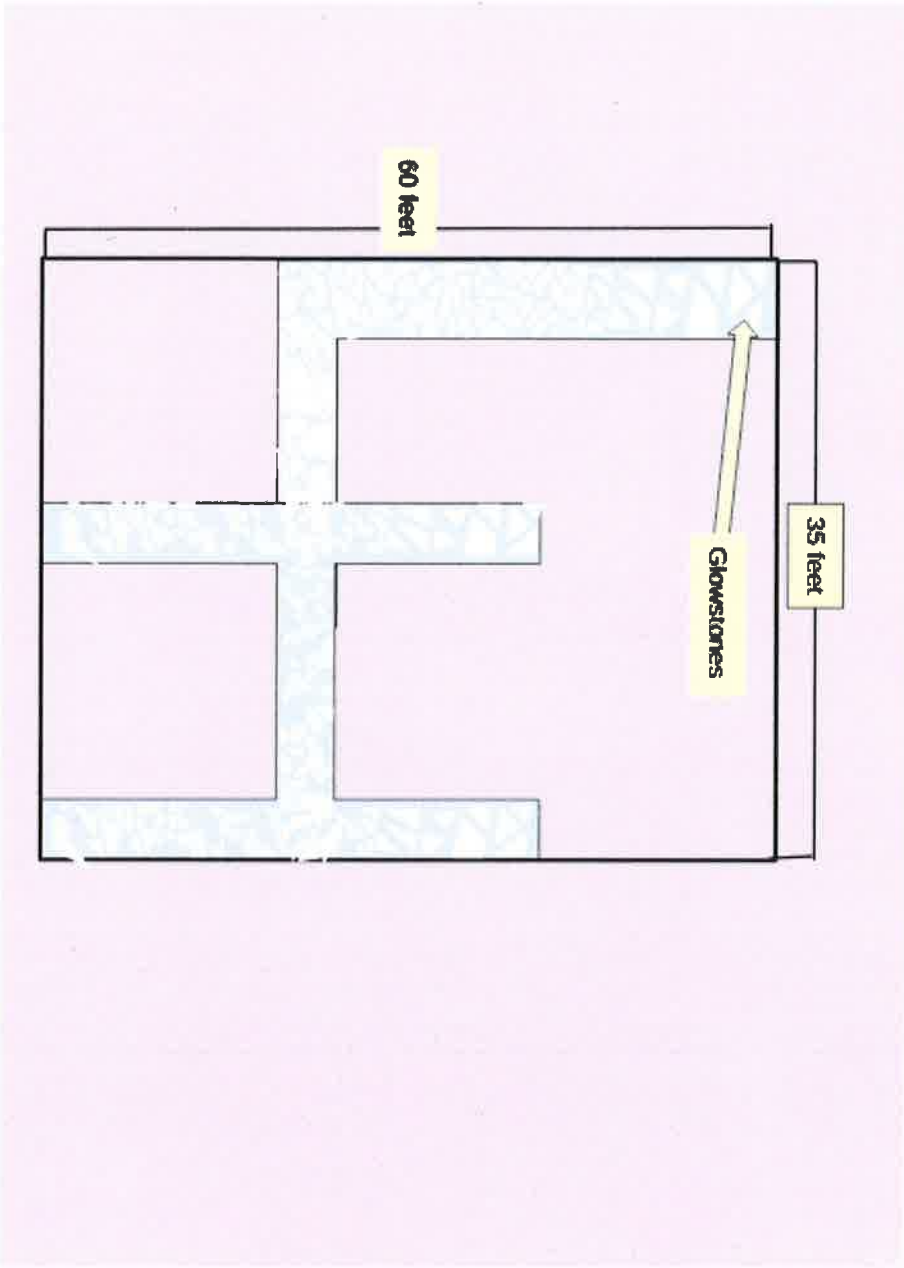
From: Lia Peters <wolfhowler808@gmail.com>
Sent: Wednesday, June 16, 2021 1:40 PM
To: Rec Dept <recdept@lagunahillsca.gov>
Subject: LH On The Hill

My idea is to replace the wood borders with new ones, take out the old stones and fill the wood borders with stones that glow in the dark. That way people can see the stones in the daytime and at night. The stones will receive sunlight so at night they will be bright enough to see. The color of the stones (when glowing at night) should be a light color whether it is white, yellow, or light blue. Since the brightness of the stones at night will depend on the sun, no utilities will be needed. The dimensions can be the same-35x60; the model is attached. For any questions, please contact me via email at wolfhowler808@gmail.com
Thank You

[[[External E-mail]]]

ATTENTION: THIS EMAIL ORIGINATED FROM OUTSIDE THE CITY OF LAGUNA HILLS. USE CAUTION WHEN OPENING ATTACHMENTS OR LINKS.

Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)



Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)

Josh Hayden

“LH” on the Hill - Proposal

**Josh Hayden
Boy Scout Troop 773
Laguna Niguel, CA**

**Contact:
3 Coralwind
Aliso Viejo, CA
jrhayden444@gmail.com**

June 24, 2021

Note: I will be on a Boy Scout backpacking trip (Philmont) from June 25 returning July 3. I will not have access to email or phone during this trip. Please send any communication or questions to my email contact and I will reply immediately upon my return.

Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)

Section 1: Abstract and Background

In the Spring of 2015, Eagle Scout candidate Daniel Green completed his “LH” project on Alicia Hill, with letters on the hillside measuring 60 feet in height and 35 feet in width. The letters were constructed using white decorative rocks with a wood border. After nearly six years, the borders surrounding the rocks have deteriorated and the letters have shifted on the hillside. We are looking for the next vision of the “LH” on the Hill and are requesting your input on a new design for the “LH” on the Hill to promote Laguna Hills community pride.

The project location is on the hill behind Ralph’s in the Alicia Town Center on the corner of Alicia Pkwy and Paseo de Valencia. There is currently no access to electricity or water at this location.

The original LH sign integrated the horizontal part of the letter “L” into the horizontal part of the letter “H.” (See Fig. 1)



Fig 1. Picture of the original “LH” sign from OC Register article dated July 8, 2015

Section 2. Introduction

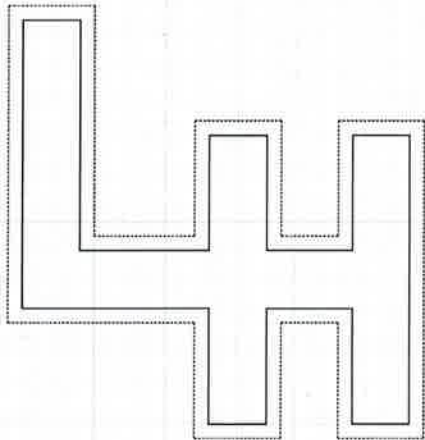
This proposal will also be my Eagle Scout project, keeping this sign a Scout tradition.

The original "LH" letters were composed of perishable borders surrounding decorative rocks. Natural elements have deteriorated the borders and the letters have shifted on the hillside. The key goals are to a) determine a desired design for the "LH" letters, and b) determine materials that will best withstand natural elements and be cost effective.

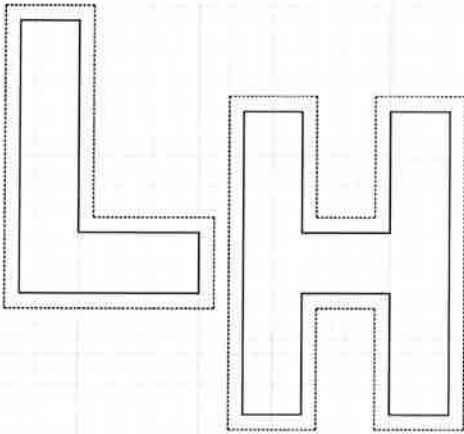
Section 3. "LH" Design and Materials

Three design options are presented in this proposal for selection by the Commission and City Staff. Each design encompasses nearly the same amount of space and material requirements, meaning impact to planning, cost, and labor does not differ from one another.

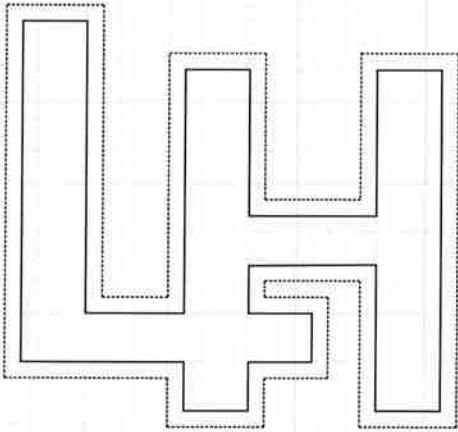
**Design 1. Original "LH" (similar to football field logo)
(each grid square is 2 square feet)**



Design 2. Distinct “LH” Letters
(each grid square is 2 square feet)



Design 3. Laguna Hills High School logo “LH”
(each grid square is 2 square feet)



Once a design is selected I will stake out the measurements on the hillside and take photos to make sure the size and spacing of the letters is visible and that it looks like an “LH.”

Materials: I propose to create the letters using artificial field turf. Using turf will handle the weather elements better and be resistant to erosion and weed growth. Black and white letters will create good contrast against the gold background of the hillside. Example turf materials can be found at :<https://www.atxturf.com/copy-of-colored-turf>



Section 4. Scope of Work

Removal of existing materials: Before starting the project I would need to take a couple hours to dig out the plastic barriers that are currently there and dispose of them. The old rock should not need to be removed. Disposal would involve carrying the plastic barriers up the hill to a rented dumpster located in the subdivision. A local resident would agree to have the dumpster located in front of their house for a weekend.

New Materials and Installation

Purchase and delivery of black and white field turf and landscaping spikes would be arranged through fundraising and donation. Delivery of materials would be at the base of the hill and then carried up the hill to the installation location. I would lay out black turf to show the letters and then put a white turf border around the black letters as shown in the images above.

All labor would be volunteer from fellow boy scouts and friends/family. No water or electricity will be needed for installation or ongoing maintenance of the project.

Neel Patel

Laguna Hills "LH" Sign Contest Entry

Neel Patel, June 2021

General Description:

This contest entry consists of various proposed future elements in addition to the LH Sign component at the site. The plan is to develop the site as a future destination for both residents and non-residents of Laguna Hills with amenities unique to the South County region. Details follow, but a Proposed Site Plan has been provided on Page 4 as well as possible funding sources afterwards.

Initial Compulsory Components:

Shopping Center Connection: Pictured on Page 4 below is the proposed site plan of the area. Starting from top of the graphic, I propose a series of steps leading from the Alicia Town Shopping Center (Ralphs) to the existing hiking trail (depicted as a dark green line). This provides visitors easy access to coffee shops, bubble tea, dining options, etc. in the area. Furthermore, the connection provides an opportunity for economic development in the immediate area which could result in a *better* retail mix at the center in the future and marginal sales tax benefits to the city. Due to economic benefits for the shopping center, perhaps costs of constructing this aspect of the plan can be shared or borne by the shopping center owner and Ralphs. Finally, I'd suggest a security camera in the area to discourage vandalism of the area.

Hiking Trail (new additions): Pictured on Page 4 below in an orange line, is a proposed hiking trail path that will connect the existing trail, Alicia Town Shopping Center, LH Sign, and the various other elements proposed in this contest entry. The chosen path roughly follows the topography (Page 5) of the hillside with gentler climbing and descending to avoid user fatigue. I propose initially constructing the hiking trail addition as a dirt path to save on initial costs with the option of converting to a gravel or wood chip path in the future. Furthermore, trees can be planted in certain parts of the trail to provide shade and relief in the summer months.

LH Sign: The new LH Sign will be situated at roughly the same location as the existing LH Sign. See "LH" in white depicted in the proposed site plan (Page 4). The sign would be constructed of wooden planks embedded in the hillside in block lettering format to allow residents and high school students an easy medium to re-paint in various themes/colors. With the signage being a considerable distance from the street, motorists wouldn't be concerned with the exact material of the LH Sign.

Additional Future Components:

Water Fountain and Steps: Just below the LH Sign and right above the hiking trail (in orange), I'm proposing a water fountain feature that can serve as the "heart" and meeting point of this overall plan. It would mimic the water features in the Community Center and City Hall.

Furthermore, it would add a unique amenity not found in our neighboring cities. I've attached a few examples of what I envision the fountain and surrounding steps to look like. In addition, the stonework on the steps and fountain would reflect the colors, tones, and textures of the Community Center Complex. The fountain head and steps would have nighttime lighting to showcase the area when the sun sets. Finally, motion activated spotlights and security cameras could be installed to discourage certain activities afterhours.

Examples:



← Bunker Hill Steps in Los Angeles, CA



← Philadelphia Art Museum Steps Fountain



← Fullerton, CA Hillcrest Park (This was my main inspiration for this part of proposal)



← A simpler fountain style such as this could be used

Moulton Niguel Water District (MNWD) Botanical Garden: Proposed in the purple shaded area of the graphic is a community botanical garden with drought-tolerant plantings from around the world. The garden would operate as a venture between a suitable future non-profit organization, the City of Laguna Hills, and the Moulton Niguel Water District to serve as both a recreational destination and educational tool for residents (on water wise landscaping). Inspiration for this component came from the Niguel Botanical Preserve. Hopefully with drought tolerant plantings, MNWD could supply some of the monies needed for recycled water infrastructure and some of the plantings in the area. The Botanical Garden can operate as a volunteer led initiative to defray costs to the city after an initial investment.

Existing Trail Enhancement: Pictured as a dark green line in the site plan, the existing uphill trail in the area could be enhanced. Inspiration was taken from the Torii Gates in Kyoto, Japan to create a “similar” aesthetic on the hillside following along the existing uphill path on the site.



← Construct these archways every 6-7 feet up the hillside on the existing pathway and then plant Star Jasmine or Red/Pink Bougainvillea to encase the gates in foliage.



← Torii Gates in Kyoto, Japan

Paid Metered/Free Parking on the Site: Over time, if most/all of the above elements of this plan are implemented, there will be measurable parking demand in the area. I’ve proposed a parking lot that is either metered-paid parking or free to use depending on maintenance costs to the city. The newly constructed trail could end/start at the parking depicted in light green on the site plan. Finally, a security camera can enhance safety in the area. There could be a board posted at the trailhead entrance with information about the history and creation of this site along with names of potential sponsors/donors.

Proposed Site Plan Pictured:**Possible Funding Mechanisms for the Various Elements Proposed:****1) Orange County Community Foundation: Partnership for the Care of our Environment Grant**

Amount: \$5000-\$10000

Applications Due Around October 2021

Contact: Austin Muckenthaler at amuckenthaler@oc-cf.org**2) Recreational Trails Program (State Grant)**

Amount: Match Requirement: The maximum amount of RTP funds allowed for each project is 88% of the total project cost. The applicant is responsible for obtaining a match amount that is at least 12% of the total project cost.

Due February 2022

Website: http://www.parks.ca.gov/?page_id=24324**3) Future: Possible Round 5 of Statewide Park Program**

The City of Fullerton used this grant to construct the Hillcrest Park Fountain and surrounding area. This was a tremendous opportunity for that city given fiscal issues similar to Laguna Hills.

- 4) Future City Capital Improvement Project Funding
- 5) Private Individual or Corporate Donors

Topographic Map of the Area used for the New Trail Path Determination:



Kevin Kondrot



Proposal Laguna Hills City Sign

Project	"LH" on the Hill City of Laguna Hills 25555 Alicia Pkwy Laguna Hills CA 92653 Art installation on hill behind Ralph's in the Alicia Town Center
Proposal	Design / Build and Install art installation Installation to consist of the letters "L" and "H" in a staggered connected design Letter construction shall be Aluminum frame proximity 5 feet in width and 8 inches thick Overall height of letters is 60 feet, width is 60 feet Surface shall appear black in the day time and illuminated at night, black solar panels and special acrylic that is black during day and light passing at night allows the letters to illuminate and change colors at night. Letters shall be supported 30 inches above the ground on posts, to create a natural shadow during the day and back lighting at night. Underside of the letters shall have down lighting to illuminate the gravel below. Ground material shall be A 2+ inch deep layer of crushed rock shall be applied to hill to form 90 foot diameter circle under the letters. Rock shall be white quartz quarried from Northern California. Rock shall be held in place using geo stabilizing grid to anchor rock in place on hill side. Geo fabric shall be installed under the rock to prevent any plant growth or dirt migration.



Proposal Laguna Hills City Sign

Concept

Design Concept

The gravel base in the shape of a circle represents the "O" in One Town, and is the support for the Letters , representing the support of the town.

The white surface provides a reflecting surface for day light and LED lighting at night.

The letters are raised to allow shadows to be cast during the day, changing shape and location during day and seasons. During the night the elevation allows for lighting on the underside of the letters to illuminate the rock below.

The surface of the letters is black in appearance during day and is comprised of solar panels and a unique lighting element.

The solar panels charge integrated batteries during the day, making this a self contained installation that does not require site power.

The lighting allows for visibility at night, color changing lighting on both the face and underside of the letters provide adjustable lighting options.

An integrated controller pulls in weather data to calculate dynamic lighting displays each night, seasons / holidays each have unique lighting as well, example for Christmas red and white to match community center, for July 4th red,white and blue.

On the fly remote changes can also be made for special occasions or events.

Install

The installation can be single sourced by Day 1

A mini excavator accessing the site from the fire road will provide brush clearing, hole augering and transport of the letter elements and approximately 62 tons of rock.

No other resources would be required.

Life span

the design life of the install would be 10+ years



Proposal Laguna Hills City Sign

quarterly maintenance being cleaning of letter surface / solar panels
every 5 years or so batteries would need replaced
rock base will need refreshed / replaced at or around 10yr mark
letters should last longer

Site View

To scale view of proposed install on site location



**Proposal Laguna Hills City Sign**

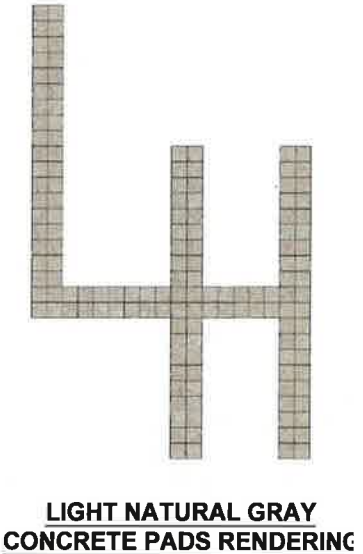
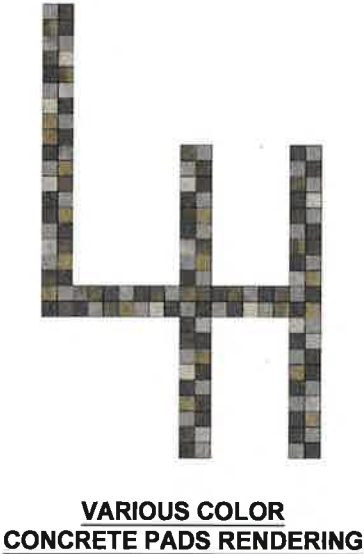
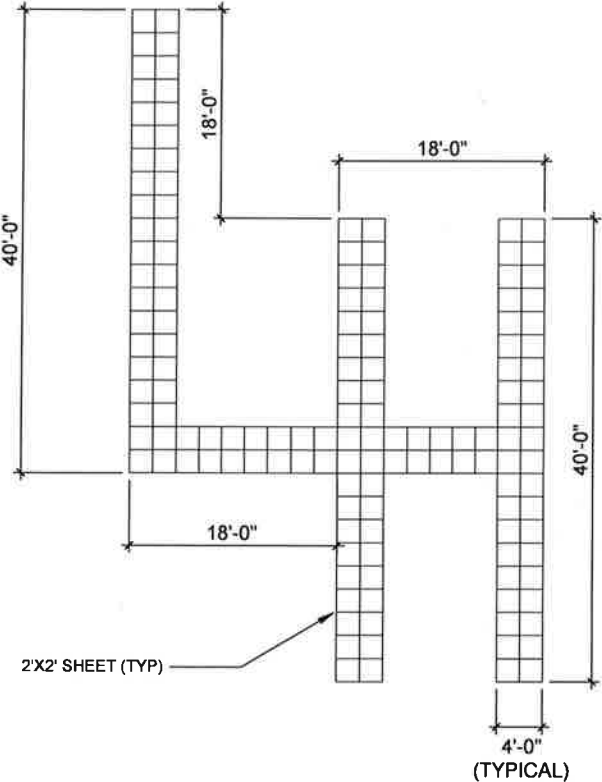
Rock Example**Contact Info**

Kevin Kondrot
Day 1 Services
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Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)

Attachment 2

Design Consultant's Concept Images and Site Plans

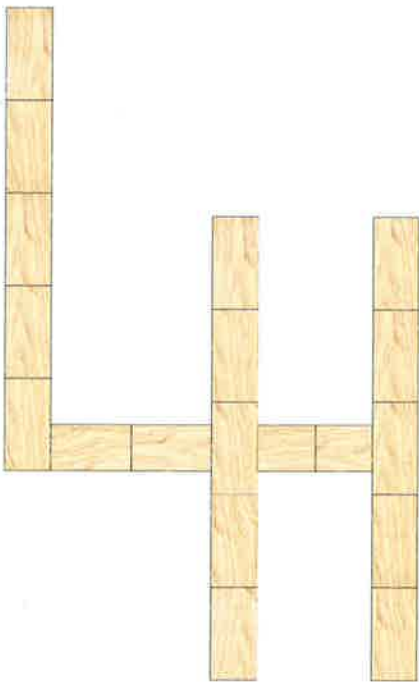
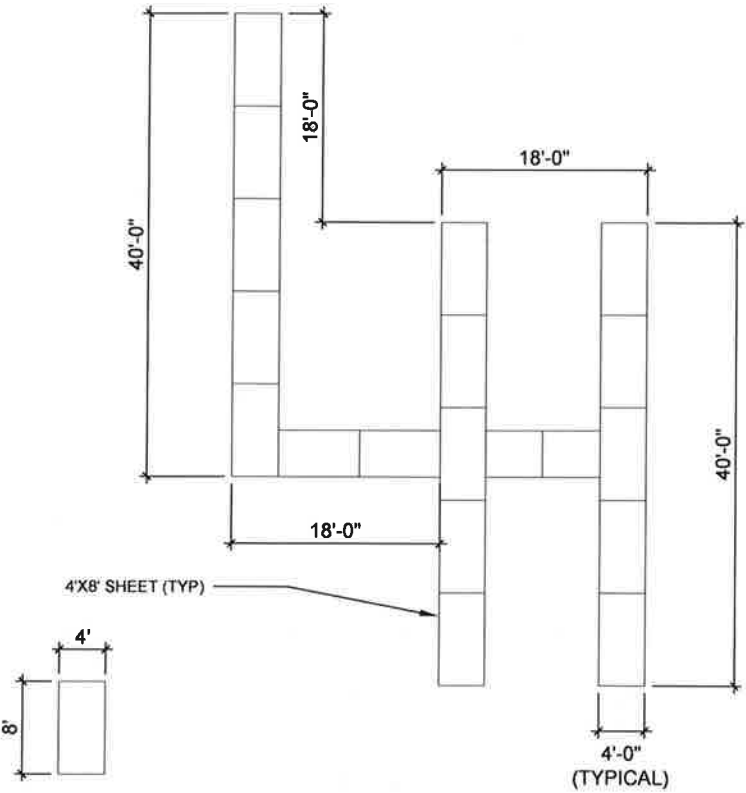


LAGUNA HILLS HILLSIDE DISPLAY | OPTION A

LAGUNA HILLS, CA

SCALE: 1/8" = 1'-0"

Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)



PLY WOOD SHEET RENDERING

LAGUNA HILLS HILLSIDE DISPLAY | OPTION B

LAGUNA HILLS, CA

SCALE: 1/8" = 1'-0"

Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)



**LIGHT NATURAL GRAY
CONCRETE PADS RENDERING**

**VARIOUS COLOR
CONCRETE PADS RENDERING**

PLY WOOD SHEET RENDERING

LAGUNA HILLS HILLSIDE DISPLAY | RENDERINGS

LAGUNA HILLS, CA

Attachment: Exhibit 2 - August 24 2021, Staff Report (2568 : LH on the Hill)



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Janice Reyes
Finance Director

ISSUE: Utilization of State and Local Fiscal Recovery Funds as Authorized Under the American Rescue Plan Act

RECOMMENDATION: That the City Council appropriate the City's full allocation of Coronavirus-related State and Local Fiscal Recovery Funds, as authorized under the American Rescue Plan Act, for: 1) the provision of government services to the full extent of the reduction in revenue (revenue loss) due to the COVID-19 public health emergency; and 2) to respond to the public health emergency caused by COVID-19 or its negative economic impacts.

SUMMARY:

The American Rescue Plan Act (ARPA), signed into law on March 11, 2021, established the Coronavirus-related State and Local Fiscal Recovery Funds (SLFRF) program. This program is intended to provide support to state and local government's responses to the economic and public health impacts of COVID-19 and assist efforts to mitigate impacts on communities, residents, and businesses. The City's allocation of SLFRF is \$7,465,377. The first half payment of these funds to the City, \$3,732,688, (hereinafter \$3.7 million) was received in mid-July 2021 and the second half payment is expected in July 2022. The \$3.7 million received has been accounted for in a new Special Revenue Fund and is pending a decision by the City Council on the use of these funds in accordance with the associated regulations. The funds must be obligated by the City Council by December 31, 2024, and expended by December 31, 2026. The City is required to submit project and expenditure reports annually on the use of SLFRF to the United States Department of the Treasury beginning October 31, 2021.

On June 24, 2021, the Treasury Department issued an Interim Final Rule (IFR) with preliminary guidance, as well as Frequently Asked Questions, to assist jurisdictions in interpreting the policy language and outlined several eligible uses for the funds as further discussed in the Background. The allowable uses of these funds, amongst others, is for the replacement of City lost revenues as a result of the COVID-19 pandemic. The appropriation of the first tranche SLFRF funding for replacement of lost revenues provides the City with the most flexibility in the use of the value of these funds for any other government purposes. If the City Council obligates funds for government services, it would relieve available resources in the General Fund that could be used for other potential projects and initiatives. Hence, it is Staff's recommendation that the City Council direct the use of the SLFRF allocation: 1) for the provision of government services to the extent of the revenue loss due to the COVID-19 public health emergency; and 2) to respond to the COVID-19 public health emergency or its negative economic impacts. This recommendation is intended as an initial step for the required compliance reporting to the Treasury Department and the City Council will have ample opportunities to adjust the use of these funds upon receipt of the second tranche of SLFRF payment as further described herein.

BACKGROUND:

The American Rescue Plan Act (ARPA), which was signed into law by President Biden on March 11, 2021, is a nearly \$1.9 trillion coronavirus relief bill. ARPA provides a total of \$350 billion in Coronavirus-related State and Local Fiscal Recovery Funds (SLFRF) to assist eligible state and local governments with meeting their present needs in responding to the COVID-19 emergency and building the foundation for a stronger, more equitable economic recovery. Funds allocated to California include \$26 billion to the State, \$7.7 billion to counties, \$7 billion to metropolitan cities, and \$1.2 billion to small cities with populations under 50,000. Funding allocations were based on population. SLFRF funds must be used within certain limits prescribed in law and U.S. Department of the Treasury regulations. The Guidance documents issued by the United States Department of Treasury explaining these regulations are attached as listed below:

- ATTACHMENT A-1 "Interim Final Rule" (IFR)
- ATTACHMENT A-2 "Fact Sheet"
- ATTACHMENT A-3 "Frequently Asked Questions" (FAQs)
- ATTACHMENT A-4 "Compliance and Reporting Guidance – State and Local Fiscal Recovery Funds", version 1.1

Allocation and Distribution

ARPA established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus-related State Local Fiscal Recovery Funds (SLFRF) program. ARPA provides for the Treasury Department to make payments directly to states and various local governments, including cities designated as metropolitan cities with populations of 50,000 or more. ARPA also provided for the Treasury to make payments to the states to allocate and make funding available to smaller units of general local governments known as Non-entitlement Units (NEUs).

NEUs, defined in section 603(g)(5) of the Social Security Act, are local governments serving populations of less than 50,000. As a smaller city, Laguna Hills receives its SLFRF allocation via the State of California Department of Finance. While the statute requires states to make distributions to eligible NEUs, states may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury Department's implementing regulations and guidance.

ARPA requires states' allocations to NEUs to be based on the proportion of the population in the NEU as a share of the total population of all NEUs in the state. However, the total amount to be distributed to a NEU may not exceed the amount equal to 75 percent of its most recent budget as of January 27, 2020. Per the population formula, the total of SLFRF to be issued to the City of Laguna Hills is \$7,465,377.

All SLFRF recipients will receive funds in two equal tranches, approximately twelve months apart. The City's first 50% allocation, or \$3,732,688, was received in mid-July 2021. This matter was scheduled for the Meeting of August 24, 2021, the first City Council meeting after receipt of the SLFRF, but continued to this meeting.

Use of SLFRF

To access SLFRF funds, NEUs were required to submit a request to the State and provide information as outlined in recent Treasury Department Guidance. A copy of the certification documents submitted by the City to the State are included as Attachment B to this staff report. All jurisdictions are responsible for adhering to the Treasury Department's requirements for expending and reporting on their use of funds. The IFR was posted on the Federal Register on May 16, 2021, and was effective May 17, 2021. Comments on the IFR were due on July 16, 2021. Staff is hopeful the Final Rules will be issued in September 2021 without any significant changes. There are both specific authorized and prohibited uses for the SLFRF. The prohibited uses are clearly outlined in

Treasury Department Guidance and include the following:

- Deposits to Reserves or Rainy-Day Funds
- Deposits to Pension Funds for unfunded liabilities (current service costs may be eligible)
- Debt Services Payments
- Offset to tax cuts caused by a change in local law.

Outside of these restrictions, the City has discretion to use the funds in ways that best suit the needs of its community so long as the use fits into one of the four eligible use categories specified in the American Rescue Plan Act and implemented in the Interim Final Rule:

- a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- d) To make necessary investments in water, sewer, or broadband infrastructure.

The use of SLFRF is retroactive to March 3, 2021, and all funds must be obligated by December 31, 2024. This time period covering almost four years is designed to provide prolonged support and recovery with the understanding that the recovery from COVID-19 will take many years.

Compliance Categorical References

Each SLFRF recipient is required to meet compliance and reporting responsibilities, as defined by the Treasury Department compliance documents. As a NEU, the City is required to submit a Project and Expenditure Report by October 31, 2021, and then annually thereafter. Treasury guidance outlines seven compliance categories which allow local government to use funds within the intent of the legislation as well as demonstrate how they are supporting their community and meeting service expectations. By in large, these categorical areas require significant justification of

evidence-based intervention as well as demonstration of the impact to qualifying underserved/disadvantaged communities. Specifically, each recipient is required to substantiate how it will consider and measure the programmatic impact to the intended communities, populations, or individuals within the City's jurisdiction.

The following details the official Treasury designated expense categories (E.C.'s).

E.C. 1 – Supporting Public Health Response: This first compliance category involves response to the COVID-19 public health emergency and support of various activities to decrease the spread of the virus and bring the pandemic under control, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff.

It involves direct COVID-19 mitigation efforts and includes but is not limited to: vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses. Capital investments in public facilities to meet pandemic operational needs are also eligible, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

Staff has identified COVID-19 mitigation expenditures incurred to-date that exceed the CARES Act funding previously received from the State and the County of Orange which would qualify under this compliance area. This is discussed in further detail in the subsequent section entitled "**Recommendations for First Appropriation**".

E.C. 2 – Negative Economic Impacts: This category allows for the use fund to address negative economic impacts caused by the public health emergency including economic harms to workers, households, small businesses, the public sector, nonprofits, or to provide aid to impacted industries such as tourism, travel, and hospitality. This involves response to second order economic impacts of the COVID-19 public health emergency to the jurisdiction's community.

Assistance to households includes, but is not limited to: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training.

The City may use funds by providing direct cash transfers to households, provided the City considers whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. Cash transfers must be reasonably proportional to the negative impact they are intended to address and must be substantiated. Cash transfers in excess of need to address the negative economic impact due to the COVID-19 health emergency would not be considered an eligible expense.

Assistance to small business and non-profits includes, but is not limited to:

- loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
- Technical assistance, counseling, or other services to assist with business planning needs

In aiding small businesses, the City must design a program that responds to the negative economic impacts of the COVID-19 public health emergency, including by identifying how the program addresses the identified need or impact faced by small businesses. As part of program design and to ensure that the program responds to the identified need, additional criteria to target assistance to businesses in need should be considered.

Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel and hospitality industries and to districts that were closed during the COVID-19 public health emergency, as well as aid a planned expansion or upgrade of tourism, travel and hospitality facilities

delayed due to the pandemic.

The City may use funds to assist impacted industries other than travel, tourism, and hospitality, provided that the City considers the extent of the impact in such industries as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, nationwide the leisure and hospitality industry has experienced an approximately 17% decline in employment and 24% decline in revenue due to the COVID-19 public health emergency. The City should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic. Moreover, the City would be required to maintain records to support its assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

E.C. 3 Services to Disproportionately Impacted Communities: This category includes a broad range of qualifying activities ranging from educational assistance to housing support. In recognition of the disproportionate impacts of the COVID-19 virus on health and economic outcomes in low-income communities, the Interim Final Rule identifies a broader range of services and programs that are considered to be in response to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services are eligible uses when provided in a Qualified Census Tract (QCT) and to families living in QCTs. Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, the City should be able to support its determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served. Eligible services include:

- Addressing health disparities and the social determinants of health, including: community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;
- Building stronger neighborhoods and communities, including: supportive housing and other services for individuals experiencing homelessness, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;
- Addressing educational disparities exacerbated by COVID-19, including:

early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and

- Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth

In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic the City may use funds to address that harm. This spending may include:

- Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic;
- Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers;
- Additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels; and
- Investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic.

As discussed in the Interim Final Rule, uses of CSFRF/CLFRF funds that respond to an identified harm must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.

E.C. 4 Premium Pay for Essential Workers: This category allows for the expense to provide premium pay to eligible workers or grants to eligible employers of workers who perform essential work during the COVID-19 public health emergency. It is to provide financial support to those who have and continue to bear the greatest health risks due to the nature of their work in critical infrastructure areas. These workers are those that have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

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

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

E.C. 5 – Infrastructure: This category of eligible expenditures allows for the use of funds to make necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet. Funds make be used to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred after March 3, 2021. For water and sewer projects, the IFR refers to the EPA Drinking Water and Clean Water State Revolving Funds (SRFs) for the categories of projects and activities that are eligible for funding. SLFRF recipients should look at the relevant federal statutes, regulations, and guidance issued by the EPA to determine whether a water or sewer project is eligible.

E.C. 6 – Replacing Public Sector Revenue Loss: This compliance category relates to the use of SLFRF funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency. Many State and local governments experienced budget shortfalls which can have a

devastating impact on communities. This category allows for SLFRF recipients facing budget shortfalls to use payment from the SLFRF to avoid cuts to government services and enable the government agency to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. This allowable use is discussed in further detail in the subsequent section entitled **“Recommendations for First Appropriation”**.

E.C.7 – Administrative Cost: This category allows the City to pursue administrative costs, data research, as well as costs associated with transferring funds to another government entity to execute a compliant project or plan.

Recommendations for First Appropriation

Outlined below are some immediate recommendations for the first tranche appropriation of \$3.7 million, along with some categorical ideas for the second tranche appropriation that can be discussed in more detail when the second tranche of SLFRF is received. In developing these recommendations, particularly for the first tranche appropriation, Staff’s focus is on what would off-set COVID-19 related revenue losses and/or free-up limited resources to support previously adopted budget priorities, projects and deferred maintenance. The Treasury Department outlined several eligible uses for the funds, as outlined above as Categories A – E.

1. Revenue Loss Provisions of Category “C”

Within the allowable categories, Category C for the replacement of City lost revenues provides the most flexibility in the use of these funds. In the Treasury Department Guidance, any calculated reduction in actual revenue is presumed to have been due to the COVID-19 public health emergency. This presumption is made for ease of administration and in recognition of the broad-based economic damage that the pandemic has caused.

Computation of Revenue Loss

The League of California Cities (League), alongside a team of city finance professionals and the California Society of Municipal Finance Officers (CSMFO), created an innovative revenue loss calculation tool that will help cities comply with the SLFRF funding rules. This new tool developed by the League and CSMFO incorporates the latest Treasury Department’s Guidance and its applicability to local government finance in California as understood by their team of finance professionals.

The revenue loss calculation is an aggregate calculation to include all governmental funds and proprietary funds. Hence, the City may factor in revenues from its General Fund, various revenues from its Special Revenue Funds, as well as its Civic Center Leasing Operation Business-type Fund.

Using this revenue loss calculator tool, attached to this staff report as Attachment C, the City's entire first SLFRF tranche of \$3.7 million is justified as revenue loss and is then applicable to government services after March 3, 2021. Recipients are permitted to calculate the extent of reduction in revenue at four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. Upon receiving its first SLFRF appropriation of \$3.7 million, the City is allowed to account for the recovery of actual revenue lost for the period ending December 31, 2020, or \$1,436,730 (based on the revenue loss calculator) and the projected loss of an additional \$1,731,451 due revenue loss for the following reporting period ending December 31, 2021. A remaining SLFRF balance \$564,507 (\$3,732,688 less \$1,436,730 less \$1,731,451) could be applied to the projected revenue loss in the subsequent reporting period ending December 31, 2022. To calculate these projected revenue losses in the future reporting periods ending December 31, 2021 and 2022, the revenues estimates from City's adopted Biennial Budget were applied to the revenue loss calculator.

Use of Funds Recovered for Revenue Loss

The Treasury Department Guidance also gives broad latitude to use revenue loss funds for the provision of "government services". The Treasury Department Guidance acknowledges that "government services" is broadly defined and can include, but is not limited to:

- The provision of police, fire and other public safety services;
- Maintenance or pay-go funded building of infrastructure;
- Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure;
- Environmental remediation;
- Health services;
- School or educational services.

The prohibited uses still apply to funds justified as revenue loss. While amounts determined eligible under "Category C - revenue loss" may be used broadly for

“government services”, certain limitations apply. Those limitations are:

- The covered period is March 3, 2021, to December 31, 2024 (IFR p.88)
- Fund must be obligated by December 31, 2024, and fully expended by December 31, 2026 (IFR p.88)
- May not spend funds on pension deposits (IFR p.71)
- May not be used to replenish rainy day funds, financial reserves, etc. (IFR p.42, 60)
- May not be used for debt obligations (IFR p.42)
- May not be used as non-Federal Match for other Federal Programs (IFR p. 86)

Furthermore, there are absolutely no provisions that would require the apportioning the use of an amount determined under Category C Revenue Loss among particular funds. That is, regardless of the inclusion of all funds in the loss calculation, the eligible funds may be used for any “governmental purpose”.

With the flexibility provided by Category “C” Revenue Loss, the City would be replacing revenue lost during the COVID-19 pandemic and consequential economic downturn and spending it on government services impacted as a result. In doing so, the City would be supporting the essential services most affected by the pandemic. This approach is consistent with the adopted budget of returning City service levels to nearly those provided pre-pandemic.

It is the City’s policy to fund current year operating expenditures with current year operating revenues. Additionally, the City Financial Policy recommends maintaining the ratio of “operating revenues to operating expenditure” at 1.1 to 1, or greater. No one-time, non-recurring revenues or Gas Tax (HUTA and RMRA) revenues may be used in determining the ratio unless the City Council authorizes the use of reserves and/or non-recurring revenues to balance the budget. The COVID-19 pandemic has resulted in a significant unforeseen reduction in annual City revenues causing a budget imbalance, identifying potential deficit spending in the 2021-2022 Fiscal Year Budget. As a result, it was the Interim City Manager’s recommendation to apply a one-time use of non-recurring revenues to balance the Budget and this was approved by the City Council. The table below provides a review of budget scenarios, with Scenario 1 and 2 being discussed during the aforementioned adoption of the 2021-2022 Fiscal Year Budget, as follows:

American Rescue Plan Act
September 14, 2021
Page 13

- Scenario 1 is the projected deficit spending without the use of non-recurring revenues;
- Scenario 2 is the use of \$863,090 in non-recurring revenues to achieve a 1.0 operating ratio (as has been approved by the City Council in the current Budget), and;
- Scenario 3 is the allocation of \$3,168,181 in revenue loss recovery from the first tranche of SLFRF (\$1,436,730 actual revenue loss as of December 31, 2020, plus \$1,731,451 projected revenue loss as of December 31, 2021) to achieve the 1.1 policy target ratio.

FY 2021/22 Operating Budget	SCENARIO 1	SCENARIO 2	SCENARIO 3
General Fund Revenues	22,236,737	22,236,737	22,236,737
Other Operating Revenues	826,042	826,042	826,042
<i>Use of Non-recurring Revenues</i>	-	863,090	3,168,181
Total Revenues	23,062,779	23,925,869	26,230,960
Personnel	5,148,039	5,148,039	5,148,039
Maintenance & Operations	2,679,878	2,679,878	2,679,878
Contracts & Professional Services	14,194,331	14,194,331	14,194,331
Capital Outlay	103,700	103,700	103,700
Total Operating Expenditures	22,125,948	22,125,948	22,125,948
Debt Service	1,799,921	1,799,921	1,799,921
Total Expenditures	23,925,869	23,925,869	23,925,869
Operating Surplus/(Deficit)	(863,090)	-	2,305,091
<i>Operating Ratio</i>	<i>0.96</i>	<i>1.00</i>	<i>1.10</i>

The broad latitude provided in the Treasury Department Guidance to use revenue loss funds for the provision of “government services” allows the City Council to obligate the use of SLFRF funds for recovery of revenue loss to support “government services” currently budgeted, essentially funding the current budget, addressing deferred maintenance and reversing previous service reductions.

As stated previously, each SLFRF recipient is required to meet compliance and reporting responsibilities, as defined in Treasury Guidance and further described in the Compliance and Reporting Guidance. Should the City allocate funds under Category “C” Revenue Loss, the City will be required to submit a description of services provided in the required annual reports. As discussed in the Interim Final Rule, the governmental

services can include a broad range of services but may not be used directly for pension deposits or debt service.

2. COVID-19 Public Health Response

ARPA also provides that funds may be used for expenditures incurred as a public health response to COVID-19 through December 31, 2024. Currently, the City has incurred an estimated \$125,000 in expense over and above the funds it received from the 2020 Coronavirus Relief Funds (CRF) as part of the Coronavirus Aid, Relief and Economic Security (CARES) Act related to its public health response for COVID-19. To cover some of this cost, Staff is seeking Federal Emergency Management Agency (FEMA) reimbursements to supplement the funding of these disaster related expenditures. However, in reviewing the nature of some of the estimated \$125,000 already incurred, Staff has concluded that not all \$125,000 is eligible for FEMA reimbursement and FEMA has the final word on any reimbursement of the disaster relief funds applied for by the City. Staff continues to work with FEMA and CalOES to file the necessary documentation to support its claims to FEMA for reimbursement. However, the timelines for FEMA reimbursements are unclear and experience suggests that there will be a considerable lag between filing reimbursement claims and receiving FEMA funding, creating both budgetary and cash flow shortfalls. Thus, Staff recommends the use of SLFRF funds to backfill eligible expenditures related to the public health response of COVID-19 that are not eligible for FEMA reimbursement and not covered by any other eligible special revenue funding sources.

3. Potential Use of Future Appropriations

The second tranche SLFRF payment of \$3.7 million expected in July 2022 can continue to be utilized to offset Revenue Loss, as calculated at that time. The potential expenditures and projects, in no particular order, that can potentially be funded with the second tranche of SLFRF funds include the following:

- Category C - Revenue Loss (subsequently allowing a variety of capital projects to be funded)
- Category B – Reduce Economic Impact (financial support for businesses)
- Category A – Public Health (Community Center improvements such as air conditioning to the gymnasium and air purification of the building)
- Category A – Public Health (Civic Center improvements such as air purification of

the building)

Based upon direction from City Council and the final Treasure Guidelines, once issued, Staff will present additional comprehensive information on potential projects and initiatives for the second tranche of funding provided by SLFRF.

FISCAL IMPACT:

The \$7,465,377 in SLFRF funding the City will receive will cover eligible expenditures that are fully obligated by December 31, 2024, and expended by December 31, 2026. The first half funding payment of \$3,732,688 was received in July 2021 and the second half funding payment is expected in July 2022.

ATTACHMENTS:

- ATTACHMENT A-1 Interim Final Rules (IFR)
- ATTACHMENT A-2 Fact-Sheet
- ATTACHMENT A-3 FAQs
- ATTACHMENT A-4 Compliance and Reporting Guidance
- ATTACHMENT B - Non-Entitlement Units (NEUs) Certification Documents
- ATTACHMENT C - Revenue Loss Calculation

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected

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

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of

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

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

³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS>, May 7, 2021.

⁴ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;U.S.CensusBureau,HouseholdPulseSurvey:MeasuringSocialandEconomicImpactsduringtheCoronavirusPandemic,https://www.census.gov/programs-surveys/household-pulse-survey.html> (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

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

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

COVID-19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID-19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

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

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

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

⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

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

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

also has reversed many gains made by communities of color in the prior economic expansion.¹⁵

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.¹⁶ Section 9901 of ARPA amended Title VI of the Social Security Act¹⁷ (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).¹⁸ The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).¹⁹

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

¹⁵ See, e.g., Tyler Atkinson & Alex Richter, *Pandemic Disproportionately Affects Women, Minority Labor Force Participation*, <https://www.dallasfed.org/research/economics/2020/1110> (last visited May 9, 2021); Jared Bernstein & Janelle Jones, *The Impact of the COVID-19 Recession on the Jobs and Incomes of Persons of Color*, https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf (last visited May 9, 2021).

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

¹⁷ 42 U.S.C. 801 *et seq.*

¹⁸ Sections 602, 603 of the Act.

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

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

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

(b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include “directly or indirectly offset[ing] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.”

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

⁹ Tracy Gordon, *State and Local Budgets and the Great Recession*, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁰ Sebastian D. Romano et al., *Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States*, March–December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

¹¹ Center on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and> (last visited May 4, 2021).

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

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

¹⁴ Emma Dorn et al., *COVID-19 and student learning in the United States: The hurt could last*

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

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

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION.** Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting

requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

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

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

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service "responds to" the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

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

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

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

1. Responding to COVID-19

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

²¹ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

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

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

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

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational

needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.²⁵

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.²⁶ The proportion of children’s emergency department visits related to mental health has also risen noticeably.²⁷ Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.²⁸ Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access

services.²⁹ Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.³⁰

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.³¹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.³²

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.³³ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.³⁴

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

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

³¹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

³² In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Romano, *supra* note 10.

³³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁴ The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases

Continued

²³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

²⁴ *Id.*

²⁵ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited May 8, 2021).

²⁶ Panchal, *supra* note 4; Mark E. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

²⁷ Leeb, *supra* note 4.

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

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.³⁵ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.³⁶

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.³⁷ Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.³⁸ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.³⁹

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

³⁵ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Apr. 26, 2021).

³⁶ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited Apr. 26, 2021).

³⁷ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, *JAMA* 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

³⁸ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, *January–May 2020*, *Morb. Mort. Wkly. Rep.* 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hlbg20200319.757883/full/>.

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

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

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

- *COVID-19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;⁴⁰ ventilation improvements in

note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁴⁰ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational

congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.⁴¹ They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.⁴²

- *Medical Expenses.* The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.⁴³ Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.⁴⁴ State and local governments may need to continue to provide care and services to address these near- and longer-term needs.⁴⁵

Strategy for K–12 Schools through Phased Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>.

⁴¹ Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

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

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

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

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

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.⁴⁶ Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on

the COVID-19 response. Recipients need not routinely track staff hours.

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

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

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

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

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

specific populations, households, or geographic areas to be served.

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

- Funding community health workers to help community members access health services and services to address the social determinants of health;⁴⁹
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;
- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.⁵⁰

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

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

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

⁴⁶ In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.⁵¹ Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,⁵² and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.⁵³

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.⁵⁴ Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁵⁵ A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.⁵⁶ Over the course of the pandemic,

inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.⁵⁷ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ and 2.0 percentage points for White women.⁶⁰

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁶¹ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores⁶² and reduced familial and childhood wellbeing.⁶³

Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

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

⁵² U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited May 8, 2021).

⁵³ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited May 8, 2021).

⁵⁵ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁵⁶ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

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

These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment⁶⁴ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.⁶⁵ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.⁶⁶ Sectors with a large share of small business employment have been among those with the most drastic drops in employment.⁶⁷ The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.⁶⁸

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.⁶⁹ In general, small businesses can face greater hurdles in accessing credit,⁷⁰ and many small businesses were already financially fragile at the outset of the pandemic.⁷¹ Non-profits, which provide vital services to communities, have similarly faced

Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

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

⁶⁵ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

⁶⁶ Biden, *supra* note 6.

⁶⁷ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

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

⁶⁹ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

⁷⁰ See e.g., Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

⁷¹ Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

⁵¹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited May 8, 2021).

⁵² *Id.*

⁵³ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CLF16OV> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), <https://www.bls.gov/web/empsit/cpseaa04.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), <https://www.bls.gov/web/empsit/cpseaa05.htm> (last visited May 8, 2021).

⁵⁵ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on

economic and financial challenges due to the pandemic.⁷²

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

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

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,⁷⁴ and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID-19.⁷⁵ Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,⁷⁶ raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor

neighborhoods more than doubling by 2010–2014 relative to 2000.⁷⁷ Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.⁷⁸ Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.⁷⁹ Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.⁸⁰ Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,⁸¹ an

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

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

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

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

⁸¹ A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. See Institute of Education Sciences, Monthly School Survey Dashboard, <https://ies.ed.gov/schoolsurvey/> (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only.

effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.⁸² Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.⁸³

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

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

See Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), <https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07> (last visited May 4, 2021).

⁸² HHS, *supra* note 79.

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

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

⁸⁵ Moreno & Sobrepena, *supra* note 73.

⁷² Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf>.

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

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

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

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

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.⁸⁶ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

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

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

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began

and remain so due to the negative economic impacts of the pandemic.

- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic’s negative economic impacts on unemployed workers.

- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker’s occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative

economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor’s benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.

- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical

⁸⁶ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

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

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

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.⁸⁷

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

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the

pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

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

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

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including

tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

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

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.⁹⁰ Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

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

⁸⁹ HUD, *supra* note 48.

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

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

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

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

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

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.⁹³

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

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other

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

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

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

extended learning and enrichment programs; and

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

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

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

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

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

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

⁹⁴ See *supra* notes 52 and 84.

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

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

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

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

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

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

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

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

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

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

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries"

affected by the COVID-19 public health emergency?

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

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

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

B. Premium Pay

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

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have

contracted or died of COVID-19.⁹⁶ Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.⁹⁷ In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.⁹⁸ Furthermore, many essential workers are people of color or low-wage workers.⁹⁹ These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

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

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

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

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

⁹⁸ *Id.*

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

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

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

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

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

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.”¹⁰³ The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.¹⁰⁴ These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others

as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

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

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

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

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

of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_links.htm (last visited May 1, 2021).

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

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

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*

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

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

¹⁰⁵ County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. See U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrcst.htm> (last visited May 1, 2021); U.S. Bureau

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

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

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

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

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

C. Revenue Loss

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

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same

period 2019.¹⁰⁹ At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.¹¹⁰ Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.¹¹¹ These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.¹¹² Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,¹¹³ while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID-19 public health emergency began.¹¹⁴

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

¹¹⁰ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

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

¹¹² See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

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

¹¹⁴ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001],

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

General Revenue. The interim final rule adopts a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.¹¹⁵ By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

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

retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited Apr. 27, 2021).

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

¹¹⁶ The interim final rule would define tax revenue in a manner consistent with the Census Bureau’s definition of tax revenue, with certain changes (*i.e.*, inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

¹⁰⁸ ARPA, *supra* note 16.

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

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

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

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in

intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.¹¹⁹ For purposes of measuring loss in general revenue due to the COVID-19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.¹²⁰

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

reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.¹²² This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- **Step 1:** Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.

- **Step 2:** Estimate *counterfactual revenue*, which is equal to *base year revenue* * $[(1 + \text{growth adjustment})^{(n/12)}]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

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

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

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

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

¹¹⁸ *Supra* note 116.

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

years prior to the COVID-19 public health emergency.

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

- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual*

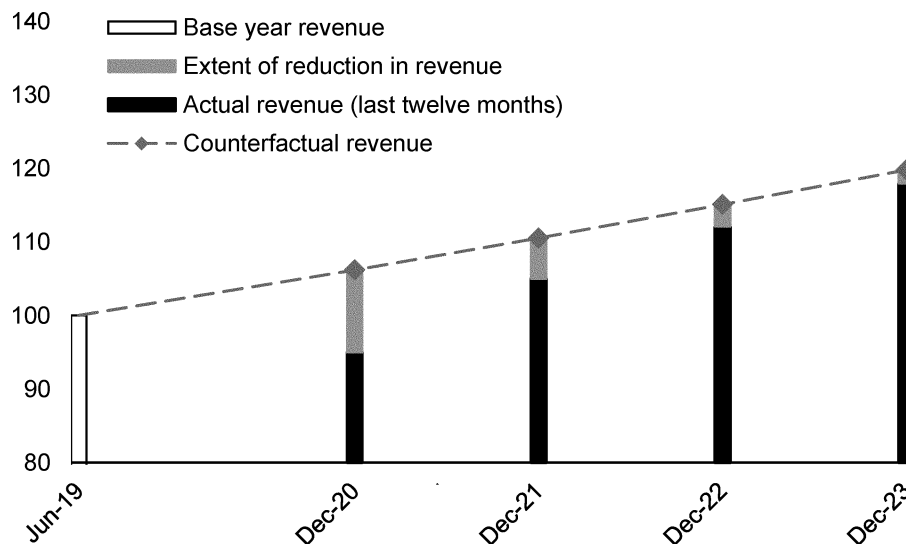
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1

percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue:</i>	106.2	110.6	115.1	119.8

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



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

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building¹²³ of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for

borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would

not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

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

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID-

¹²³ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

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

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

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

D. Investments in Infrastructure

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

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to

ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

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

1. Water and Sewer Infrastructure

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

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

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

Established by the 1987 amendments¹²⁷ to the Clean Water Act (CWA),¹²⁸ the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.¹²⁹ Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.¹³⁰

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

¹²⁷ Water Quality Act of 1987, Public Law 100-4.

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

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

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

¹³¹ 42 U.S.C. 300j-12.

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

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

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

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

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

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also

support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

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

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

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

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

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

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 42 U.S.C. 300j–12(b)(3)(A).

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

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

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

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

2. Broadband Infrastructure

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.¹³⁹ With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.¹⁴⁰ By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure

exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹⁴¹ There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.¹⁴² Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.¹⁴³

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to

a minimum of 100 Mbps symmetrical for download and upload speeds.¹⁴⁴ In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.¹⁴⁵ In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017¹⁴⁶ and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,¹⁴⁷ attributable, in part to a shift to using broadband and the internet by individuals and businesses

¹³⁹ See, e.g., <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹⁴⁰ As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

¹⁴¹ How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹⁴² See, e.g., Federal Communications Commission, Fourteenth Broadband Deployment Report, available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

¹⁴³ See, e.g., Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), <https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>; Kansas Office of Broadband Development, Broadband Acceleration Grant, <https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf> (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), [https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

¹⁴⁴ This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

¹⁴⁵ Federal Communications Commission, Broadband Speed Guide, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 30, 2021).

¹⁴⁶ Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, available at <https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOP%20Jan%203%20Ex%20Parte.pdf>. Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide*, Apr. 29, 2021.

¹⁴⁷ *Id.* See also United States's Mobile and Broadband internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

to create and share content using video sharing, video conferencing, and other applications.¹⁴⁸

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.¹⁴⁹ As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.¹⁵⁰ For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others.¹⁵¹ These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8

¹⁴⁸ *Id.*

¹⁴⁹ One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

¹⁵⁰ See, e.g., Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

¹⁵¹ By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org*: What is Symmetrical internet? (March 2020).

gigabytes.¹⁵² OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.¹⁵³ According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.¹⁵⁴

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the “above baseline” performance tier set by the FCC.¹⁵⁵ The Broadband Infrastructure Program (BBIP)¹⁵⁶ of the Department of Commerce, which provides Federal funding to deploy broadband

¹⁵² OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), available at <https://openvault.com/ovbi-covid-19-drove-15-increase-in-broadband-traffic-in-2020>; See OpenVault’s data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4*, Quarterly Advisory (Feb. 10, 2021), available at <https://openvault.com/complimentary-report-4q20/>.

¹⁵³ OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 2020), available at <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/>; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, available at <https://openvault.com/upstream-whitepaper/>.

¹⁵⁴ Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), <https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls> [www.oecd.org/sti/broadband-statistics](https://www.oecd.org/sti/broadband/broadband-statistics).

¹⁵⁵ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

¹⁵⁶ The BBIP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.¹⁵⁷

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC’s benchmark for an “advanced telecommunications capability.”¹⁵⁸ This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC’s RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.¹⁵⁹ The Department of Commerce’s BBIP also considers households to be “unserved” generally if they lack access to broadband service

¹⁵⁷ Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

¹⁵⁸ *Deployment Report*, *supra* note 142.

¹⁵⁹ *Rural Digital Opportunity Fund*, *supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These

four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a predetermined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments¹⁶⁰), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation¹⁶¹ during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. See Section IV of this

SUPPLEMENTARY INFORMATION. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—

i.e., cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is

offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:

- State or territory tax changes that would increase any source of general

¹⁶⁰ In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

¹⁶¹ For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this

SUPPLEMENTARY INFORMATION.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. See Section IV of this **SUPPLEMENTARY INFORMATION**.

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation.” A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute

or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.¹⁶² This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.¹⁶³

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–

19 public health emergency.¹⁶⁴ This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,¹⁶⁵ suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines “reporting year” as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (“in-year” value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term “reporting year” refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of “tax revenue” is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.¹⁶⁶ It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

¹⁶⁴ Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. See section 602(c)(1)(C).

¹⁶⁵ Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), available at <https://www.cbo.gov/publication/56965>.

¹⁶⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

¹⁶² See, e.g., Tax Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

¹⁶³ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited May 9, 2021).

revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States

and territories already consider tax changes.¹⁶⁷

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.¹⁶⁸ The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that

such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

¹⁶⁷ See, e.g., Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

¹⁶⁸ Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an

offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to “indirectly” offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.¹⁶⁹ In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by \$1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth \$500 million, it need only pay for the remaining \$500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this

¹⁶⁹ This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.¹⁷⁰

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.¹⁷¹ The

definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID-19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).¹⁷² As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID-19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID-19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing

grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.¹⁷³

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.¹⁷⁴ The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

¹⁷⁰ See 42 CFR 433.51 and 45 CFR 75.306.

¹⁷¹ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

¹⁷² Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

¹⁷³ Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, i.e., those incurred prior to March 3, 2021.

¹⁷⁴ Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.¹⁷⁵ This process will allow the Secretary to respond to the

issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.¹⁷⁶

¹⁷⁶ With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements

Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.¹⁷⁷ For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

¹⁷⁷ The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID-19 pandemic, *J. of Public Econ.* (Nov. 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389>.

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

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.¹⁷⁸ Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021¹⁷⁹) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan

cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."¹⁸⁰ Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and

regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID-19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

¹⁷⁸ Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, <https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions> (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited Apr. 27, 2021).

¹⁷⁹ U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, <https://www.bls.gov/news.release/laus.t01.htm> (last visited Apr. 30, 2021).

¹⁸⁰ Section 602(c)(3) of the Act.

“public benefit corporation” that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for \$19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID-19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury’s implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU’s use of Fiscal Recovery Funds based on the NEU’s proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU’s distribution. Further, States and territories may not provide funding on a reimbursement basis—e.g., requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for

complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU’s most recent budget. The most recent budget is defined as the NEU’s most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury’s implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (e.g., a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government’s NEU allocation under section 603(b)(2) but not to the consolidated government’s county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local

government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient’s expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient’s utilization of the award funds. The reports will include the same general data (e.g., on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As

discussed below, the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.”¹⁸¹ The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁸² This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID-19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID-19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory

action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as “economically significant” regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available

¹⁸¹ 5 U.S.C. 553(a)(2).

¹⁸² 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”).

techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the \$350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers \$350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond

to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined \$350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.¹⁸³ Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.¹⁸⁴

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID-19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

¹⁸³ Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, *American Econ. J.: Econ. Policy*, 4:3 118–45 (Aug. 2012), available at <https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118>.

¹⁸⁴ See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients’ overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury’s approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- **Revenue Loss:** Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury’s decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients’ pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury’s approach provides a more accurate representation of the effect of the pandemic on overall revenues.

- **Premium Pay:** Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker’s annual pay above a certain threshold. To set this threshold, Treasury analyzed data

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

- *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

- *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need,

particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹⁸⁵ To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;¹⁸⁶ and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many

have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

¹⁸⁵ Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (last visited May 9, 2021).

¹⁸⁶ David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, <https://www.epi.org/publication/bp339-public-sector-jobs-crisis> (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus “both clearly and directly related to a federal grant program.” *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the “process necessary to maintain state . . . eligibility for federal funds,” *id.*, as well as the “method[s] by which states can . . . qualify for federal aid,” and other “integral part[s] of the grant program,” *Center for Auto Safety v. Tiemann*, 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553’s requirements. The ARPA is a law responding to a historic economic and

public health emergency; it is “extraordinary” legislation about which “both Congress and the President articulated a profound sense of ‘urgency.’” *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to “respond to the public health emergency,” and the urgency is further exemplified by Congress’s command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, “[t]o the extent practicable,” funds must be provided to Tribes and cities “not later than 60 days after the date of enactment.” *See Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been “virtually impossible”). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA “covered period” began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the

Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.*, payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes) ...	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	† 20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

**5,050–TBD.

***Per year after first year.

† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report

and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the www.regulations.gov docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to oira_submission@omb.eop.gov.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule

pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

- 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

- 2. Revise the part heading to read as set forth above.
- 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

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

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et*

seq.) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into

contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

- (1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and
- (2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID-19 response and prevention.* Expenditures for the mitigation and prevention of COVID-19, including:

(i) Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID-19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID-19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(vi) Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID-19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment;

(ix) Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.*

Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance

or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(8) *Assistance to households.*

Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

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

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory

resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the

requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance

with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

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FACT SHEET: The Coronavirus State and Local Fiscal Recovery Funds Will Deliver \$350 Billion for State, Local, Territorial, and Tribal Governments to Respond to the COVID-19 Emergency and Bring Back Jobs

May 10, 2021

Aid to state, local, territorial, and Tribal governments will help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery

Today, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Funds, established by the American Rescue Plan Act of 2021, to provide \$350 billion in emergency funding for eligible state, local, territorial, and Tribal governments. Treasury also released details on how these funds can be used to respond to acute pandemic response needs, fill revenue shortfalls among these governments, and support the communities and populations hardest-hit by the COVID-19 crisis. With the launch of the Coronavirus State and Local Fiscal Recovery Funds, eligible jurisdictions will be able to access this funding in the coming days to address these needs.

State, local, territorial, and Tribal governments have been on the frontlines of responding to the immense public health and economic needs created by this crisis – from standing up vaccination sites to supporting small businesses – even as these governments confronted revenue shortfalls during the downturn. As a result, these governments have endured unprecedented strains, forcing many to make untenable choices between laying off educators, firefighters, and other frontline workers or failing to provide other services that communities rely on. Faced with these challenges, state and local governments have cut over 1 million jobs since the beginning of the crisis. The experience of prior economic downturns has shown that budget pressures like these often result in prolonged fiscal austerity that can slow an economic recovery.

To support the immediate pandemic response, bring back jobs, and lay the groundwork for a strong and equitable recovery, the American Rescue Plan Act of 2021 established the Coronavirus State and Local Fiscal Recovery Funds, designed to deliver \$350 billion to state, local, territorial, and Tribal governments to bolster their response to the COVID-19 emergency and its economic impacts. Today, Treasury is launching this much-needed relief to:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Replace lost public sector revenue to strengthen support for vital public services and help retain jobs;
- Support immediate economic stabilization for households and businesses; and,
- Address systemic public health and economic challenges that have contributed to the inequal impact of the pandemic on certain populations.

The Coronavirus State and Local Fiscal Recovery Funds provide substantial flexibility for each jurisdiction to meet local needs—including support for households, small businesses, impacted industries, essential workers, and the communities hardest-hit by the crisis. These funds also deliver resources that recipients can invest in building, maintaining, or upgrading their water, sewer, and broadband infrastructure.

Starting today, eligible state, territorial, metropolitan city, county, and Tribal governments may request Coronavirus State and Local Fiscal Recovery Funds through the Treasury Submission Portal. Concurrent with this program launch, Treasury has published an Interim Final Rule that implements the provisions of this program.

FUNDING AMOUNTS

The American Rescue Plan provides a total of \$350 billion in Coronavirus State and Local Fiscal Recovery Funds to help eligible state, local, territorial, and Tribal governments meet their present needs and build the foundation for a strong recovery. Congress has allocated this funding to tens of thousands of jurisdictions. These allocations include:

Type	Amount (\$ billions)
States & District of Columbia	\$195.3
Counties	\$65.1
Metropolitan Cites	\$45.6
Tribal Governments	\$20.0
Territories	\$4.5
Non-Entitlement Units of Local Government	\$19.5

Treasury expects to distribute these funds directly to each state, territorial, metropolitan city, county, and Tribal government. Local governments that are classified as non-entitlement units will receive this funding through their applicable state government. Treasury expects to provide further guidance on distributions to non-entitlement units next week.

Local governments should expect to receive funds in two tranches, with 50% provided beginning in May 2021 and the balance delivered 12 months later. States that have experienced a net increase in the unemployment rate of more than 2 percentage points from February 2020 to the latest available data as of the date of certification will receive their full allocation of funds in a single payment; other states will receive funds in two equal tranches. Governments of U.S. territories will receive a single payment. Tribal governments will receive two payments, with the first payment available in May and the second payment, based on employment data, to be delivered in June 2021.

USES OF FUNDING

Coronavirus State and Local Fiscal Recovery Funds provide eligible state, local, territorial, and Tribal governments with a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. Within the categories of eligible uses, recipients have broad flexibility to decide how best to use this funding to meet the needs of their communities. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to:

- **Support public health expenditures**, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- **Address negative economic impacts caused by the public health emergency**, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- **Replace lost public sector revenue**, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Within these overall categories, Treasury’s Interim Final Rule provides guidelines and principles for determining the types of programs and services that this funding can support, together with examples of allowable uses that recipients may consider. As described below, Treasury has also designed these provisions to take into consideration the disproportionate impacts of the COVID-19 public health emergency on those hardest-hit by the pandemic.

1. Supporting the public health response

Mitigating the impact of COVID-19 continues to require an unprecedented public health response from state, local, territorial, and Tribal governments. Coronavirus State and Local Fiscal Recovery Funds provide resources to meet these needs through the provision of care for those impacted by the virus and through services that address disparities in public health that have been exacerbated by the pandemic. Recipients may use this funding to address a broad range of public health needs across COVID-19 mitigation, medical expenses, behavioral healthcare, and public health resources. Among other services, these funds can help support:

- **Services and programs to contain and mitigate the spread of COVID-19, including:**
 - ✓ Vaccination programs
 - ✓ Medical expenses
 - ✓ Testing
 - ✓ Contact tracing
 - ✓ Isolation or quarantine
 - ✓ PPE purchases
 - ✓ Support for vulnerable populations to access medical or public health services
 - ✓ Public health surveillance (e.g., monitoring for variants)
 - ✓ Enforcement of public health orders
 - ✓ Public communication efforts
 - ✓ Enhancement of healthcare capacity, including alternative care facilities
 - ✓ Support for prevention, mitigation, or other services in congregate living facilities and schools
 - ✓ Enhancement of public health data systems
 - ✓ Capital investments in public facilities to meet pandemic operational needs
 - ✓ Ventilation improvements in key settings like healthcare facilities

- **Services to address behavioral healthcare needs exacerbated by the pandemic, including:**
 - ✓ Mental health treatment
 - ✓ Substance misuse treatment
 - ✓ Other behavioral health services
 - ✓ Hotlines or warmlines
 - ✓ Crisis intervention
 - ✓ Services or outreach to promote access to health and social services
- **Payroll and covered benefits expenses** for public health, healthcare, human services, public safety and similar employees, to the extent that they work on the COVID-19 response. For public health and safety workers, recipients can use these funds to cover the full payroll and covered benefits costs for employees or operating units or divisions primarily dedicated to the COVID-19 response.

2. Addressing the negative economic impacts caused by the public health emergency

The COVID-19 public health emergency resulted in significant economic hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 20 million jobs were lost between February and April 2020. Although many have since returned to work, as of April 2021, the economy remains more than 8 million jobs below its pre-pandemic peak, and more than 3 million workers have dropped out of the labor market altogether since February 2020.

To help alleviate the economic hardships caused by the pandemic, Coronavirus State and Local Fiscal Recovery Funds enable eligible state, local, territorial, and Tribal governments to provide a wide range of assistance to individuals and households, small businesses, and impacted industries, in addition to enabling governments to rehire public sector staff and rebuild capacity. Among these uses include:

- **Delivering assistance to workers and families**, including aid to unemployed workers and job training, as well as aid to households facing food, housing, or other financial insecurity. In addition, these funds can support survivor's benefits for family members of COVID-19 victims.
- **Supporting small businesses**, helping them to address financial challenges caused by the pandemic and to make investments in COVID-19 prevention and mitigation tactics, as well as to provide technical assistance. To achieve these goals, recipients may employ this funding to execute a broad array of loan, grant, in-kind assistance, and counseling programs to enable small businesses to rebound from the downturn.
- **Speeding the recovery of the tourism, travel, and hospitality sectors**, supporting industries that were particularly hard-hit by the COVID-19 emergency and are just now beginning to mend. Similarly impacted sectors within a local area are also eligible for support.
- **Rebuilding public sector capacity**, by rehiring public sector staff and replenishing unemployment insurance (UI) trust funds, in each case up to pre-pandemic levels. Recipients may also use this funding to build their internal capacity to successfully implement economic relief programs, with investments in data analysis, targeted outreach, technology infrastructure, and impact evaluations.

3. Serving the hardest-hit communities and families

While the pandemic has affected communities across the country, it has disproportionately impacted low-income families and communities of color and has exacerbated systemic health and economic inequities. Low-income and socially vulnerable communities have experienced the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000.

Coronavirus State and Local Fiscal Recovery Funds allow for a broad range of uses to address the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households. Eligible services include:

- **Addressing health disparities and the social determinants of health**, through funding for community health workers, public benefits navigators, remediation of lead hazards, and community violence intervention programs;
- **Investments in housing and neighborhoods**, such as services to address individuals experiencing homelessness, affordable housing development, housing vouchers, and residential counseling and housing navigation assistance to facilitate moves to neighborhoods with high economic opportunity;
- **Addressing educational disparities** through new or expanded early learning services, providing additional resources to high-poverty school districts, and offering educational services like tutoring or afterschool programs as well as services to address social, emotional, and mental health needs; and,
- **Promoting healthy childhood environments**, including new or expanded high quality childcare, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

Governments may use Coronavirus State and Local Fiscal Recovery Funds to support these additional services if they are provided:

- within a Qualified Census Tract (a low-income area as designated by the Department of Housing and Urban Development);
- to families living in Qualified Census Tracts;
- by a Tribal government; or,
- to other populations, households, or geographic areas disproportionately impacted by the pandemic.

4. Replacing lost public sector revenue

State, local, territorial, and Tribal governments that are facing budget shortfalls may use Coronavirus State and Local Fiscal Recovery Funds to avoid cuts to government services. With these additional resources, recipients can continue to provide valuable public services and ensure that fiscal austerity measures do not hamper the broader economic recovery.

Many state, local, territorial, and Tribal governments have experienced significant budget shortfalls, which can yield a devastating impact on their respective communities. Faced with budget shortfalls and pandemic-related uncertainty, state and local governments cut staff in all 50 states. These budget shortfalls and staff cuts are particularly problematic at present, as these entities are on the front lines of battling the COVID-19 pandemic and helping citizens weather the economic downturn.

Recipients may use these funds to replace lost revenue. Treasury's Interim Final Rule establishes a methodology that each recipient can use to calculate its reduction in revenue. Specifically, recipients will compute the extent of their reduction in revenue by comparing their actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic. Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency and projects forward at either (a) the recipient's average annual revenue growth over the three full fiscal years prior to the public health emergency or (b) 4.1%, the national average state and local revenue growth rate from 2015-18 (the latest available data).

For administrative convenience, Treasury's Interim Final Rule allows recipients to presume that any diminution in actual revenue relative to the expected trend is due to the COVID-19 public health emergency. Upon receiving Coronavirus State and Local Fiscal Recovery Funds, recipients may immediately calculate the reduction in revenue that occurred in 2020 and deploy funds to address any shortfall. Recipients will have the opportunity to re-calculate revenue loss at several points through the program, supporting those entities that experience a lagged impact of the crisis on revenues.

Importantly, once a shortfall in revenue is identified, recipients will have broad latitude to use this funding to support government services, up to this amount of lost revenue.

5. Providing premium pay for essential workers

Coronavirus State and Local Fiscal Recovery Funds provide resources for eligible state, local, territorial, and Tribal governments to recognize the heroic contributions of essential workers. Since the start of the public health emergency, essential workers have put their physical well-being at risk to meet the daily needs of their communities and to provide care for others.

Many of these essential workers have not received compensation for the heightened risks they have faced and continue to face. Recipients may use this funding to provide premium pay directly, or through grants to private employers, to a broad range of essential workers who must be physically present at their jobs including, among others:

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

Treasury's Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

In addition, employers are both permitted and encouraged to use Coronavirus State and Local Fiscal Recovery Funds to offer retrospective premium pay, recognizing that many essential workers have not yet received additional compensation for work performed. Staff working for third-party contractors in eligible sectors are also eligible for premium pay.

6. Investing in water and sewer infrastructure

Recipients may use Coronavirus State and Local Fiscal Recovery Funds to invest in necessary improvements to their water and sewer infrastructures, including projects that address the impacts of climate change.

Recipients may use this funding to invest in an array of drinking water infrastructure projects, such as building or upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines.

Recipients may also use this funding to invest in wastewater infrastructure projects, including constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works.

To help jurisdictions expedite their execution of these essential investments, Treasury's Interim Final Rule aligns types of eligible projects with the wide range of projects that can be supported by the Environmental Protection Agency's Clean Water State Revolving Fund and Drinking Water State Revolving Fund. Recipients retain substantial flexibility to identify those water and sewer infrastructure investments that are of the highest priority for their own communities.

Treasury's Interim Final Rule also encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

7. Investing in broadband infrastructure

The pandemic has underscored the importance of access to universal, high-speed, reliable, and affordable broadband coverage. Over the past year, millions of Americans relied on the internet to participate in remote school, healthcare, and work.

Yet, by at least one measure, 30 million Americans live in areas where there is no broadband service or where existing services do not deliver minimally acceptable speeds. For millions of other Americans, the high cost of broadband access may place it out of reach. The American Rescue Plan aims to help remedy these shortfalls, providing recipients with flexibility to use Coronavirus State and Local Fiscal Recovery Funds to invest in broadband infrastructure.

Recognizing the acute need in certain communities, Treasury's Interim Final Rule provides that investments in broadband be made in areas that are currently unserved or underserved—in other words, lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. Recipients are also encouraged to prioritize projects that achieve last-mile connections to households and businesses.

Using these funds, recipients generally should build broadband infrastructure with modern technologies in mind, specifically those projects that deliver services offering reliable 100 Mbps download and 100

Mbps upload speeds, unless impracticable due to topography, geography, or financial cost. In addition, recipients are encouraged to pursue fiber optic investments.

In view of the wide disparities in broadband access, assistance to households to support internet access or digital literacy is an eligible use to respond to the public health and negative economic impacts of the pandemic, as detailed above.

8. Ineligible Uses

Coronavirus State and Local Fiscal Recovery Funds provide substantial resources to help eligible state, local, territorial, and Tribal governments manage the public health and economic consequences of COVID-19. Recipients have considerable flexibility to use these funds to address the diverse needs of their communities.

To ensure that these funds are used for their intended purposes, the American Rescue Plan Act also specifies two ineligible uses of funds:

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent.** The American Rescue Plan ensures that funds needed to provide vital services and support public employees, small businesses, and families struggling to make it through the pandemic are not used to fund reductions in net tax revenue. Treasury's Interim Final Rule implements this requirement. If a state or territory cuts taxes, they must demonstrate how they paid for the tax cuts from sources other than Coronavirus State Fiscal Recovery Funds—by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be paid back to the Treasury.
- **No recipient may use this funding to make a deposit to a pension fund.** Treasury's Interim Final Rule defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions for employees whose wages and salaries are an eligible use of funds.

Treasury's Interim Final Rule identifies several other ineligible uses, including funding debt service, legal settlements or judgments, and deposits to rainy day funds or financial reserves. Further, general infrastructure spending is not covered as an eligible use outside of water, sewer, and broadband investments or above the amount allocated under the revenue loss provision. While the program offers broad flexibility to recipients to address local conditions, these restrictions will help ensure that funds are used to augment existing activities and address pressing needs.

AS OF JULY 19, 2021

Coronavirus State and Local Fiscal Recovery Funds

Frequently Asked Questions

AS OF JULY 19, 2021

This document contains answers to frequently asked questions regarding the Coronavirus State and Local Fiscal Recovery Funds (CSFRF / CLFRF, or Fiscal Recovery Funds). Treasury will be updating this document periodically in response to questions received from stakeholders. Recipients and stakeholders should consult the [Interim Final Rule](#) for additional information.

- For overall information about the program, including information on requesting funding, please see <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments>
- For general questions about CSFRF / CLFRF, please email SLFRP@treasury.gov
- Treasury is seeking comment on all aspects of the Interim Final Rule. Stakeholders are encouraged to submit comments electronically through the Federal eRulemaking Portal (<https://www.regulations.gov/document/TREAS-DO-2021-0008-0002>) on or before July 16, 2021. Please be advised that comments received will be part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Questions added 5/27/21: 1.5, 1.6, 2.13, 2.14, 2.15, 3.9, 4.5, 4.6, 10.3, 10.4 (noted with “[5/27]”)

Questions added 6/8/21: 2.16, 3.10, 3.11, 3.12, 4.7, 6.7, 8.2, 9.4, 9.5, 10.5 (noted with “[6/8]”)

Questions added 6/17/21: 6.8, 6.9, 6.10, 6.11 (noted with “[6/17]”)

Questions added 6/23/21: 1.7, 2.17, 2.18, 2.19, 2.20, 3.1 (appendix), 3.13, 4.8, 6.12 (noted with “[6/23]”)

Question added 6/24/21: 2.21 (noted with “[6/24]”)

Questions added 7/14/21: 1.8, 3.14, 3.15, 4.9, 4.10, 4.11, 4.12, 6.13, 6.14, 6.15, 6.16, 6.17, 10.3 updated (noted with “[7/14]”)

Answers to frequently asked questions on distribution of funds to non-entitlement units of local government (NEUs) can be found in this [FAQ supplement](#), which is regularly updated.

1. Eligibility and Allocations

1.1. Which governments are eligible for funds?

Attachment: ATTACHMENT A-3 FAQs (2534 : American Rescue Plan Act)

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The following governments are eligible:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities
- Non-entitlement units, or smaller local governments

1.2. Which governments receive funds directly from Treasury?

Treasury will distribute funds directly to each eligible state, territory, metropolitan city, county, or Tribal government. Smaller local governments that are classified as non-entitlement units will receive funds through their applicable state government.

1.3. Are special-purpose units of government eligible to receive funds?

Special-purpose units of local government will not receive funding allocations; however, a state, territory, local, or Tribal government may transfer funds to a special-purpose unit of government. Special-purpose districts perform specific functions in the community, such as fire, water, sewer or mosquito abatement districts.

1.4. How are funds being allocated to Tribal governments, and how will Tribal governments find out their allocation amounts?¹

\$20 billion of Fiscal Recovery Funds was reserved for Tribal governments. The American Rescue Plan Act specifies that \$1 billion will be allocated evenly to all eligible Tribal governments. The remaining \$19 billion will be distributed using an allocation methodology based on enrollment and employment.

There will be two payments to Tribal governments. Each Tribal government's first payment will include (i) an amount in respect of the \$1 billion allocation that is to be divided equally among eligible Tribal governments and (ii) each Tribal government's pro rata share of the Enrollment Allocation. Tribal governments will be notified of their allocation amount and delivery of payment 4-5 days after completing request for funds in the Treasury Submission Portal. The deadline to make the initial request for funds is June 21, 2021.

The second payment will include a Tribal government's pro rata share of the Employment Allocation. There is a \$1,000,000 minimum employment allocation for Tribal governments. In late-June, Tribal governments will receive an email notification to re-enter the Treasury Submission Portal to confirm or amend their 2019 employment numbers that were submitted to the Department of the Treasury for the CARES Act's Coronavirus Relief Fund. To receive an Employment Allocation, including the minimum employment allocation, Tribal governments must confirm employment numbers by July

¹ The answer to this question was updated on July 19, 2021.

23, 2021. Treasury will calculate employment allocations for those Tribal governments that confirmed or submitted amended employment numbers by the deadline. In August, Treasury will communicate to Tribal governments the amount of their portion of the Employment Allocation and the anticipated date for the second payment.

1.5. My county is a unit of general local government with population under 50,000. Will my county receive funds directly from Treasury? [5/27]

Yes. All counties that are units of general local government will receive funds directly from Treasury and should apply via the [online portal](#). The list of county allocations is available [here](#).

1.6. My local government expected to be classified as a non-entitlement unit. Instead, it was classified as a metropolitan city. Why? [5/27]

The American Rescue Plan Act defines, for purposes of the Coronavirus Local Fiscal Recovery Fund (CLFRF), metropolitan cities to include those that are currently metropolitan cities under the Community Development Block Grant (CDBG) program but also those cities that relinquish or defer their status as a metropolitan city for purposes of the CDBG program. This would include, by way of example, cities that are principal cities of their metropolitan statistical area, even if their population is less than 50,000. In other words, a city that is eligible to be a metropolitan city under the CDBG program is eligible as a metropolitan city under the CLFRF, regardless of how that city has elected to participate in the CDBG program.

Unofficial allocation estimates produced by other organizations may have classified certain local governments as non-entitlement units of local government. However, based on the statutory definitions, some of these local governments should have been classified as metropolitan cities.

1.7. In order to receive and use Fiscal Recovery Funds, must a recipient government maintain a declaration of emergency relating to COVID-19? [6/23]

No. Neither the statute establishing the CSFRF/CLFRF nor the Interim Final Rule requires recipients to maintain a local declaration of emergency relating to COVID-19.

1.8. Can non-profit or private organizations receive funds? If so, how? [7/14]

Yes. Under section 602(c)(3) of the Social Security Act, a State, territory, or Tribal government may transfer funds to a “private nonprofit organization . . . , a Tribal organization . . . , a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations). The Interim Final Rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive, and recipients may transfer funds to constituent units of government or private entities beyond those

specified in the statute. A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be considered to be a subrecipient and will be expected to comply with all subrecipient reporting requirements.

The ARPA does not authorize Treasury to provide CSFRF/CLFRF funds directly to non-profit or private organizations. Thus, non-profit or private organizations should seek funds from CSFRF/CLFRF recipient(s) in their jurisdiction (e.g., a State, local, territorial, or Tribal government).

2. Eligible Uses – Responding to the Public Health Emergency / Negative Economic Impacts

2.1. What types of COVID-19 response, mitigation, and prevention activities are eligible?

A broad range of services are needed to contain COVID-19 and are eligible uses, including vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses. Capital investments in public facilities to meet pandemic operational needs are also eligible, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

2.2. If a use of funds was allowable under the Coronavirus Relief Fund (CRF) to respond to the public health emergency, may recipients presume it is also allowable under CSFRF/CLFRF?

Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under CSFRF/CLFRF, with the following two exceptions: (1) the standard for eligibility of public health and safety payrolls has been updated; and (2) expenses related to the issuance of tax-anticipation notes are not an eligible funding use.

2.3. If a use of funds is not explicitly permitted in the Interim Final Rule as a response to the public health emergency and its negative economic impacts, does that mean it is prohibited?

The Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. The Interim Final Rule also provides flexibility for recipients to use Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but which meet the objectives of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts.

2.4. May recipients use funds to respond to the public health emergency and its negative economic impacts by replenishing state unemployment funds?

Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020, or to pay back advances received for the payment of benefits between January 27, 2020 and the date when the Interim Final Rule is published in the Federal Register.

2.5. What types of services are eligible as responses to the negative economic impacts of the pandemic?

Eligible uses in this category include assistance to households; small businesses and non-profits; and aid to impacted industries.

Assistance to households includes, but is not limited to: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training.

Assistance to small business and non-profits includes, but is not limited to:

- loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
- Technical assistance, counseling, or other services to assist with business planning needs

2.6. May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households?

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Yes, provided the recipient considers whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. Additionally, cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, state, local, territorial, and Tribal governments may consider and take guidance from the per person amounts previously provided by the federal government in response to the COVID crisis.

2.7. May funds be used to reimburse recipients for costs incurred by state and local governments in responding to the public health emergency and its negative economic impacts prior to passage of the American Rescue Plan?

Use of Fiscal Recovery Funds is generally forward looking. The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021.

2.8. May recipients use funds for general economic development or workforce development?

Generally, not. Recipients must demonstrate that funding uses directly address a negative economic impact of the COVID-19 public health emergency, including funds used for economic or workforce development. For example, job training for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

2.9. How can recipients use funds to assist the travel, tourism, and hospitality industries?

Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel and hospitality industries and to districts that were closed during the COVID-19 public health emergency, as well as aid a planned expansion or upgrade of tourism, travel and hospitality facilities delayed due to the pandemic.

Tribal development districts are considered the commercial centers for tribal hospitality, gaming, tourism and entertainment industries.

2.10. May recipients use funds to assist impacted industries other than travel, tourism, and hospitality?

Yes, provided that recipients consider the extent of the impact in such industries as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, nationwide the leisure and hospitality industry has experienced an

approximately 17 percent decline in employment and 24 percent decline in revenue, on net, due to the COVID-19 public health emergency. Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

Recipients should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

2.11. How does the Interim Final Rule help address the disparate impact of COVID-19 on certain populations and geographies?

In recognition of the disproportionate impacts of the COVID-19 virus on health and economic outcomes in low-income and Native American communities, the Interim Final Rule identifies a broader range of services and programs that are considered to be in response to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services are eligible uses when provided in a Qualified Census Tract (QCT), to families living in QCTs, or when these services are provided by Tribal governments.

Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served.

Eligible services include:

- Addressing health disparities and the social determinants of health, including: community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;
- Building stronger neighborhoods and communities, including: supportive housing and other services for individuals experiencing homelessness, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;
- Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and
- Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

2.12. May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs. See 31 CFR 35.6(b)(1)(i). Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

2.13. May recipients use funds to pay “back to work incentives” (e.g., cash payments for newly employed workers after a certain period of time on the job)? [5/27]

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to unemployed workers. See 31 CFR 35.6(b)(4). This assistance can include job training or other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers.

2.14. The Coronavirus Relief Fund (CRF) included as an eligible use: "Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency." What has changed in CSFRF/CLFRF, and what type of documentation is required under CSFRF/CLFRF? [5/27]

Many of the expenses authorized under the Coronavirus Relief Fund are also eligible uses under the CSFRF/CLFRF. However, in the case of payroll expenses for public safety, public health, health care, human services, and similar employees (hereafter, public health and safety staff), the CSFRF/CLFRF does differ from the CRF. This change reflects the differences between the ARPA and CARES Act and recognizes that the response to the COVID-19 public health emergency has changed and will continue to change over time. In particular, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, including first responders, to the extent that the employee's time that is dedicated to responding to the COVID-19 public health emergency.

For administrative convenience, the recipient may consider a public health and safety employee to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated (e.g., more than half of the employee's time is dedicated) to responding to the COVID-19 public health emergency.

Recipients may use presumptions for assessing whether an employee, division, or operating unit is primarily dedicated to COVID-19 response. The recipient should

maintain records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response. Recipients need not routinely track staff hours. Recipients should periodically reassess their determinations.

2.15. What staff are included in “public safety, public health, health care, human services, and similar employees”? Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff? [5/27]

As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee’s time that is dedicated to responding to the COVID-19 public health emergency.

Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.

2.16. May recipients use funds to establish a public jobs program? [6/8]

Yes. The Interim Final Rule permits a broad range of services to unemployed or underemployed workers and other individuals that suffered negative economic impacts from the pandemic. That can include public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker’s occupation or level of training. The broad range of permitted services can also include other employment supports, such as childcare assistance or assistance with transportation to and from a jobsite or interview.

The Interim Final Rule includes as an eligible use re-hiring public sector staff up to the government’s level of pre-pandemic employment. “Public sector staff” would not include individuals participating in a job training or subsidized employment program administered by the recipient.

2.17. The Interim Final Rule states that “assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.” Are recipients

required to demonstrate that each individual or business experienced a negative economic impact for that individual or business to receive assistance? [6/23]

Not necessarily. The Interim Final Rule allows recipients to demonstrate a negative economic impact on a population or group and to provide assistance to households or businesses that fall within that population or group. In such cases, the recipient need only demonstrate that the household or business is within the population or group that experienced a negative economic impact.

For assistance to households, the Interim Final Rule states, “In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic.” This would allow, for example, an internet access assistance program for all low- or moderate-income households, but would not require the recipient to demonstrate or document that each individual low- or -moderate income household experienced a negative economic impact from the COVID-19 public health emergency apart from being low- or -moderate income.

For assistance to small businesses, the Interim Final Rule states that assistance may be provided to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, to respond to the negative economic impacts of the COVID-19 public health emergency. In providing assistance to small businesses, recipients must design a program that responds to the negative economic impacts of the COVID-19 public health emergency, including by identifying how the program addresses the identified need or impact faced by small businesses. This can include assistance to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency.

As part of program design and to ensure that the program responds to the identified need, recipients may consider additional criteria to target assistance to businesses in need, including to small businesses. Assistance may be targeted to businesses facing financial insecurity, with substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or facing other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. For example, a recipient could find based on local data or research that the smallest businesses faced sharply increased risk of bankruptcy and develop a program to respond; such a program would only need to document a population or group-level negative economic impact, and eligibility criteria to limit access to the program to that population or group (in this case, the smallest businesses).

In addition, recognizing the disproportionate impact of the pandemic on disadvantaged communities, the Interim Final Rule also identifies a set of services that are presumptively eligible when provided in a Qualified Census Tract (QCT); to families and individuals living in QCTs; to other populations, households, or geographic areas

identified by the recipient as disproportionately impacted by the pandemic; or when these services are provided by Tribal governments. For more information on the set of presumptively eligible services, see the Interim Final Rule section on *Building Stronger Communities through Investments in Housing and Neighborhoods* and FAQ 2.11.

2.18. Would investments in improving outdoor spaces (e.g. parks) be an eligible use of funds as a response to the public health emergency and/or its negative economic impacts? [6/23]

There are multiple ways that investments in improving outdoor spaces could qualify as eligible uses; several are highlighted below, though there may be other ways that a specific investment in outdoor spaces would meet eligible use criteria.

First, in recognition of the disproportionate negative economic impacts on certain communities and populations, the Interim Final Rule identifies certain types of services that are eligible uses when provided in a Qualified Census Tract (QCT), to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic.

These programs and services include services designed to build stronger neighborhoods and communities and to address health disparities and the social determinants of health. The Interim Final Rule provides a non-exhaustive list of eligible services to respond to the needs of communities disproportionately impacted by the pandemic, and recipients may identify other uses of funds that do so, consistent with the Rule's framework. For example, investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments and outdoor recreation and socialization to mitigate the spread of COVID-19.

Second, recipients may provide assistance to small businesses in all communities. Assistance to small businesses could include support to enhance outdoor spaces for COVID-19 mitigation (e.g., restaurant patios) or to improve the built environment of the neighborhood (e.g., façade improvements).

Third, many governments saw significantly increased use of parks during the pandemic that resulted in damage or increased maintenance needs. The Interim Final Rule recognizes that “decrease[s to] a state or local government’s ability to effectively administer services” can constitute a negative economic impact of the pandemic.

2.19. Would expenses to address a COVID-related backlog in court cases be an eligible use of funds as a response to the public health emergency? [6/23]

The Interim Final Rule recognizes that “decrease[s to] a state or local government’s ability to effectively administer services,” such as cuts to public sector staffing levels, can constitute a negative economic impact of the pandemic. During the COVID-19 public

health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from inability of courts to safely operate during the COVID-19 pandemic decreased the government's ability to administer services. Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.

2.20. Can funds be used to assist small business startups as a response to the negative economic impact of COVID-19? [6/23]

As discussed in the Interim Final Rule, recipients may provide assistance to small businesses that responds to the negative economic impacts of COVID-19. The Interim Final Rule provides a non-exclusive list of potential assistance mechanisms, as well as considerations for ensuring that such assistance is responsive to the negative economic impacts of COVID-19.

Treasury acknowledges a range of potential circumstances in which assisting small business startups could be responsive to the negative economic impacts of COVID-19, including for small businesses and individuals seeking to start small businesses after the start of the COVID-19 public health emergency. For example:

- A recipient could assist small business startups with additional costs associated with COVID-19 mitigation tactics (e.g., barriers or partitions; enhanced cleaning; or physical plant changes to enable greater use of outdoor space).
- A recipient could identify and respond to a negative economic impact of COVID-19 on new small business startups; for example, if it could be shown that small business startups in a locality were facing greater difficulty accessing credit than prior to the pandemic, faced increased costs to starting the business due to the pandemic, or that the small business had lost expected startup capital due to the pandemic.
- The Interim Final Rule also discusses eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID-19 public health emergency, including uses that provide job training for unemployed individuals. These initiatives also may support small business startups and individuals seeking to start small businesses.

2.21. Can funds be used for eviction prevention efforts or housing stability services? [6/24]

Yes. Responses to the negative economic impacts of the pandemic include “rent, mortgage, or utility assistance [and] counseling and legal aid to prevent eviction or homelessness.” This includes housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of

domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing.

This also includes legal aid such as legal services or attorney's fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.

Recipients may transfer funds to, or execute grants or contracts with, court systems, non-profits, and a wide range of other organizations to implement these strategies.

3. Eligible Uses – Revenue Loss

3.1. How is revenue defined for the purpose of this provision? [appendix added 6/23]

The Interim Final Rule adopts a definition of “General Revenue” that is based on, but not identical, to the Census Bureau’s concept of “General Revenue from Own Sources” in the Annual Survey of State and Local Government Finances.

General Revenue includes revenue from taxes, current charges, and miscellaneous general revenue. It excludes refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and revenue generated by utilities and insurance trusts. General revenue also includes intergovernmental transfers between state and local governments, but excludes intergovernmental transfers from the Federal government, including Federal transfers made via a state to a locality pursuant to the CRF or the Fiscal Recovery Funds.

Tribal governments may include all revenue from Tribal enterprises and gaming operations in the definition of General Revenue.

Please see the appendix for a diagram of the Interim Final Rule’s definition of General Revenue within the Census Bureau’s revenue classification structure.

3.2. Will revenue be calculated on an entity-wide basis or on a source-by-source basis (e.g. property tax, income tax, sales tax, etc.)?

Recipients should calculate revenue on an entity-wide basis. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the net impact of the COVID- 19 public health emergency on a recipient’s revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.

3.3. Does the definition of revenue include outside concessions that contract with a state or local government?

Recipients should classify revenue sources as they would if responding to the U.S. Census Bureau's Annual Survey of State and Local Government Finances. According to the Census Bureau's [Government Finance and Employment Classification manual](#), the following is an example of current charges that would be included in a state or local government's general revenue from own sources: "Gross revenue of facilities operated by a government (swimming pools, recreational marinas and piers, golf courses, skating rinks, museums, zoos, etc.); auxiliary facilities in public recreation areas (camping areas, refreshment stands, gift shops, etc.); lease or use fees from stadiums, auditoriums, and community and convention centers; and rentals from concessions at such facilities."

3.4. What is the time period for estimating revenue loss? Will revenue losses experienced prior to the passage of the Act be considered?

Recipients are permitted to calculate the extent of reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. This approach recognizes that some recipients may experience lagged effects of the pandemic on revenues.

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

3.5. What is the formula for calculating the reduction in revenue?

A reduction in a recipient's General Revenue equals:

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

Where:

Base Year Revenue is General Revenue collected in the most recent full fiscal year prior to the COVID-19 public health emergency.

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date.

Subscript *t* denotes the calculation date.

3.6. Are recipients expected to demonstrate that reduction in revenue is due to the COVID-19 public health emergency?

In the Interim Final Rule, any diminution in actual revenue calculated using the formula above would be presumed to have been “due to” the COVID-19 public health emergency. This presumption is made for administrative ease and in recognition of the broad-based economic damage that the pandemic has wrought.

3.7. May recipients use pre-pandemic projections as a basis to estimate the reduction in revenue?

No. Treasury is disallowing the use of projections to ensure consistency and comparability across recipients and to streamline verification. However, in estimating the revenue shortfall using the formula above, recipients may incorporate their average annual revenue growth rate in the three full fiscal years prior to the public health emergency.

3.8. Once a recipient has identified a reduction in revenue, are there any restrictions on how recipients use funds up to the amount of the reduction?

The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. Government services can include, but are not limited to, maintenance of infrastructure or pay-go spending for building new infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

However, paying interest or principal on outstanding debt, replenishing rainy day or other reserve funds, or paying settlements or judgments would not be considered provision of a government service, since these uses of funds do not entail direct provision of services to citizens. This restriction on paying interest or principal on any outstanding debt instrument, includes, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt. In addition, the overarching restrictions on all program funds (e.g., restriction on pension deposits, restriction on using funds for non-federal match where barred by regulation or statute) would apply.

3.9. How do I know if a certain type of revenue should be counted for the purpose of computing revenue loss? [5/27]

As discussed in FAQ #3.1, the Interim Final Rule adopts a definition of “General Revenue” that is based on, but not identical, to the Census Bureau’s concept of “General Revenue from Own Sources” in the Annual Survey of State and Local Government Finances.

Recipients should refer to the definition of “General Revenue” included in the Interim Final Rule. See 31 CFR 35.3. If a recipient is unsure whether a particular revenue source is included in the Interim Final Rule’s definition of “General Revenue,” the recipient may consider the classification and instructions used to complete the Census Bureau’s Annual Survey.

For example, parking fees would be classified as a Current Charge for the purpose of the Census Bureau’s Annual Survey, and the Interim Final Rule’s concept of “General Revenue” includes all Current Charges. Therefore, parking fees would be included in the Interim Final Rule’s concept of “General Revenue.”

The Census Bureau’s Government Finance and Employment Classification manual is available [here](#).

3.10. In calculating revenue loss, are recipients required to use audited financials? [6/8]

Where audited data is not available, recipients are not required to obtain audited data. Treasury expects all information submitted to be complete and accurate. See 31 CFR 35.4(c).

3.11. In calculating revenue loss, should recipients use their own data, or Census data? [6/8]

Recipients should use their own data sources to calculate general revenue, and do not need to rely on published revenue data from the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients’ self-reported general revenue figures may differ somewhat from those published by the Census Bureau.

3.12. Should recipients calculate revenue loss on a cash basis or an accrual basis? [6/8]

Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required.

3.13. In identifying intergovernmental revenue for the purpose of calculating General Revenue, should recipients exclude all federal funding, or just federal funding related to the COVID-19 response? How should local governments treat federal funds that are passed through states or other entities, or federal funds that are intermingled with other funds? [6/23]

In calculating General Revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a state to a locality pursuant to the Coronavirus Relief Fund or Fiscal Recovery Funds. To the extent federal funds are passed through states or other entities or intermingled with other funds, recipients should attempt to identify and exclude the

federal portion of those funds from the calculation of General Revenue on a best-efforts basis.

3.14. What entities constitute a government for the purpose of calculating revenue loss? [7/14]

In determining whether a particular entity is part of a recipient's government for purposes of measuring a recipient's government revenue, recipients should identify all the entities included in their government and the general revenue attributable to these entities on a best-efforts basis. Recipients are encouraged to consider how their administrative structure is organized under state and local statutes. In cases in which the autonomy of certain authorities, commissions, boards, districts, or other entities is not readily distinguishable from the recipient's government, recipients may adopt the Census Bureau's criteria for judging whether an entity is independent from, or a constituent of, a given government. For an entity to be independent, it generally meets all four of the following conditions:

- The entity is an organized entity and possesses corporate powers, such as perpetual succession, the right to sue and be sued, having a name, the ability to make contracts, and the ability to acquire and dispose of property.
- The entity has governmental character, meaning that it provides public services, or wields authority through a popularly elected governing body or officers appointed by public officials. A high degree of responsibility to the public, demonstrated by public reporting requirements or by accessibility of records for public inspection, also evidences governmental character.
- The entity has substantial fiscal independence, meaning it can determine its budget without review and modification by other governments. For instance, the entity can determine its own taxes, charges, and debt issuance without another government's supervision.
- The entity has substantial administrative independence, meaning it has a popularly elected governing body, or has a governing body representing two or more governments, or, in the event its governing body is appointed by another government, the entity performs functions that are essentially different from those of, and are not subject to specification by, its creating government.

If an entity does not meet all four of these conditions, a recipient may classify the entity as part of the recipient's government and assign the portion of General Revenue that corresponds to the entity.

To further assist recipients in applying the forgoing criteria, recipients may refer to the Census Bureau's [*Individual State Descriptions: 2017 Census of Governments*](#) publication, which lists specific entities and classes of entities classified as either independent (defined by Census as "special purpose governments") or constituent (defined by Census as "dependent agencies") on a state-by-state basis. Recipients should note that the Census Bureau's lists are not exhaustive and that Census classifications are based on an analysis of state and local statutes as of 2017 and subject to the Census Bureau's judgement. Though not included in the Census Bureau's publication, state

colleges and universities are generally classified as dependent agencies of state governments by the Census Bureau.

If an entity is determined to be part of the recipient's government, the recipient must also determine whether the entity's revenue is covered by the Interim Final Rule's definition of "general revenue." For example, some cash flows may be outside the definition of "general revenue." In addition, note that the definition of general revenue includes Tribal enterprises in the case of Tribal governments. Refer to FAQ 3.1 (and the Appendix) for the components included in General Revenue.

3.15. The Interim Final Rule's definition of General Revenue excludes revenue generated by utilities. Can you please clarify the definition of utility revenue? [7/14]

As noted in FAQs 3.1 and 3.9, the Interim Final Rule adopts a definition of "general revenue" that is based on, but not identical to, the Census Bureau's concept of "General Revenue from Own Sources" in the Annual Survey of State and Local Government Finances. Recipients should refer to the definition of "general revenue" included in the Interim Final Rule. See 31 CFR 35.3. If a recipient is unsure whether a particular revenue source is included in the Interim Final Rule's definition of "general revenue," the recipient may consider the classification and instructions used to complete the Census Bureau's Annual Survey.

According to the Census Bureau's [Government Finance and Employment Classification manual](#), utility revenue is defined as "[g]ross receipts from sale of utility commodities or services to the public or other governments by publicly-owned and controlled utilities." This includes revenue from operations of publicly-owned and controlled water supply systems, electric power systems, gas supply systems, and public mass transit systems (see pages 4-45 and 4-46 of the manual for more detail).

Except for these four types of utilities, revenues from all commercial-type activities of a recipient's government (e.g., airports, educational institutions, lotteries, public hospitals, public housing, parking facilities, port facilities, sewer or solid waste systems, and toll roads and bridges) are covered by the Interim Final Rule's definition of "general revenue." If a recipient is unsure whether a particular entity performing one of these commercial-type activities can be considered part of the recipient's government, please see FAQ 3.14.

4. Eligible Uses – General

4.1. May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds

and similar reserves funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services, since such expenses do not directly relate to the provision of government services.

4.2. May recipients use funds to invest in infrastructure other than water, sewer, and broadband projects (e.g. roads, public facilities)?

Under 602(c)(1)(C) or 603(c)(1)(C), recipients may use funds for maintenance of infrastructure or pay-go spending for building of new infrastructure as part of the general provision of government services, to the extent of the estimated reduction in revenue due to the public health emergency.

Under 602(c)(1)(A) or 603(c)(1)(A), a general infrastructure project typically would not be considered a response to the public health emergency and its negative economic impacts unless the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing in a Qualified Census Tract).

4.3. May recipients use funds to pay interest or principal on outstanding debt?

No. Expenses related to financing, including servicing or redeeming notes, would not address the needs of pandemic response or its negative economic impacts. Such expenses would also not be considered provision of government services, as these financing expenses do not directly provide services or aid to citizens.

This applies to paying interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt.

4.4. May recipients use funds to satisfy nonfederal matching requirements under the Stafford Act? May recipients use funds to satisfy nonfederal matching requirements generally?

Fiscal Recovery Funds are subject to pre-existing limitations in other federal statutes and regulations and may not be used as non-federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, expenses for the state share of Medicaid are not an eligible use. For information on FEMA programs, please [see here](#).

4.5. Are governments required to submit proposed expenditures to Treasury for approval? [5/27]

No. Recipients are not required to submit planned expenditures for prior approval by Treasury. Recipients are subject to the requirements and guidelines for eligible uses contained in the Interim Final Rule.

4.6. How do I know if a specific use is eligible? [5/27]

Fiscal Recovery Funds must be used in one of the four eligible use categories specified in the American Rescue Plan Act and implemented in the Interim Final Rule:

- a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- d) To make necessary investments in water, sewer, or broadband infrastructure.

Recipients should consult Section II of the Interim Final Rule for additional information on eligible uses. For recipients evaluating potential uses under (a), the Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. See Section II of the Interim Final Rule for additional discussion.

For recipients evaluating potential uses under (c), the Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. See FAQ #3.8 for additional discussion.

For recipients evaluating potential uses under (b) and (d), see Sections 5 and 6.

4.7. Do restrictions on using Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred beginning on March 3, 2021 apply to costs incurred by the recipient (e.g., a State, local, territorial, or Tribal government) or to costs incurred by households, businesses, and individuals benefiting from assistance provided using Coronavirus State and Local Fiscal Recovery Funds? [6/8]

The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021. This limitation applies to costs incurred by the recipient (i.e., the state, local, territorial, or Tribal government receiving funds). However, recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to households, businesses, and individuals within the eligible use categories described in the Interim

Final Rule for economic harms experienced by those households, businesses, and individuals prior to March 3, 2021. For example,

- Public Health/Negative Economic Impacts – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to households – such as rent, mortgage, or utility assistance – for economic harms experienced or costs incurred by the household prior to March 3, 2021 (e.g., rental arrears from preceding months), provided that the cost of providing assistance to the household was not incurred by the recipient prior to March 3, 2021.
- Premium Pay – Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
- Revenue Loss – The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. The calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020. However, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- Investments in Water, Sewer, and Broadband – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to make necessary investments in water, sewer, and broadband. See FAQ Section 6. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the Coronavirus State and Local Fiscal Recovery Funds were incurred after March 3, 2021.

4.8. How can I use CSFRF/CLFRF funds to prevent and respond to crime, and support public safety in my community? [6/23]

Under Treasury’s Interim Final Rule, there are many ways in which the State and Local Fiscal Recovery Funds (“Funds”) under the American Rescue Plan Act can support communities working to reduce and respond to increased violence due to the pandemic. Among the eligible uses of the Funds are restoring of public sector staff to their pre-pandemic levels and responses to the public health crisis and negative economic impacts resulting from the pandemic. The Interim Final Rule provides several ways for recipients to “respond to” this pandemic-related gun violence, ranging from community violence intervention programs to mental health services to hiring of public safety personnel.

Below are some examples of how Fiscal Recovery Funds can be used to address public safety:

- In all communities, recipients may use resources to rehire police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels.

Additionally, Funds can be used for expenses to address COVID-related court backlogs, including hiring above pre-pandemic levels, as a response to the public health emergency. See FAQ 2.19.

- In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic they may use funds to address that harm. This spending may include:
 - Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
 - Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers
 - Additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels
 - Investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic

As discussed in the Interim Final Rule, uses of CSFRR/CLFRR funds that respond to an identified harm must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.

- Recipients may also use funds up to the level of revenue loss for government services, including those outlined above.

Recognizing that the pandemic exacerbated mental health and substance use disorder needs in many communities, eligible public health services include mental health and other behavioral health services, which are a critical component of a holistic public safety approach. This could include:

- Mental health services and substance use disorder services, including for individuals experiencing trauma exacerbated by the pandemic, such as:
 - Community-based mental health and substance use disorder programs that deliver evidence-based psychotherapy, crisis support services, medications for opioid use disorder, and/or recovery support
 - School-based social-emotional support and other mental health services
- Referrals to trauma recovery services for crime victims.

Recipients also may use Funds to respond to the negative economic impacts of the public health emergency, including:

- Assistance programs to households or populations facing negative economic impacts of the public health emergency, including:

- Assistance to support economic security, including for the victims of crime;
 - Housing assistance, including rent, utilities, and relocation assistance;
 - Assistance with food, including Summer EBT and nutrition programs; and
 - Employment or job training services to address negative economic or public health impacts experienced due to a worker's occupation or level of training.
- Assistance to unemployed workers, including:
 - Subsidized jobs, including for young people. Summer youth employment programs directly address the negative economic impacts of the pandemic on young people and their families and communities;
 - Programs that provide paid training and/or work experience targeted primarily to (1) formerly incarcerated individuals, and/or (2) communities experiencing high levels of violence exacerbated by the pandemic;
 - Programs that provide workforce readiness training, apprenticeship or pre-apprenticeship opportunities, skills development, placement services, and/or coaching and mentoring; and
 - Associated wraparound services, including for housing, health care, and food.

Recognizing the disproportionate impact of the pandemic on certain communities, a broader range of services are eligible in those communities than would otherwise be available in communities not experiencing a pandemic-related increase in crime or gun violence. These eligible uses aim to address the pandemic's exacerbation of public health and economic disparities and include services to address health and educational disparities, support neighborhoods and affordable housing, and promote healthy childhood environments. The Interim Final Rule provides a non-exhaustive list of eligible services in these categories.

These services automatically qualify as eligible uses when provided in Qualified Census Tracts (QCTs), low-income areas designated by HUD; to families in QCTs; or by Tribal governments. Outside of these areas, recipient governments can also identify and serve households, populations, and geographic areas disproportionately impacted by the pandemic.

Services under this category could include:

- Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, childhood health and welfare, including:
 - Summer education and enrichment programs in these communities, which include many communities currently struggling with high levels of violence;
 - Programs that address learning loss and keep students productively engaged;
 - Enhanced services for foster youths and home visiting programs; and
 - Summer camps and recreation.
- Programs or services that provide or facilitate access to health and social services and address health disparities exacerbated by the pandemic. This includes Community Violence Intervention (CVI) programs, such as:
 - Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with

- wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and,
- Capacity-building efforts at CVI programs like funding more intervention workers; increasing their pay; providing training and professional development for intervention workers; and hiring and training workers to administer the programs.

Please refer to Treasury's Interim Final Rule for additional information.

4.9. May recipients pool funds for regional projects? [7/14]

Yes, provided that the project is itself an eligible use of funds and that recipients can track the use of funds in line with the reporting and compliance requirements of the CSFRF/CLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another government, recipients would need to comply with the rules on transfers specified in the Interim Final Rule, Section V. A recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the recipient can document that its jurisdiction receives a benefit proportionate to the amount contributed.

4.10. May recipients fund a project with both ARP funds and other sources of funding (e.g., blending, braiding, or other pairing funding sources), including in conjunction with financing provided through a debt issuance? [7/14]

Cost sharing or matching funds are not required under CSFRF/CLFRF. Funds may be used in conjunction with other funding sources, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the CSFRF/CLFRF projects, and with any requirements and restrictions on the use of funds from the supplemental funding sources and the CSFRF/CLFRF program. Specifically,

- All funds provided under the CSFRF/CLFRF program must be used for projects, investments, or services that are eligible under the CSFRF/CLFRF statute, Treasury's Interim Final Rule, and guidance. See 31 CFR 35.6-8; FAQ 4.6. CSFRF/CLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the CSFRF/CLFRF statute, Treasury's Interim Final Rule, and guidance. For example,
 - CSFRF/CLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure, which is eligible under the CSLFRF statute, and Treasury's Interim Final Rule.
 - CSFRF/CLFRF funds could not be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury's Interim Final Rule. However, the recipient could use CSFRF/CLFRF funds only for a smaller component project that does

constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the “project” under this program would be only the eligible use component of the larger project.

- In addition, because CSFRF/CLFRF funds must be obligated by December 31, 2024, and expended by December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of CSFRF/CLFRF funds obligated and expended and when such funds were obligated and expended.

4.11. May Coronavirus State and Local Fiscal Recovery Funds be used to make loans or other extensions of credit (“loans”), including loans to small businesses and loans to finance necessary investments in water, sewer, and broadband infrastructure? [7/14]

Yes. Coronavirus State and Local Fiscal Recovery Funds (“Funds”) may be used to make loans, provided that the loan is an eligible use and the cost of the loan is tracked and reported in accordance with the points below. See 31 CFR 35.6. For example, a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make loans to small businesses. See 31 CFR 35.6(b)(6). In addition, a recipient may use Funds to finance a necessary investment in water, sewer or broadband, as described in the Interim Final Rule. See 31 CFR 35.6(e).

Funds must be used to cover “costs incurred” by the recipient between March 3, 2021, and December 31, 2024, and Funds must be expended by December 31, 2026. See Section III.D of the Interim Final Rule; 31 CFR 35.5. Accordingly, recipients must be able to determine the amount of Funds used to make a loan.

- For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with the approach to loans taken in the Coronavirus Relief Fund.
 - Recipients may use Fiscal Recovery Funds to fund the principal of the loan and in that case must track repayment of principal and interest (i.e., “program income,” as defined under 2 CFR 200).
 - When the loan is made, recipients must report the principal of the loan as an expense.
 - Repayment of principal may be re-used only for eligible uses, and subject to restrictions on timing of use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and IFR. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.
- For loans with maturities longer than December 31, 2026, the recipient may use Fiscal Recovery Funds for only the projected cost of the loan. Recipients may estimate the subsidy cost of the loan, which equals the expected cash flows associated

with the loan discounted at the recipient's cost of funding. A recipient's cost of funding can be determined based on the interest rates of securities with a similar maturity to the cash flow being discounted that were either (i) recently issued by the recipient or (ii) recently issued by a unit of state, local, or Tribal government similar to the recipient. Recipients that have adopted the Current Expected Credit Loss (CECL) standard may also treat the cost of the loan as equal to the CECL-based expected credit losses over the life of the loan. Recipients may measure projected losses either once, at the time the loan is extended, or annually over the covered period.

Under either approach for measuring the amount of funds used to make loans with maturities longer than December 31, 2026, recipients would not be subject to restrictions under 2 CFR 200.307(e)(1) and need not separately track repayment of principal or interest.

Any contribution of Fiscal Recovery Funds to a revolving loan fund must follow the approach described above for loans with maturities longer than December 31, 2026. In other words, a recipient could contribute Fiscal Recovery Funds to a revolving loan fund, provided that the revolving loan fund makes loans that are eligible uses and the Fiscal Recovery Funds contributed represent the projected cost of loans made over the life of the revolving loan fund.

4.12. May funds be used for outreach to increase uptake of federal assistance like the Child Tax Credit or federal programs like SNAP? [7/14]

Yes. Eligible uses to address negative economic impacts include work “to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.” See 31 CFR 35.6(b)(10). Of note, per the CSFRF/CLFRF [Reporting Guidance](#), allowable use of funds for evaluations may also include other types of program evaluations focused on program improvement and evidence building. In addition, recipients may use funds to facilitate access to health and social services in populations and communities disproportionately impacted by the COVID-19 pandemic, including benefits navigators or marketing efforts to increase consumer uptake of federal tax credits, benefits, or assistance programs that respond to negative economic impacts of the pandemic. See 31 CFR 35.6(b)(12).

5. Eligible Uses – Premium Pay

5.1. What criteria should recipients use in identifying essential workers to receive premium pay?

Essential workers are those in critical infrastructure sectors who regularly perform in-person work, interact with others at work, or physically handle items handled by others.

Critical infrastructure sectors include healthcare, education and childcare, transportation, sanitation, grocery and food production, and public health and safety, among others, as provided in the Interim Final Rule. Governments receiving Fiscal Recovery Funds have the discretion to add additional sectors to this list, so long as the sectors are considered critical to protect the health and well-being of residents.

The Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

5.2. What criteria should recipients use in identifying third-party employers to receive grants for the purpose of providing premium pay to essential workers?

Any third-party employers of essential workers are eligible. Third-party contractors who employ essential workers in eligible sectors are also eligible for grants to provide premium pay. Selection of third-party employers and contractors who receive grants is at the discretion of recipients.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided.

5.3. May recipients provide premium pay retroactively for work already performed?

Yes. Treasury encourages recipients to consider providing premium pay retroactively for work performed during the pandemic, recognizing that many essential workers have not yet received additional compensation for their service during the pandemic.

6. Eligible Uses – Water, Sewer, and Broadband Infrastructure

6.1. What types of water and sewer projects are eligible uses of funds?

The Interim Final Rule generally aligns eligible uses of the Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).

Under the DWSRF, categories of [eligible projects](#) include: treatment, transmission and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development.

Under the CWSRF, categories of [eligible projects](#) include: construction of publicly-owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water

conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act.

As mentioned in the Interim Final Rule, eligible projects under the DWSRF and CWSRF support efforts to address climate change, as well as to meet cybersecurity needs to protect water and sewer infrastructure. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury also encourages recipients to consider projects to replace lead service lines.

6.2. May construction on eligible water, sewer, or broadband infrastructure projects continue past December 31, 2024, assuming funds have been obligated prior to that date?

Yes. Treasury is interpreting the requirement that costs be incurred by December 31, 2024 to only require that recipients have obligated the funds by such date. The period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with Fiscal Recovery Funds.

6.3. May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

Recipients may not use funds as a state match for the CWSRF and DWSRF due to prohibitions in utilizing federal funds as a state match in the authorizing statutes and regulations of the CWSRF and DWSRF.

6.4. Does the National Environmental Policy Act (NEPA) apply to eligible infrastructure projects?

NEPA does not apply to Treasury's administration of the Funds. Projects supported with payments from the Funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs.

6.5. What types of broadband projects are eligible?

The Interim Final Rule requires eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

Projects must also be designed to serve unserved or underserved households and businesses, defined as those that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

6.6. For broadband investments, may recipients use funds for related programs such as cybersecurity or digital literacy training?

Yes. Recipients may use funds to provide assistance to households facing negative economic impacts due to Covid-19, including digital literacy training and other programs that promote access to the Internet. Recipients may also use funds for modernization of cybersecurity, including hardware, software, and protection of critical infrastructure, as part of provision of government services up to the amount of revenue lost due to the public health emergency.

6.7. How do I know if a water, sewer, or broadband project is an eligible use of funds? Do I need pre-approval? [6/8]

Recipients do not need approval from Treasury to determine whether an investment in a water, sewer, or broadband project is eligible under CSFRF/CLFRF. Each recipient should review the Interim Final Rule (IFR), along with the preamble to the Interim Final Rule, in order to make its own assessment of whether its intended project meets the eligibility criteria in the IFR. A recipient that makes its own determination that a project meets the eligibility criteria as outlined in the IFR may pursue the project as a CSFRF/CLFRF project without pre-approval from Treasury. Local government recipients similarly do not need state approval to determine that a project is eligible under CSFRF/CLFRF. However, recipients should be cognizant of other federal or state laws or regulations that may apply to construction projects independent of CSFRF/CLFRF funding conditions and that may require pre-approval.

For water and sewer projects, the IFR refers to the EPA [Drinking Water](#) and [Clean Water](#) State Revolving Funds (SRFs) for the categories of projects and activities that are eligible for funding. Recipients should look at the relevant federal statutes, regulations, and guidance issued by the EPA to determine whether a water or sewer project is eligible. Of note, the IFR does not incorporate any other requirements contained in the federal statutes governing the SRFs or any conditions or requirements that individual states may place on their use of SRFs.

6.8. For broadband infrastructure investments, what does the requirement that infrastructure “be designed to” provide service to unserved or underserved households and businesses mean? [6/17]

Designing infrastructure investments to provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. To meet this requirement, states and localities should use funds to deploy broadband infrastructure projects whose objective is to provide service to unserved or underserved households or businesses. These unserved or underserved households or businesses do not need to be the only ones in the service area funded by the project.

6.9. For broadband infrastructure to provide service to “unserved or underserved households or businesses,” must every house or business in the service area be unserved or underserved? [6/17]

No. It suffices that an objective of the project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.

6.10. May recipients use payments from the Funds for “middle mile” broadband projects? [6/17]

Yes. Under the Interim Final Rule, recipients may use payments from the Funds for “middle-mile projects,” but Treasury encourages recipients to focus on projects that will achieve last-mile connections—whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

6.11. For broadband infrastructure investments, what does the requirement to “reliably” meet or exceed a broadband speed threshold mean? [6/17]

In the Interim Final Rule, the term “reliably” is used in two places: to identify areas that are eligible to be the subject of broadband infrastructure investments and to identify expectations for acceptable service levels for broadband investments funded by the Coronavirus State and Local Fiscal Recovery Funds. In particular:

- The IFR defines “unserved or underserved households or businesses” to mean one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speeds and 3 Mbps of upload speeds.
- The IFR provides that a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make investments in broadband infrastructure that are designed to provide service to unserved or underserved households or businesses and that are designed to, upon completion: (i) reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or (ii) in limited cases, reliably meet or exceed 100 Mbps download speed and between 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download and upload speeds.

The use of “reliably” in the IFR provides recipients with significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can actually and consistently meet the specified thresholds of at least 25Mbps/3Mbps—i.e., to consider the actual experience of current

wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises or otherwise claims to offer speeds that meet the 25 Mbps download and 3 Mbps upload speed thresholds is not dispositive.

When making these assessments, recipients may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).

The IFR also provides recipients with significant discretion as to how they will assess whether the project itself has been designed to provide households and businesses with broadband services that meet, or even exceed, the speed thresholds provided in the rule.

6.12. May recipients use Funds for pre-project development for eligible water, sewer, and broadband projects? [6/23]

Yes. To determine whether Funds can be used on pre-project development for an eligible water or sewer project, recipients should consult whether the pre-project development use or cost is eligible under the Drinking Water and Clean Water State Revolving Funds (CWSRF and DWSRF, respectively). Generally, the CWSRF and DWSRF often allow for pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. For example, the DWSRF [allows](#) for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF [allows](#) for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans.

Similarly, pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For example, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project (e.g., broadband mapping for the purposes of finding an eligible area for investment).

All funds must be obligated within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.

6.13. May State and Local Fiscal Recovery Funds be used to support energy or electrification infrastructure that would be used to power new water treatment plants and wastewater systems? [7/14]

The EPA's [Overview of Clean Water State Revolving Fund Eligibilities](#) describes eligible energy-related projects. This includes a "[p]ro rata share of capital costs of offsite clean energy facilities that provide power to a treatment works." Thus, State and Local Fiscal Recovery Funds may be used to finance the generation and delivery of clean power to a wastewater system or a water treatment plant on a pro-rata basis. If the wastewater system or water treatment plant is the sole user of the clean energy, the full cost would be considered an eligible use of funds. If the clean energy provider provides power to other entities, only the proportionate share used by the water treatment plant or wastewater system would be an eligible use of State and Local Fiscal Recovery Funds.

6.14. How should states and local governments assess whether a stormwater management project, such as a culvert replacement, is an eligible project for State and Local Fiscal Recovery Funds? [7/14]

FAQ 6.7 describes the overall approach that recipients may take to evaluate the eligibility of water or sewer projects. For stormwater management projects specifically, as noted in the EPA's [Overview of Clean Water State Revolving Fund Eligibilities](#), "Stormwater projects must have a water quality benefit." Thus, to be eligible under CSFRF/CLFRF, stormwater management projects should be designed to incorporate water quality benefits consistent with the goals of the Clean Water Act. [Summary of the Clean Water Act.](#)

6.15. May recipients use Funds for road repairs and upgrades that occur in connection with an eligible water or sewer project? [7/14]

Yes, recipients may use State and Local Fiscal Recovery Funds for road repairs and upgrades directly related to an eligible water or sewer project. For example, a recipient could use Funds to repair or re-pave a road following eligible sewer repair work beneath it. However, use of Funds for general infrastructure projects is subject to the limitations described in FAQ 4.2. Water and sewer infrastructure projects are often a single component of a broader transportation infrastructure project, for example, the implementation of stormwater infrastructure to meet Clean Water Act established water quality standards. In this example, the components of the infrastructure project that interact directly with the stormwater infrastructure project may be funded by Fiscal Recovery Funds.

6.16. May Funds be used to build or upgrade broadband connections to schools or libraries? [7/14]

As outlined in the IFR, recipients may use Fiscal Recovery Funds to invest in broadband infrastructure that, wherever it is practicable to do so, is designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. Treasury interprets “businesses” in this context broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

6.17. Are eligible infrastructure projects subject to the Davis-Bacon Act? [7/14]

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the CSFRF/CLFRF program, except for CSFRF/CLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (CSFRF/CLFRF funds or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when CSFRF/CLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects. Please refer to FAQ 4.10 concerning projects funded with both CSFRF/CLFRF funds and other sources of funding.

Treasury has indicated in its Interim Final Rule that it is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for infrastructure projects over \$10 million, and that that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance, page 21, for more detailed information on the reporting requirement.

7. Non-Entitlement Units (NEUs)

Answers to frequently asked questions on distribution of funds to NEUs can be found in this [FAQ supplement](#), which is regularly updated.

8. Ineligible Uses

8.1. What is meant by a pension “deposit”? Can governments use funds for routine pension contributions for employees whose payroll and covered benefits are eligible expenses?

Treasury interprets “deposit” in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both: (1) the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and (2) the payment occurs outside the recipient’s regular timing for making such payments.

Under this interpretation, a “deposit” is distinct from a “payroll contribution,” which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees’ wages and salaries. In general, if an employee’s wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee’s covered benefits as an eligible use of Fiscal Recovery Funds.

8.2. May recipients use Fiscal Recovery Funds to fund Other Post-Employment Benefits (OPEB)? [6/8]

OPEB refers to benefits other than pensions (see, e.g., [Governmental Accounting Standards Board, “Other Post-Employment Benefits”](#)). Treasury has determined that Sections 602(c)(2)(B) and 603(c)(2), which refer only to pensions, do not prohibit CSFRF/CLFRF recipients from funding OPEB. Recipients of either the CSFRF/CLFRF may use funds for eligible uses, and a recipient seeking to use CSFRF/CLFRF funds for OPEB contributions would need to justify those contributions under one of the four eligible use categories.

9. Reporting

On June 17, 2021, Treasury released [Guidance on Recipient Compliance and Reporting Responsibilities for the Coronavirus State and Local Fiscal Recovery Funds](#). Recipients should consult this guidance for additional detail and clarification on recipients’ compliance and reporting responsibilities. A users’ guide will be provided with additional information on how and where to submit required reports.

9.1. What records must be kept by governments receiving funds?

Financial records and supporting documents related to the award must be retained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. This includes those which demonstrate the award funds were used for eligible purposes in accordance with the ARPA, Treasury's regulations implementing those sections, and Treasury's guidance on eligible uses of funds.

9.2. What reporting will be required, and when will the first report be due?

Recipients will be required to submit an interim report, quarterly project and expenditure reports, and annual Recovery Plan Performance Reports as specified below, regarding their utilization of Coronavirus State and Local Fiscal Recovery Funds.

Interim reports: States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report. The interim report will include a recipient's expenditures by category at the summary level and for states, information related to distributions to non-entitlement units of local government must also be included in the interim report. The interim report will cover activity from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Non-entitlement units of local government are not required to submit an interim report.

Quarterly Project and Expenditure reports: State (defined to include the District of Columbia), territorial, metropolitan city, county, and Tribal governments will be required to submit quarterly project and expenditure reports. This report will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of award funds. Reports will be required quarterly with the exception of non-entitlement units, which will report annually. An interim report is due on August 31, 2021. The reports will include the same general data as those submitted by recipients of the Coronavirus Relief Fund, with some modifications to expenditure categories and the addition of data elements related to specific eligible uses. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Non-entitlement units of local government will be required to submit the project and expenditure report annually. The initial annual Project and Expenditure report for non-entitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

Recovery Plan Performance Reports: States (defined to include the District of Columbia), territories, metropolitan cities, and counties with a population that exceeds 250,000

residents will also be required to submit an annual Recovery Plan Performance Report to Treasury. This report will include descriptions of the projects funded and information on the performance indicators and objectives of each award, helping local residents understand how their governments are using the substantial resources provided by Coronavirus State and Local Fiscal Recovery Funds program. The initial Recovery Plan Performance Report will cover activity from date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan Performance Reports will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance Report will cover the period from July 1, 2021 to June 30, 2022 and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance Report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and non-entitlement units of local government are not required to develop a Recovery Plan Performance Report.

Please see the [Guidance on Recipient Compliance and Reporting Responsibilities](#) for more information.

9.3. What provisions of the Uniform Guidance for grants apply to these funds? Will the Single Audit requirements apply?

Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Cost Principles and Single Audit Act requirements. Recipients should refer to the Assistance Listing for detail on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing will be available on beta.SAM.gov.

9.4. Once a recipient has identified a reduction in revenue, how will Treasury track use of funds for the provision of government services? [6/8]

The ARPA establishes four categories of eligible uses and further restrictions on the use of funds to ensure that Fiscal Recovery Funds are used within the four eligible use categories. The Interim Final Rule implements these restrictions, including the scope of the eligible use categories and further restrictions on tax cuts and deposits into pensions. Reporting requirements will align with this structure.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of the reduction in revenue, recipients will be required to submit a description of services provided. As discussed in IFR, these services can include a broad range of services but may not be used directly for pension deposits, contributions to reserve funds, or debt service. Recipients may use sources of funding other than Fiscal Recovery Funds to make deposits to pension funds, contribute to reserve funds, and pay debt service, including during the period of performance for the Fiscal Recovery Fund award.

For recipients using Fiscal Recovery Funds to provide government services to the extent of reduction in revenue, the description of government services reported to Treasury may be narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for personnel costs and \$50 were used for pay-go building of sidewalk infrastructure.

In addition to describing the government services provided to the extent of reduction in revenue, all recipients will also be required to indicate that Fiscal Recovery Funds are not used directly to make a deposit in a pension fund. Further, recipients subject to the tax offset provision will be required to provide information necessary to implement the Interim Final Rule, as described in the Interim Final Rule. Treasury does not anticipate requiring other types of reporting or recordkeeping on spending in pensions, debt service, or contributions to reserve funds.

These requirements are further detailed in the guidance on reporting requirements for the Fiscal Recovery Funds available [here](#).

9.5. What is the Assistance Listing and Catalog of Federal Domestic Assistance (CFDA) number for the program? [6/8]

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov. This includes the final CFDA Number for the program, 21.027.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The CFDA number is the unique 5-digit code for each type of federal assistance, and can be used to search for program information, including funding opportunities, spending on [usaspending.gov](#), or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines, Treasury issued initial payments under an existing CFDA number. If you have already received funds or captured the initial CFDA number in your records, please update your systems and reporting to reflect the final CFDA number 21.027. **Recipients must use the final CFDA number for all financial accounting, audits, subawards, and associated program reporting requirements.**

To ensure public trust, Treasury expects all recipients to serve as strong stewards of these funds. This includes ensuring funds are used for intended purposes and recipients have in place effective financial management, internal controls, and reporting for transparency and accountability.

Please see [Treasury's Interim Final Rule](#) and the [Guidance on Recipient Compliance and Reporting Responsibilities](#) for more information.

10. Miscellaneous

10.1. May governments retain assets purchased with Fiscal Recovery Funds? If so, what rules apply to the proceeds of disposition or sale of such assets?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds. If such assets are disposed of prior to December 31, 2024, the proceeds would be subject to the restrictions on the eligible use of payments.

10.2. Can recipients use funds for administrative purposes?

Recipients may use funds to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID–19 public health emergency and its negative economic impacts. This includes, but is not limited to, costs related to disbursing payments of Fiscal Recovery Funds and managing new grant programs established using Fiscal Recovery Funds.

10.3. Are recipients required to remit interest earned on CSFRF/CLFRF payments made by Treasury? [5/27, updated 7/14]

No. CSFRF/CLFRF payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury’s implementing regulations at 31 CFR part 205 to remit interest to Treasury. CSFRF/CLFRF payments made by Treasury to local governments and Tribes are not subject to the requirement of 2 CFR 200.305(b)(8)–(9) to maintain balances in an interest-bearing account and remit payments to Treasury. Moreover, interest earned on CSFRF/CLFRF payments is not subject to program restrictions. Finally, States may retain interest on payments made by Treasury to the State for distribution to NEUs that is earned before funds are distributed to NEUs, provided that the State adheres to the statutory requirements and Treasury’s guidance regarding the distribution of funds to NEUs. Such interest is also not subject to program restrictions.

Among other things, States and other recipients may use earned income to defray the administrative expenses of the program, including with respect to NEUs.

10.4. Is there a deadline to apply for funds? [5/27]

The Interim Final Rule requires that costs be incurred by December 31, 2024. Direct recipients are encouraged to apply as soon as possible. For direct recipients other than Tribal governments, there is not a specific application deadline.

Tribal governments do have deadlines to complete the application process and should visit www.treasury.gov/SLFRPTribal for guidance on applicable deadlines.

Non-entitlement units of local government should contact their state government for information on applicable deadlines.

10.5. May recipients use funds to cover the costs of consultants to assist with managing and administering the funds? [6/8]

Yes. Recipients may use funds for administering the CSFRF/CLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.

11. Operations

11.1. How do I know if my entity is eligible?

The Coronavirus State and Local Fiscal Recovery Funds American Rescue Plan Act of 2021 set forth the jurisdictions eligible to receive funds under the program, which are:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities (typically, but not always, those with populations over 50,000)
- Non-entitlement units of local government, or smaller local governments (typically, but not always, those with populations under 50,000)

11.2. How does an eligible entity request payment?

Eligible entities (other than non-entitlement units) must submit their information to the [Treasury Submission Portal](#). Please visit the [Coronavirus State and Local Fiscal Recovery Fund website](#) for more information on the submission process.

11.3. I cannot log into the Treasury Submission Portal or am having trouble navigating it. Who can help me?

If you have questions about the Treasury Submission Portal or for technical support, please email covidreliefitsupport@treasury.gov.

11.4. What do I need to do to receive my payment?

All eligible payees are required to have a DUNS Number previously issued by Dun & Bradstreet (<https://www.dnb.com/>).

All eligible payees are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>).

And eligible payees must have a bank account enabled for Automated Clearing House (ACH) direct deposit. Payees with a Wire account are encouraged to provide that information as well.

More information on these and all program pre-submission requirements can be found on the [Coronavirus State and Local Fiscal Recovery Fund website](#).

11.5. Why is Treasury employing id.me for the Treasury Submission Portal?

ID.me is a trusted technology partner to multiple government agencies and healthcare providers. It provides secure digital identity verification to those government agencies and healthcare providers to make sure you're you – and not someone pretending to be you – when you request access to online services. All personally identifiable information provided to ID.me is encrypted and disclosed only with the express consent of the user. Please refer to ID.me Contact Support for assistance with your ID.me account. Their support website is <https://help.id.me>.

11.6. Why is an entity not on the list of eligible entities in Treasury Submission Portal?

The ARPA statute lays out which governments are eligible for payments. The list of entities within the Treasury Submission Portal includes entities eligible to receive a direct payment of funds from Treasury, which include states (defined to include the District of Columbia), territories, Tribal governments, counties, and metropolitan cities.

Eligible non-entitlement units of local government will receive a distribution of funds from their respective state government and should not submit information to the Treasury Submission Portal.

If you believe an entity has been mistakenly left off the eligible entity list, please email SLFRP@treasury.gov.

11.7. What is an Authorized Representative?

An Authorized Representative is an individual with legal authority to bind the government entity (e.g., the Chief Executive Officer of the government entity). An Authorized Representative must sign the Acceptance of Award terms for it to be valid.

11.8. How does a Tribal government determine their allocation?

Tribal governments will receive information about their allocation when the submission to the Treasury Submission Portal is confirmed to be complete and accurate.

11.9. How do I know the status of my request for funds (submission)?

Entities can check the status of their submission at any time by logging into [Treasury Submission Portal](#).

11.10. My Treasury Submission Portal submission requires additional information/correction. What is the process for that?

If your Authorized Representative has not yet signed the award terms, you can edit your submission with in the into [Treasury Submission Portal](#). If your Authorized Representative has signed the award terms, please email SLFRP@treasury.gov to request assistance with updating your information.

11.11. My request for funds was denied. How do I find out why it was denied or appeal the decision?

Please check to ensure that no one else from your entity has applied, causing a duplicate submission. Please also review the list of all eligible entities on the [Coronavirus State and Local Fiscal Recovery Fund website](#).

If you still have questions regarding your submission, please email SLFRP@treasury.gov.

11.12. When will entities get their money?

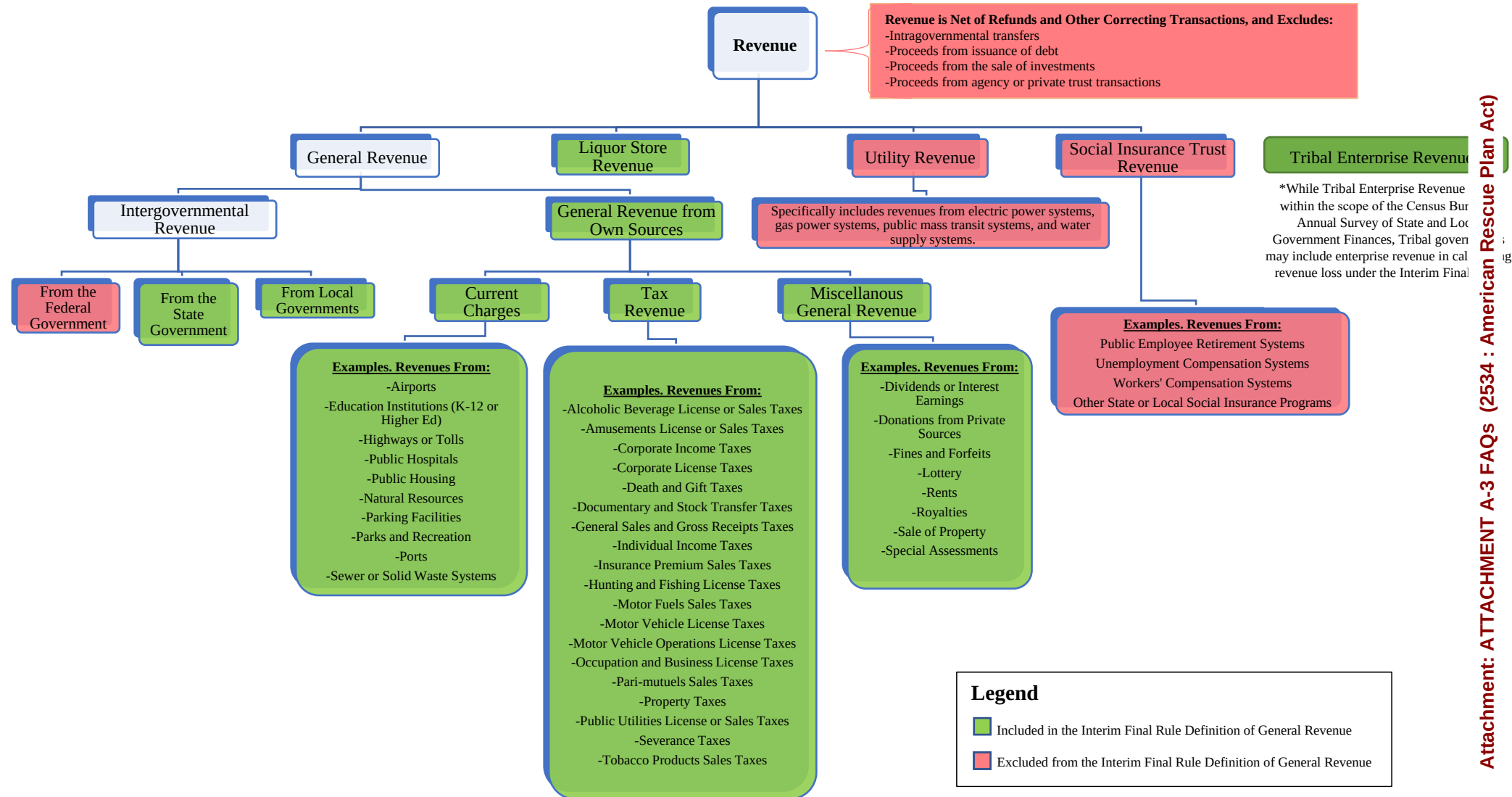
Before Treasury is able to execute a payment, a representative of an eligible government must submit the government's information for verification through the [Treasury Submission Portal](#). The verification process takes approximately four business days. If any errors are identified, the designated point of contact for the government will be contacted via email to correct the information before the payment can proceed. Once verification is complete, the designated point of contact of the eligible government will receive an email notifying them that their submission has been verified. Payments are generally scheduled for the next business day after this verification email, though funds may not be available immediately due to processing time of their financial institution.

11.13. How does a local government entity provide Treasury with a notice of transfer of funds to its State?

For more information on how to provide Treasury with notice of transfer to a state, please email SLRedirectFunds@treasury.gov.

AS OF JULY 19, 2021

Appendix: Interim Final Rule Definition of General Revenue Within the Census Bureau Classification Structure of Revenue



Source: [U.S. Bureau of the Census Government Finance and Employment Classification Manual, 2006](#); [Annual Survey of State and Local Government Finances](#)

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds



June 24, 2021



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

This guidance provides additional detail and clarification for each recipient’s compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [SLFRF implementing regulation](#), and other regulatory and statutory requirements, including regulatory requirements under [the Uniform Guidance \(2 CFR Part 200\)](#). Please see the [Assistance Listing](#) in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund (“CRF”) established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients’ compliance responsibilities and the U.S. Department of the Treasury’s (“Treasury”) expectations and recommends best practices where appropriate under the SLFRF Program.

A. Key Principles.....	P. 3
B. Statutory Eligible Uses.....	P. 3
C. Treasury’s Rulemaking.....	P. 4
D. Uniform Guidance (2 CFR Part 200).....	P. 6
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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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B. Project and Expenditure Report.....	P. 15
C. Recovery Plan Performance Report.....	P. 23
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Appendix 2: Evidenced-Based Intervention Additional Information.....	P. 33



Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.



Treasury adopted an [Interim Final Rule](#) to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.¹ It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's [Interim Final Rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
- Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
- A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative

¹ Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule.
<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>



interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a “rainy day” fund. Recipients should refer to Treasury’s Interim Final Rule for more information on these restrictions.

- 2. Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury’s Interim Final Rule.

Recipients may use SLFRF award funds to provide assistance to households, businesses, and individuals within the eligible use categories described in Treasury’s Interim Final Rule for costs that those households, businesses and individuals incurred prior to March 3, 2021. For example,

- a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
- c. Revenue Loss: Treasury’s Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors. For the purposes of determining expenditure eligibility, Treasury’s Interim Final Rule provides that “incurred” has the same meaning given to “financial obligation” in 2 CFR § 200.1.

- 3. Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.



Assistance Listing

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, [2 CFR Part 200](#) (the “Uniform Guidance”). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the [2020 OMB Compliance Supplement Part 3. Compliance Requirements \(issued August 18, 2020\)](#). Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

- 1. Allowable Activities.** Each recipient should review program requirements, including Treasury’s Interim Final Rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.
- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.



SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.²

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed, or not in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. **Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.³ Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.⁴⁵ Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).
 - b. **Salaries and Expenses:** In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's Interim Final Rule for details.
3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9).

As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.
4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and record retention, to determine and monitor implementation of criteria for

² See 42 CFR 433.51 and 45 CFR 75.306.

³ Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).

⁴ 2 CFR 200.413 Direct Costs.

⁵ 2 CFR 200.414 Indirect Costs.



determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.
7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.
8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.⁶ Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.
9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds

⁶ 2 CFR 200.320(c)(1)-(3) and (5)



should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

- 10. Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

- 11. Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as defined under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

- 12. Special Tests and Provisions.** Treasury has set a deadline of July 16, 2021, for receipt of public comment on its Interim Final Rule and will adopt a final rule responding to these comments. In addition, Treasury may add clarifications to the implementing guidance.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and example of each best practice.

**Table 1: Internal controls best practices**

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury's Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁷
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").
- 3. Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁸ Recipients and subrecipients may also refer to the [Office of](#)

⁷ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.

⁸ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, the PRAC and the Treasury's OIG.



[Management and Budget \(OMB\) Compliance Supplements for audits of federal funds and related guidance](#) and the [Federal Audit Clearinghouse](#) to see examples and single audit submissions.

4. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42](#), provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. [See Section A, page 13.](#)
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over \$50,000, and other information. [See Section B, page 15.](#)
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the “Recovery Plan”) will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. [See Section C, page 23.](#)

Table 2: Reporting requirements by recipient type

Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then 30 days after the end of each quarter thereafter ⁹	By August 31, 2021, and annually thereafter by July 31 ¹⁰
Metropolitan cities and counties with a population below 250,000 residents which received more than \$5 million in SLFRF funding			Not required
Tribal Governments			
Metropolitan cities and counties with a population below 250,000 residents which received less than \$5 million in SLFRF funding		By October 31, 2021, and then annually thereafter ¹¹	
NEUs	Not required		

The remainder of this document describes these reporting requirements. A users’ guide will be provided with additional information on how and where to submit required reports.

⁹ Interim Final Rule Page 111

¹⁰ Interim Final Rule page 112

¹¹ Interim Final Rule Page 111



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Changes from CRF to SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter. SLFRF quarterly reporting will be due 30 days from quarter end.
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures¹² by Expenditure Category from the date of award to July 31, 2021. The recipient will be required to enter obligations¹³ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

- Revenue replacement (EC 6.1¹⁴):** Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020
 - Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
 - An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions and/or template to be provided in users' guide)

¹² For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

¹³ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

¹⁴ See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.



In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

- b. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
- NEU name
 - NEU DUNS number
 - NEU Taxpayer Identification Number (TIN)
 - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
 - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
 - NEU authorized representative name and email address
 - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
 - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)



- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States, U.S. territories, and Tribal governments
- Metropolitan cities and counties that received more than \$5 million in SLFRF funding

For these recipients, the initial quarterly Project and Expenditure Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 and 3	Award Date – September 30	October 31, 2021
2	2021	4	October 1 – December 31	January 31, 2022
3	2022	1	January 1 – March 31	April 30, 2022
4	2022	2	April 1 – June 30	July 31, 2022
5	2022	3	July 1 – September 30	October 31, 2022
6	2022	4	October 1 – December 31	January 31, 2023
7	2023	1	January 1 – March 31	April 30, 2023
8	2023	2	April 1 – June 30	July 31, 2023
9	2023	3	July 1 – September 30	October 31, 2023
10	2023	4	October 1 – December 31	January 31, 2024
11	2024	1	January 1 – March 31	April 30, 2024
12	2024	2	April 1 – June 30	July 31, 2024
13	2024	3	July 1 – September 30	October 31, 2024
14	2024	4	October 1 – December 31	January 31, 2025
15	2025	1	January 1 – March 31	April 30, 2025
16	2025	2	April 1 – June 30	July 31, 2025
17	2025	3	July 1 – September 30	October 31, 2025
18	2025	4	October 1 – December 31	January 31, 2026
19	2026	1	January 1 – March 31	April 30, 2026
20	2026	2	April 1 – June 30	July 31, 2026



Report	Year	Quarter	Period Covered	Due Date
21	2026	3	July 1 – September 30	October 31, 2026
22	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Metropolitan cities and counties that received less than \$5 million in SLFRF funding.
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by October 31. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	Award Date – September 30, 2021	October 31, 2021
2	October 1, 2021 – September 30, 2022	October 31, 2022
3	October 1, 2022 – September 30, 2023	October 31, 2023
4	October 1, 2023 – September 30, 2024	October 31, 2024
5	October 1, 2024 – September 30, 2025	October 31, 2025
6	October 1, 2025 – September 30, 2026	October 31, 2026
7	October 1, 2026 – December 31, 2026	March 31, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports:

- Projects:** Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. In particular, recipients should review the Required Programmatic Data described below and define their projects at a sufficient level of granularity to report these metrics for a reasonably specific activity or set of activities in each project.

Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

- Expenditures:** Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
 - Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure



- c. **Project Status:** Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. **Project Demographic Distribution:** Recognizing the disproportionate impact of the pandemic-related recession on low-income communities, recipients must report whether certain types of projects¹⁵ are targeted to economically disadvantaged communities, as defined by HUD's [Qualified Census Tract](#).¹⁶ Recipients will be asked to identify whether or not the project is serving an economically disadvantaged community. To minimize the administrative burden on recipients while ensuring that this important aspect of program performance is tracked, recipients may assume that the funds for a project count as being targeted towards economically disadvantaged communities if the project funds are spent on:
- A program or service is provided at a physical location in a Qualified Census Tract (for multi-site projects, if a majority of sites are within Qualified Census Tracts);
 - A program or service where the primary intended beneficiaries live within a Qualified Census Tract;
 - A program or service for which the eligibility criteria are such that the primary intended beneficiaries earn less than 60 percent of the median income for the relevant jurisdiction (e.g., State, county, metropolitan area, or other jurisdiction); or
 - A program or service for which the eligibility criteria are such that over 25 percent of intended beneficiaries are below the federal poverty line.

Recipients may use reasonable estimates to determine if a project meets one of these criteria, including identifying the intended beneficiaries of a program or service in terms of income characteristics, geographic location, or otherwise estimating the beneficiaries of a program based on its eligibility criteria. Recipients do not need to track information on each individual beneficiary to make the determination of whether or not the project is serving an economically disadvantaged community. If a recipient is unable to measure economic characteristics of the primary intended beneficiaries of a program or service due to data limitations or for other reasons, that program or service may not be counted as targeted to economically disadvantaged communities. Treasury recognizes that in some circumstances, recipients may fund eligible programs or services that benefit economically disadvantaged communities but may lack adequate data to assess conclusively that such a program or service is targeted to economically disadvantaged communities based on the criteria described above.

- e. **Subawards:** Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than or equal to \$50,000.

¹⁵ Specifically recipients must report this information for projects in the Expenditure Categories that are marked with “^” in the expenditure category listing in Appendix 1 of this guidance

¹⁶ HUD defines as a QCT as having “50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more.” To view median income area for their jurisdiction, recipients may visit the U.S. Census [website](#) on median incomes and select the geography for their jurisdiction and relevant unit of measurement (household or individual) for the project.



Recipients do not also need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than or equal to \$50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below \$50,000. This information will be accounted for by expenditure category at the project level.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF Recipients are governmental entities with executive salaries that are already disclosed, so no additional information must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- f. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.



g. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Payroll for Public Health and Safety Employees (EC 1.9):
 - Number of government FTEs responding to COVID-19 supported under this authority
2. Household Assistance (EC 2.1-2.5):
 - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
 - Number of individuals served (by program if recipient establishes multiple separate household assistance programs)
 - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule
3. Small Business Economic Assistance (EC 2.9):
 - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
 - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
 - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule
4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12):
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
 - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic
 - For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
5. Rehiring Public Sector Staff (EC 2.14):
 - Number of FTEs rehired by governments under this authority
6. Education Assistance (EC 3.1-3.5):
 - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁷

¹⁷ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).

7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2):

- List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
- Number of workers to be served
- Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
- For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's¹⁸ average annual wage, whichever is higher, on an annual basis:
 - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy.

8. Revenue replacement (EC 6.1):

Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:

- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021);
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

- h. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

¹⁸ *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.

1. All infrastructure projects (EC 5):

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)
- For projects over \$10 million:
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.¹⁹

Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
 - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
 - c. Whether the project prioritizes local hires.
 - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

¹⁹ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

2. Water and sewer projects (EC 5.1-5.15):

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

3. Broadband projects (EC 5.16-5.17):

- Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
 - Technology to be deployed
 - Miles of fiber
 - Cost per mile
 - Cost per passing
 - Number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload
 - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download
 - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
 - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
 - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
- i. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
- NEU name
 - NEU DUNS number
 - NEU Taxpayer Identification Number (TIN)
 - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
 - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
 - NEU authorized representative name and email address
 - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
 - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)
 - Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
 - Payment amount(s)
 - Payment date(s)



For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).

States with “weak” minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

- j. **NEU Documentation (NEUs only):** Each NEU will also be asked to provide the following information with their first report submitted by October 31, 2021:
- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
 - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
 - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report (“Recovery Plan”). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027



The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

- a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
- c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
- e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
- f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as the Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

- a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
- b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
- c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?



- d. **Outcomes:** Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

- a. **Negative Economic Impacts (EC 2):** assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
- b. **Services to Disproportionately Impacted Communities (EC 3):** services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is defined in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.



6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions²⁰ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.²¹

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's [What Works Clearinghouse](#), the U.S. Department of Labor's [CLEAR](#), and the [Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness](#) clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).²² Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²³

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

²⁰As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

²¹ Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.

²² For more information on the required standards for program evaluation, see [OMB M-20-12](#).

²³ For more information on learning agendas, please see [OMB M-19-23](#)

**7. Table of Expenses by Expenditure Category**

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²⁴ to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the

²⁴ A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.



section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

- a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
 - Number of people or households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Negative Economic Impacts (EC 2):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Education Assistance (EC 3.1-3.5):
 - Number of students participating in evidence-based tutoring programs²⁵
- d. Healthy Childhood Environments (EC 3.6-3.9):
 - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)

The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision 31 CFR 35.8, as detailed below. As indicated in the Interim Final Rule, Treasury is seeking comment on reporting requirements related to the Tax Offset Provision, including ways to better rely on information already produced by States and territories and to minimize burden.

The terms “reporting year,” “baseline,” “covered change,” “net reduction in total spending,” and “tax revenue” are defined in the Interim Final Rule, 31 CFR 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3. Similarly, for purposes of calculating baseline, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3.

For purposes of reporting actual tax revenue and calculating tax revenue for the fiscal year ending 2019,²⁶ (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating

²⁵ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education’s [2021 ED COVID-19 Handbook \(Volume 2\)](#), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).

²⁶ Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient’s baseline.



a net reduction in total spending, recipients should report data using audited financials where available.

a. Revenue-reducing Covered Changes:

For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

b. Baseline Revenue:

Baseline has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

Whether the revenue-reducing covered changes are in excess of the *de minimis*.

Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue.

c. Actual Tax Revenue:

Actual tax revenue means the actual tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

d. Reduction in Net Tax Revenue:

The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

e. Any revenue-increasing covered changes:

A recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes.



Recipients should maintain records regarding revenue-reducing covered changes and estimates of such changes.

f. Net reduction in total spending, and tables of specific spending cuts:

Recipients must report on spending cuts. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As in the Interim Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States. If that subtraction yields a positive value, there has been a net reduction; if it yields zero or a negative value, there has not been a net reduction. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit," as defined below. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit, and (3) the amount by which the reduction in spending exceeds the Fiscal Recovery funds spent in the reporting unit. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in aggregate spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate of spending cuts.

To align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Recipients may also choose to report at a more granular sub-department level. Recipients are encouraged to define and report spending in departments, sub-departments (e.g., bureaus), agencies, or authorities (each a "reporting unit") in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. For example, if a State health department maintains separate budgets for different units (e.g., medical and public health units), those units may be reported and considered separately. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts. As discussed in the Interim Final Rule, in order to help ensure governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. Evasions of the Tax Offset Provision may be subject to recoupment.



Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term “Expenditure Category” refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^



3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure²⁷	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: “Last Mile” projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)

²⁷ Definitions for water and sewer Expenditure Categories can be found in the EPA’s handbooks. For “clean water” expenditure category definitions, please see: <https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf>. For “drinking water” expenditure category definitions, please see: <https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports>.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means the evidence base that can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

**Revision Log**

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	• Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. • Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.



CERTIFICATION OF CORONAVIRUS LOCAL FISCAL RECOVERY FUND
ALLOCATION ACCEPTANCE (42 U.S.C. section 603)

I, Kenneth H. Rosenfield, am the chief executive or authorized designee of City of Laguna Hills, and I certify that:

1. Check one:

☒ In my role as an authorized representative, I am accepting the City of Laguna Hills allocation from the Coronavirus Local Fiscal Recovery Fund.

☐ In my role as an authorized representative, I am declining the [Insert city or town name here] allocation from the Coronavirus Local Fiscal Recovery Fund, and authorize this allocation to be transferred to the State of California. An additional U.S. Treasury form will likely be required and subsequent information may be requested.

If you are accepting funds, proceed to questions 2 through 5. If you are declining funds, skip to question 6 and sign and submit the form.

2. I have the authority on behalf of City of Laguna Hills to report the following information:

☒ Entity's Taxpayer Identification Number

☒ DUNS number

☒ Address

☒ Total budget or top-line expenditure total as of January 27, 2020

3. I certify that my city or town is in compliance with 2 CFR Part 180 and that I have the authority on behalf of City of Laguna Hills to submit the following U.S. Treasury documents:

☒ Award Terms and Conditions agreement

☒ Assurances of Compliance with Title VI of the Civil Rights Act of 1964

4. I certify that the total budget amount provided is supported by an approved budget document, as of January 27, 2020. If my city or town does not have an approved budget, I certify that the total annual expenditure amount provided is supported by accounting documents. I agree to retain copies of financial records and supporting documentation for five years after all funds have been expended and the documents in item 3 of this certification and submit them to U.S. Treasury as required, no later than October 31, 2021

5. I agree to submit a project and expenditures report annually to U.S. Treasury.

6. I understand the State will rely on this certification as a material representation in distributing Coronavirus Local Fiscal Recovery Relief Funds to City of Laguna Hills

Authorized Representative

Signature: Kenneth H. Rosenfield Date: 6/15/21

Name (Print): Kenneth H. Rosenfield Title: Interim City Manager

OMB Approved No. 1505-0271
 Expiration Date: November 30, 2021

U.S. DEPARTMENT OF THE TREASURY
 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: City of Laguna Hills 24035 El Toro Road Laguna Hills CA 92653	DUNS Number: Taxpayer Identification Number: 798794947 Assistance Listing Number: 21.027
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Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:



Authorized Representative: Kenneth H. Rosenfield

Title: Interim City Manager

Date signed:

U.S. Department of the Treasury:

Authorized Representative:

Title:

Date:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. **Remedial Actions.** In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
11. **Hatch Act.** Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. **False Statements.** Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. **Publications.** Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. **Debts Owed the Federal Government.**
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

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4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

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agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

City of Laguna Hills

Recipient

6/15/21

Date



Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

American Rescue Plan
Coronavirus State and Local Fiscal Recovery Funds
Public Revenue Loss Calculator - for California Cities
v1.0



Agency Name:	Ciy of Laguna Hills
Agency Contact Info:	Janice Reyes, Finance Director
Date:	Monday, June 21, 2021

Base Year Revenue: *The amount of revenues collected in the most recent fiscal year prior to the public health emergency (i.e., the last fiscal year before January 27, 3030), called the base year value.*

\$24,914,496

from "ActualRevenues" worksheet cell F10.

Growth Adjustment: *The average percent revenue growth in the three full fiscal years prior to the COVID-19 public health emergency -or- 4.1 percent, whichever is greater.*

4.1%

from "ActualRevenues" worksheet cell F12 or 4.1% whichever is greater.

Fiscal Year End Date: *The date for the most recent full fiscal year prior to the declaration of public health emergency on January 27, 2020.*

June 30, 2019

Revenue Loss Summary				
Reporting Period	Months Elapsed	Counterfactual Revenue	Actual Revenue	Revenue Loss
January 1, 2020 - December 31, 2020	18	\$ 26,462,337	\$25,025,607	-\$1,436,730
January 1, 2021 - December 31, 2021	30	\$ 27,547,293	\$25,815,842	-\$1,731,451
January 1, 2022 - December 31, 2022	42	\$ 28,676,732	\$26,408,908	-\$2,267,825
January 1, 2023 - December 31, 2023	54	\$ 29,852,478	\$26,505,123	-\$3,347,355
			Total	-\$8,783,361

computed from "ActualRevenues" worksheet.

Fund basis of accounting (modified accrual)

Summary of Actual Revenues - Governmental and Proprietary Funds

Note: "General Revenue" as used by the US Census Bureau and by US Treasury's Interim Final Rule regarding the Coronavirus State and Local Fiscal Recovery Funds under the American Recovery Plan (ARP) refers to the general nature of the SOURCE of the revenue not the PURPOSE. That is, "general revenue" includes revenues regardless of the level of discretion over the use of the funds, including fees, charges, special taxes, assessments, etc. and regardless of whether the funds are accounted for in the general fund or not. Include all governmental funds (general and special), proprietary funds. Do not include trust, fiduciary or internal service funds .

	<u>FY2015-2016</u> <u>Year Ending</u> <u>June 30, 2016</u>	<u>FY2016-2017</u> <u>Year Ending</u> <u>June 30, 2017</u>	<u>FY2017-2018</u> <u>Year Ending</u> <u>June 30, 2018</u>	<u>FY2018-2019</u> <u>Year Ending</u> <u>June 30, 2019</u>	<u>July 1, 2019 -</u> <u>Dec 31, 2019</u>	<u>Jan 1, 2020 -</u> <u>June 30, 2020</u>	<u>FY2019-2020</u> <u>Year Ending</u> <u>June 30, 2020</u>	<u>July 1, 2020 -</u> <u>Dec 31, 2020</u>	<u>Jan 1, 2021 -</u> <u>June 30, 2021</u>	<u>FY2020-2021</u> <u>Year Ending</u> <u>June 30, 2021</u>	<u>July 1, 2021 -</u> <u>Dec 31, 2021</u>	<u>Jan 1, 2022 -</u> <u>June 30, 2022</u>	<u>FY2021-2022</u> <u>Year Ending</u> <u>June 30, 2022</u>	<u>July 1, 2022 -</u> <u>Dec 31, 2022</u>	<u>Jan 1, 2023 -</u> <u>June 30, 2023</u>	<u>FY2022-2023</u> <u>Year Ending</u> <u>June 30, 2023</u>	<u>July 1, 2023 -</u> <u>Dec 31, 2023</u>
Governmental Funds - Total	22,710,716	23,586,861	23,126,859	24,577,860	9,144,238	15,478,886	24,623,124	9,660,069	15,642,777	25,302,846	9,410,504	16,023,291	25,433,795	9,455,912	16,100,606	25,556,518	9,455,912
Governmental Funds - Exclusions	-	(60,000)	-	(257,453)	(21,851)	(35,777)	(57,628)	(681,260)	(6,293)	(687,553)	(11,100)	(18,900)	(30,000)	-	-	-	-
Proprietary Funds - Total	579,349	650,189	658,459	594,089	296,427	301,183	597,610	302,506	316,017	618,523	463,937	484,668	948,605	463,937	484,668	948,605	463,937
Proprietary Funds - Exclusions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Total Revenue	23,290,065	24,177,050	23,785,318	24,914,496	9,418,814	15,744,292	25,163,106	9,281,315	15,952,501	25,233,816	9,863,341	16,489,059	26,352,400	9,919,849	16,585,274	26,505,123	9,919,849
Revenue Change Percent from Prior Year		3.8%	-1.6%	4.7%													
Average Prior Three Year Revenue Change Percent ==>>				2.3%													



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021
TO: Mayor and Council Members
FROM: Erica Pezold
Mayor
ISSUE: Community Safety Standing Agenda Item

RECOMMENDATION: Mayor Pezold recommends that the City Council direct Staff to keep the agenda item "Community Safety" on all future agendas to engage with the public and take necessary action to reduce crime. In addition, discuss safety and actions needed to reduce crime and what actions the City has already implemented.



City of Laguna Hills

City Council/Planning Agency

Staff Report

DATE: September 14, 2021

TO: Mayor and Council Members

FROM: Erica Pezold
Mayor

ISSUE: Discussion Regarding Issuing a Request for Proposal for a Planning Firm to Guide the City in Current and Future Development Projects

RECOMMENDATION: Mayor Pezold recommends that the City Council direct Staff to issue a Request for Proposal for a planning firm to guide the City for current and future projects.

SUMMARY:

The City of Laguna Hills has never had a Planning Commission. The City Council instead has a Planning Agency. While a Planning Agency can be helpful, in Laguna Hills, the Planning Agency has not been as effective as needed. A Planning Commission made up of our citizens would be a much more effective way to plan for our City's future in a way that honors our City's vision advising the City Council on issues relating to planning, land use development and community development. An open process and the Planning Commission's due diligence will ensure strong community engagement and provide appropriate process to effect Laguna Hills' review of planning projects. Currently, large-scale projects do not have a platform for community engagement, guidance in the design, planning for the City's physical development and financial success. There is no foresight or tools provided for the City Council. A Planning Commission would help and is highly suggested.

The loss of the Laguna Hills Mall, which was the City's economic driver requires thoughtful planning to compensate for the lost revenue and handle population growth for current projects and future projects as well as the appropriate land use and design.

Discussion on RFP for Planning Firm to Guide the City in Development Projects

September 14, 2021

Page 2

The City Council is going through significant changes with the Regional Housing Needs Assessment alone; the City needs tools to support growth positively. Many cities hire consulting firms to guide their financial stability and physical growth for the long term. Financially prosperous cities use planning firms as a resource to ensure that the city's General Plan, Zoning and Specific Plans are implemented properly. In addition, professional consulting firms can help a community look at the bigger picture guiding our development so that projects tie into a long-range plan. Planned communities, such as Ladera Ranch, are thriving due to the positive planning and guidance provided to the community and developers. Council members can come from many walks of life and with different sets of experiences. We are not planning professionals, although we are on the Planning Agency. In addition to our staff, we need guidance and professionals to assist for future planning of our City. For these reasons, I am requesting a motion for the City Council to direct staff to issue a Request for Proposal for a planning firm to guide the City for current and future projects

FISCAL IMPACT: Not as yet determined.