Members of the public may address the City Council on any item shown on the agenda or matter of the Council's authority after completion of "Request to Address the Council Form" available in the lobby of the Council Chambers. This form must be completed 15 minutes prior to the scheduled meeting time. Pursuant to Section 54957.5 of the California Government Code, Any writings (Except for those writings which are exempt from disclosure) which are distributed to all or a majority of the members of the City Council are available for public inspection in the lobby of the City Council Chambers and in the office of the City Clerk during regular business hours.

COMPTON CITY COUNCIL
AGENDA
06/14/2022
5:30 PM

HEARINGS

5:35 P.M. - PUBLIC HEARING - PLANNING COMMISSION APPEAL ON CONDITIONAL USE PERMIT CASE NO'S. 21-011 AND 21-012, MITIGATED NEGATIVE DECLARATION NO. 950, MITIGATION MONITORING AND REPORTING PROGRAM (3010 NORTH ALAMEDA)

5:45 P.M. - PUBLIC HEARING - FIREWORKS APPROVAL/DENIAL HEARING (Item #5)

OPENING

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

ROLL CALL

INTRODUCTION OF SPECIAL GUESTS

1. POWER POINT PRESENTATION - Los Angeles Hospitality Education Center - Jessy Henderson

PUBLIC COMMENTS ON AGENDA ITEMS AND NON-AGENDA MATTERS

CONSENT AGENDA

Consent items are routine and expected to be non-controversial. They will be acted upon by the Council at one time without discussion unless a Council Member requests an item be removed or discussed..

APPROVAL OF MINUTES

2. MAY 17, 2022

REGULAR AGENDA

REPORTS OF OFFICERS, BOARDS, COMMISSIONS AND COMMITTEES AND CITY COUNCIL

3. APPOINTMENT(S) OF OFFICERS, COUNCIL MEMBERS, BOARDS/COMMISSIONS AND COMMITTEES

   AUDIT AD HOC COMMITTEE,
   AD HOC FINANCE COMMITTEE
   MULTI-JURISDICTIONAL ASSOCIATION AND COMMITTES

CITY MANAGER'S REPORT

4. A REQUEST TO SCHEDULE A PUBLIC HEARING FOR AN APPEAL REQUEST TO DEVELOP A 60 UNIT GATED CONDOMINIUM COMMUNITY ON A 2.45 ACRE SUCCESSOR AGENCY OWNED SITE LOCATED AT COMPTON BOULEVARD BETWEEN DWIGHT AVENUE AND KEMP AVENUE (June 28, 2022 at 5:35 p.m.)

5. FIREWORKS APPLICATION APPROVAL **(Action Item)**

NEW BUSINESS

6. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMPTON LEVYING A MUNICIPAL TAX RATE FOR THE FISCAL YEAR 2022-2023

7. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON ESTABLISHING THE HOLIDAY SCHEDULE FOR CITY EMPLOYEES FOR FISCAL YEAR 2022 – 2023

8. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON RESCINDING RESOLUTION NO. 25,160 AND AUTHORIZING THE CITY MANAGER TO RE-ESTABLISH THE CITY'S CORPORATE CREDIT CARD ACCOUNT TO BE UTILIZED SOLELY AND EXCLUSIVELY FOR APPROVED CITY BUSINESS

9. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH AND ESTABLISH A PURCHASE ORDER FOR INFRASTRUCTURE ENGINEERS FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT, CIP # 18-01, PHASE 2B ($354,801)

10. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION CONTRACT WITH AND ESTABLISH A PURCHASE ORDER FOR ALL AMERICAN ASPHALT FOR THE ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT, CIP# 18-01, PHASE 2B ($6,840,971.50)

11. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A 3-YEAR PROFESSIONAL SERVICES AGREEMENT WITH AND ISSUE A PURCHASE ORDER FOR NV5, INC. FOR ON-CALL CIVIL AND TRAFFIC ENGINEERING SERVICES IN THE AMOUNT OF $500,000 ANNUALLY

12. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO AMEND THE PROFESSIONAL SERVICES AGREEMENT TO EXTEND THE TERMS WITH AND ESTABLISH A PURCHASE ORDER FOR JMC2 ENGINEERING + SURVEYING TO PROVIDE ENGINEERING DESIGN AND CONSTRUCTION SUPPORT SERVICES PURSUANT TO THE ALAMEDA-STATE ROUTE 91 URBAN GREENING/FORESTRY AND WATER RECLAMATION GRANT PROJECT ($91,481.80)

13. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING THE 2021-2022 FISCAL YEAR BUDGET TO TRANSFER FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SOUTH COAST FIRE EQUIPMENT INC., (PIERCE MANUFACTURING) FOR THE PURCHASE OF FOUR (4) PIERCE ARROW XT FIRE ENGINES AND ONE (1) PIERCE ARROW XT 107' QUINT CAPABLE TRUCK ($4,998,817.35)

COUNCIL COMMENTS

ADJOURNMENT

NEXT REGULAR MEETING: 6/21/2022 @ 5:30 PM

Visit our website at http://www.comptoncity.org



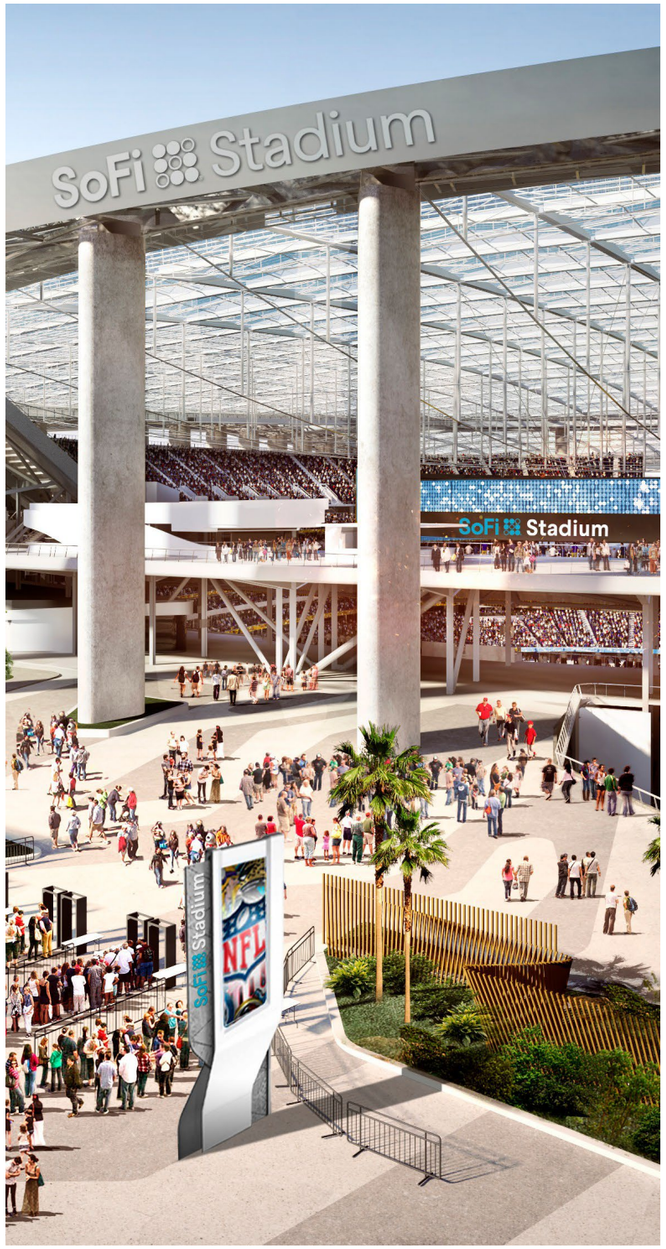
Los Angeles
HOSPITALITY
EDUCATION CENTER

- LAHEC OVERVIEW -

WHAT IS THE LOS ANGELES HOSPITALITY EDUCATION CENTER?

The LAHEC is an education center operating at SoFi Stadium





OUR MISSION

Our educational programs are designed to provide graduates with work-ready skills to enable them to obtain entry-level employment in the culinary and hospitality industries.

OBJECTIVES

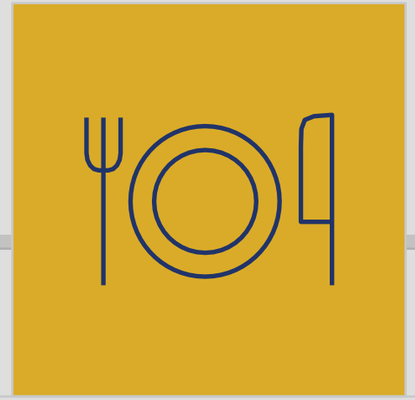
Provide hand's-on education with low student to teacher ratios allowing for an exceptional learning experience in state-of-the-industry kitchens, dining room, concessions, bar, and lounge laboratories.

- EDUCATIONAL PROGRAMS -



CULINARY ARTS

The six-month Culinary Arts program prepares graduates for a variety of careers in the food service industry. This preparation is accomplished through practical experiences in simulated commercial kitchens, including simulated situations with real-world production applications.



FOOD & BEVERAGE SERVICE

The three-month Professional Food & Beverage Service Program prepares graduates for a variety of careers in the food service industry. This preparation is accomplished through practical experiences in a simulated dining environment.



BEVERAGE SERVICE

The three-month Professional Beverage Service Certificate Program prepares graduates for a variety of careers in the food service industry. This preparation is accomplished through practical experiences in a simulated bar and lounge environment.

- OUR STUDENTS -

Students of the LAHEC are an ethnically and culturally diverse group seeking fast-paced, short-term skilled-based education, who learn best with hands on training and are looking for opportunity and growth in the hospitality industries.







- STUDENT BENEFITS -

- LOW COST OF TUITION
- SHORT TERM PROGRAMS
- CLASSES JUST 3 DAYS A WEEK
- SKILLS-BASED CURRICULA
- LOW TEACHER TO STUDENT RATIOS
- HIGHLY EXPERIENCED LOCAL FACULTY
- EARLY ACCESS TO JOBS AT HOLLYWOOD PARK - WAGE PREMIUMS
- ACCESS TO SCHOLARSHIPS
- PAYMENT PLANS

- JOB PLACEMENT OPPORTUNITIES -

JOB OPPORTUNITIES FOR LAHEC GRADUATES WILL BE AVAILABLE WITH LEGENDS AT SOFI STADIUM & HOLLYWOOD PARK

The Los Angeles Hospitality Education Center has established preferred placement opportunities and premium wage rates for its enrolled students and graduates for available positions within the Hollywood Park Entertainment District.

ADDITIONAL LOCAL OPPORTUNITIES FOR EMPLOYMENT WITH LEGENDS

BANC OF CALIFORNIA STADIUM

LOS ANGELES MEMORIAL COLISEUM

ANGELS STADIUM

- STUDENT BENEFITS -



The Los Angeles Hospitality Education Center has as an objective to provide ample financial resources, in lieu of traditional state and federal financial aid programs, as a means to assist its students with the cost of completing its skills-based education programs in order to enter the hospitality industry as a skilled, entry-level worker.

The following are a variety of vehicles for students and graduates to mitigate the cost of tuition at the Los Angeles Hospitality Education Center

LAHEC Direct Scholarship
Academic Scholarship
Perfect Attendance Award
Needs-based Scholarships

- COMMUNITY BENEFITS -

- Improved Employment Rates
- Provides Opportunities for the Under Employed
- Promotes Economic Independence
- Training for one of LA County's top 5 growing industries
- Strive to help communities through volunteering
- Promote Youth Career Outlook Opportunities

- JOB PLACEMENT OPPORTUNITIES -

California Job Trends

California economic recovery is ultimately expected to be faster than U.S. overall



Source: Anderson March 2021 economic outlook

LA area has experienced the second largest increase year over year in employment out of all metropolitan areas in the U.S.

(Los Angeles-Long Beach-Anaheim metropolitan area +8.2%)
Source: U.S. Bureau of Labor Statistics

Single Largest Employment Growth by Industry in LA County is Leisure/Hospitality

Source: LAEDC 2021 economic forecast



Industry Sector Forecast – Los Angeles County



- STUDENT TESTIMONIALS -

If awarded this scholarship I would be BEYOND THANKFUL! It may sound a little cliché, but it has always been my lifelong dream to be able to attend a culinary school where myself taught skills can be polished to perfection, this scholarship would give me the opportunity to educate myself and be more knowledgeable in the culinary field
- Marshay Boyd

I want to be awarded the LAHEC scholarship because cooking is my passion and I've always wanted to go to culinary school, but I was a single mother at a young age. Growing up I didn't really have financial assistance and my family's money crisis was one of the reasons why I felt like I couldn't go forward with my career and I'm looking forward to this opportunity to take my skills to the next level.
- Tiffany Mejia

After graduating high school unfortunately, I was unable to continue with a college career. Being in the food industry has always been one of my dreams. Since a very young age as the oldest daughter, I was the one to help around the house and food preparation for the rest of my other six siblings. I learned how to cook just about everything from how to prepare the meats before being cooked to the way of properly washing all the fruits and vegetables. I learned some very interesting recipes from my grandmother that after years went by, and I cook for guests until this day they have become very popular. I also in a new way made a few changes to some of those recipes that have changed them for an even greater taste. I cater to friends and family at big special events because they are more than happy with the way my food comes out at the end. I keep my self-busy reading about and learning new recipes to better myself always. My dream is to become a chef, open my own family restaurant, and share some of grandmother's own unforgettable delicious recipes.
-Vicki Moreno

Los Angeles Hospitality Education Center Scholarship Eligibility

Current students of LAHEC are enrolled in the Culinary Arts program and are all recipients of the LAHEC Direct Scholarship
Scholarship Application - LAHEC (la-hec.com)

Students who are at least 18 years of age and who have a high school diploma, GED or pass the ATB test may apply.

CONTACT US

Los Angeles Hospitality Education Center
1001 S. Stadium Drive
Inglewood, CA 90305

WWW.LA-HEC.COM
310-975-7070

Los Angeles
HOSPITALITY
EDUCATION CENTER

THANK YOU



MAY 17, 2022

The Compton City Council meeting was called to order at 5:40 p.m. by Mayor Emma Sharif in the Council Chambers of City Hall. The Moment of Silence Ceremony and the Pledge of Allegiance was led by Mayor Sharif.

ROLL CALL

Council Members Present – D. Duhart, I. Galvan, J. Bowers, L. Darden, Mayor E. Sharif
Council Members Absent – None

Other Officials Present: E. Perrodin, A. Godwin, B. Mims, T. Thomas

COMMENDATORY RESOLUTIONS/PRESENTATIONS

1. CERTIFICATE PRESENTATION - Chris Olivares, Years of Dedicated Community Service (Mayor Emma Sharif)

The Mayor and City Council presented a commendation to Chris Olivares acknowledging him for the many years he has dedicated to working with the youth in the community with Compton Junior Cricket Academy. Mr. Olivares was thanked for his many contributions to the youth and impact he has made on the lives of the youth in keeping them off the street and keeping them entertained and focused on success.

Mr. Chris Olivares thanked the City Council and the entire City for this very distinguished award and committed himself for acknowledging the work they do and further commended the coaches and the parents and youth that worked with the Junior Cricket program.

PUBLIC COMMENTS ON AGENDA ITEMS AND NON-AGENDA MATTERS

David Garcia spoke out against the potholes and the extremely poor condition of the streets of Compton and added that he has raised over 100 signatures from the residents demanding that the streets be repaired and repaved. Mr. Garcia recited stories of how the City's numerous potholes have caused various damages to their vehicles and added that individuals have even fallen and become injured as a result of the potholes. Mr. Garcia urged the City Council to develop a plan to upgrade all the streets in Compton.

Jennifer Tyus stated that there are a lot of problems throughout the World between the races. Ms. Tyus addressed the City Council regarding her encounters with the Compton Sheriffs and indicated that she has been unfairly targeted by the Department. She recalled an incident whereby during a phone call, a Sheriff's Dispatcher called her Mother a racist term and hung up on her, and they have never apologized. She stated that the Sheriff's Department have labeled her as a 'constant caller' and added that they do not respond to her calls for service. Ms. Tyus further stated that she has reported the Compton Sheriff's Department to the FBI and the White House and further requested assistance from the City Council.

Anthony Lewis asked the City Council for their discretionary approval to allow the Successor Agency to complete the proposal for the property at 700 North Bullis Road. Mr. Lewis indicated that the project would increase income for the City and provide a scholarship program for the residents. Mr. Lewis then indicated that College of Instrument Technology (CIT) would like to place a training site at 700 N. Bullis Road to provide training for the Veterans and other residents of the community.

Harold Durbin, representing CIT, spoke in support of Anthony Lewis and his endeavor to be able to allow the organization to place a training school at 700 N. Bullis Road. Mr. Durbin indicated that the company has made many improvements at the proposed site location and added that CIT will provide "hands on" training for the residents to perform street repairs, adding that the City needs only to supply the necessary materials to perform the tasks. Mr. Durbin concluded by stating that the Council will be able to provide scholarships to the returning Veterans and residents of the City of Compton.

Brother Zaafir, Muslim Historical Society, stated that he is greatly inspired by everything he sees when he attends the City Council meetings. Brother Zaafir indicated that peace is found with the Oneness of God the Most High. Brother Zaafir extoled the beliefs of the Quran and Islam.

DeSean Watkins thanked Councilman Galvan for the commendation for his deceased Mother and further thanked the City Council and the community for allowing him to work with the City. Mr. Watkins stated that it is his goal to unite the community and highlight the positivity and showcase the many talents of the residents of the City of Compton.

Judge Kelvin Filer spoke in support of agenda item Number 6 (Street vacation of Cocoa Street), which would allow for the construction of the new Compton High School. Judge Filer noted that he is a proud member of the Compton High School Class of 1973 and indicated that it was painful to see Compton High torn down, however, he was extremely excited to see the wonderful groundbreaking ceremony for the new Compton High School. Judge Filer then suggested that the City Council consider a quarterly meeting between the Compton Unified School Board, Compton College Board and the Compton City Council to create and foster an atmosphere of coordination and cooperation.

Gilda Blueford suggested that the Council require the various City Departments to include their request for supplies and equipment, objectives, cost analysis and detailed expenditure lists for the next budget workshop. Ms. Blueford also requested that the community be provided with status reports so that the residents may know where and how their tax dollars are being spent.

Miller Martin commented that the L.A. County Sheriffs do not have a strategy to combat the street takeovers, and further indicated the Compton Sheriffs were called and responded and parked near his property for quite some time. However, after the Deputies left, the street takeovers resumed. Mr. Miller suggested that there be more Sheriff's Deputies patrolling the streets of Compton to deter the illegal street takeovers.

Lena Cole Dennis stated that she lives near Rosecrans and Central and added that she walks every day throughout the City of Compton. Ms. Dennis urged the City Council to repair the streets and sidewalks for the safety of the residents and added that the buses are also having a difficult time maneuvering through the City because of the numerous potholes. Ms. Dennis concluded by encouraging the City to reopen Wilson park.

Mr. Solomon offered his services as an electrician and further noted that he would like to purchase a home in Compton and questioned if the City has a program whereby, he can return to Compton as a homeowner. Mr. Solomon also requested that the City reopen Wilson park where he often played as a child.

Richard Earl informed the City Council that there has been standing water on the Greenleaf Boulevard parkway for over 6 months and indicated there are mosquitoes in the stagnant water. Mr. Earl noted that there is a ban on marijuana dispensaries in the City of Compton and further urged the City Council to immediately and permanently close all of the dispensaries. Mr. Earl commented on the lack of parking for the residents and added that the new housing developments must provide adequate parking for their residents. Mr. Earl detailed the damages done to his vehicles as a result of driving through the City and further requested that the City Council seriously develop a strategic plan to promptly repair the streets.

Dr. Michael Tankersley indicated that most of the City's problems can be solved with new technology and other resources and further suggested that the Council use artificial intelligence to improve the City of Compton. Dr. Tankersley also encouraged the City Council to utilize solar power and remove all of the above ground electrical wires around the City.

Sheila Smith suggested that the community work in conjunction with the Compton Sheriff's Department to develop solutions to stop the illegal street takeovers, such as increasing fines and perform vehicle seizures. Ms. Smith then urge the citizens of the community to take responsibility and not place all of the blame on the Compton Sheriff's Department.

Lynn Boone spoke in opposition to agenda item Number 8 (Amending the FY 2021/2022 Budget-Electric Parking Vehicles) and stated that the Code Enforcement Division recently purchased chargers, and the City should be utilizing those chargers instead of purchasing new ones. Ms. Boone then addressed agenda item Number 9 (Amending Water Department FY 2021-2022 Budget) and questioned the whereabouts of the $42 Million Water Bond funds, noting that the item pays out too much for consultants. Ms. Boone concluded by questioning why Measure P funds are being used to pay the Sheriffs and further requested that the meeting be adjourned in memory of John Greenwood.

Fidel Marquez addressed agenda item Number 9 (Amending Water Department FY 2021-2022 Budget) and questioned why the scheduled maintenance of the wells was not included in the budget, rather than using Covid-19 funds without the input of the residents. Mr. Marquez spoke about the repairs he and many of the residents have had to make on their vehicles and urged the City Council to repair the streets and provide the residents with services that they deserve. Mr. Marquez offered his thanks to the Compton Fire Department for quickly responding to a car fire and preventing a larger fire that could have involved the entire block. Mr. Marquez concluded by urging the City Council to provide for outside resources for additional police patrol.

5:35 P.M. – PUBLIC HEARING – STREET VACATION NO. 20-002 (Compton High School Campus) Item#6)

On motion by Galvan, seconded by Darden, the public hearing was opened at 6:57 p.m. by the following vote on roll call:

AYES: Council Members – Duhart, Galvan, Bowers, Darden, Sharif
NOES: Council Members – None
ABSENT: Council Members – None

Robert Delgadillo, Planning Department, reported that on April 19, 2022, the City Council adopted Resolution No. 25,647, which declared its intention to vacate a portion of excess public right-of-way and scheduled a public hearing for May 17, 2022.

Mr. Delgadillo stated that the Compton Unified School District (CUSD), the applicant, is requesting approval of Street Vacation No. 20-002, to facilitate the Compton High School reconstruction and expansion project. The street vacation will consist of a 60-foot by approximately 600-foot section of West Cocoa Street located between South Acacia Avenue and formerly South Oleander Avenue. The total area of the vacation will be approximately 36,000 square feet. The proposed street vacation (abandonment) will facilitate the Compton High School campus expansion to West Alondra Boulevard.

Pursuant to Section 65402 of the Government Code of the State of California the Planning Commission is required to review all vacations for conformity with the general plan. On February 9, 2022, the City of Compton Planning Commission adopted Resolution No. 4034, which declared that the proposed street vacation as legally described on Exhibit "A", is in conformance with the goals and policies of the City of Compton's adopted 1991 General Plan.

The proposed vacation was reviewed by the City of Compton Public Works Engineering and Street Maintenance Department's and has determined that the area to be vacated is not necessary for current or future public use and that the vacation serves the public interest and is a public benefit as it eliminates any maintenance costs and liabilities imposed on the City associated with the right-of-way.

Mr. Delgadillo stated that approval of the request will have no significant impact on municipal expenditures. The City will relinquish its future maintenance responsibility of the public right-of-way, if the street vacation is granted. Any specific cost savings related to Cocoa Street cannot be determined at this time by the Public Works Department due to insufficient maintenance cost history. The City has not performed any maintenance on Cocoa Street in the recent past other than street sweeping.

PUBLIC COMMENTS REGARDING THE HEARING

Lynn Boone questioned whether there are any residents currently living on the proposed vacated street.

Mr. Delgadillo indicated that the school district owns the property and there are no residents at the location site.

Anthony Lewis commented that he is a retired County Engineer with the Highway Department and noted that this is the correct process and procedure for the next step in the construction process.

There being no further comments, It was moved by Galvan, seconded by Darden, the hearing was closed at 7:03 p.m. by the following vote on roll call:

AYES: Council Members – Duhart, Galvan, Bowers, Darden, Sharif
NOES: Council Members – None
ABSENT: Council Members – None

CONSENT AGENDA

APPROVAL OF MINUTES

2. APRIL 19, 2022
   APRIL 26, 2022

It was moved by Galvan, seconded by Duhart, that the consent agenda be approved.

Councilmember Darden commented that on Page 4 of the April 19, 2022, minutes, the name of the person she recommended to fill the vacancy on the Personnel Board is '*Hugo Arellano*.' The minutes for April 19, 2022 and April 26, 2022 were approved by the following vote on roll call

AYES: Council Members – Duhart, Galvan, Bowers, Darden, Sharif
NOES: Council Members – None
ABSENT: Council Members – None

REGULAR AGENDA

REPORTS OF OFFICERS, BOARDS, COMMISSIONS AND COMMITTEES AND CITY COUNCIL

3. APPOINTMENT(S) OF OFFICERS, COUNCIL MEMBERS, BOARDS/COMMISSIONS AND COMMITTEES

MEASURE P (Mayor, District 2 & 4) APPOINTMENTS

Mayor Sharif and **Councilman Galvan** indicated that they would make an appointment at a later date.

On motion by Darden, seconded by Galvan, **Richard Earl** was appointed to the **Measure P Committee**, by the following vote on roll call:

AYES: Council Members – Duhart, Galvan, Bowers, Darden, Sharif
NOES: Council Members – None
ABSENT: Council Members – None

CITY MANAGER'S REPORT

4. A REQUEST TO SCHEDULE A PUBLIC HEARING TO APPEAL AN PLANNING COMMISSION DECISION ON CONDITIONAL USE PERMIT CASE (CUP) NO. 21-011, CONDITIONAL USE PERMIT CASE (CUP) NO. 21-012 AND MITIGATED NEGATIVE DECLARATION (MND) NO. 950 AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) (3010 NORTH ALAMEDA (June 14, 2022, at 5:35 p.m.)

On motion by Darden, seconded by Galvan, the public hearing was scheduled for **June 14, 2022, at 5:35 p.m.** by the following vote on roll call:

AYES: **Council Members – Duhart, Galvan, Bowers, Darden, Sharif**
NOES: **Council Members – None**
ABSENT: **Council Members – None**

5. A REQUEST TO SCHEDULE A PUBLIC HEARING - CHARGES FOR SOLID WASTE AND RECYCLABLE MATERIALS HANDLING SERVICES TAX ROLL BILLING FOR 2022-2023 (July 12, 2022, at 5:35 p.m.)

On motion by Galvan, seconded by Darden, the hearing was scheduled for **July 12, 2022**, at **5:35 p.m.** by the following vote on roll call:

AYES: **Council Members – Duhart, Galvan, Bowers, Darden, Sharif**
NOES: **Council Members – None**
ABSENT: **Council Members – None**

NEW BUSINESS

6. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON APPROVING AND ORDERING THE VACATION OF A PORTION OF WEST COCOA STREET (60-FEET BY APPROXIMATELY 600-FEET), LOCATED BETWEEN SOUTH ACACIA AVENUE AND FORMERLY SOUTH OLEANDER AVENUE AND LOCATED ADJACENT TO 601 SOUTH ACACIA AVENUE (COMPTON HIGH SCHOOL CAMPUS), IN COMPTON (STREET VACATION NO. 20-002)

On motion by Galvan, seconded by Darden, **Resolution Number 25,661** entitled **'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON APPROVING AND ORDERING THE VACATION OF A PORTION OF WEST COCOA STREET (60-FEET BY APPROXIMATELY 600-FEET), LOCATED BETWEEN SOUTH ACACIA AVENUE AND FORMERLY SOUTH OLEANDER AVENUE AND LOCATED ADJACENT TO 601 SOUTH ACACIA AVENUE (COMPTON HIGH SCHOOL CAMPUS), IN COMPTON (STREET VACATION NO. 20-002)**' was adopted by the following vote on roll call:

AYES: **Council Members – Duhart, Galvan, Bowers, Darden, Sharif**
NOES: **Council Members – None**
ABSENT: **Council Members – None**

7. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON RESCINDING RESOLUTION NO. 25,613 AND APPROVING AN AMENDMENT TO THE POSITION CLASSIFICATION PLAN BY ADOPTING AMENDED CLASSIFICATION SPECIFICATIONS FOR SENIOR PUMP OPERATOR AND ADJUSTING THE SALARY RANGE FROM 121 TO 143 AND AUTHORIZING THE CITY MANAGER TO AMEND THE MUNICIPAL WATER DEPARTMENT'S FISCAL YEAR 2021-2022 BUDGET TO ADD ONE SENIOR PUMP OPERATOR POSITION AND ONE ADMINISTRATIVE ANALYST II

POSITION AND REMOVE ONE VACANT CROSS CONNECTION INVESTIGATOR AND ONE VACANT ADMINISTRATIVE SPECIALIST POSITION

On motion by Darden, seconded by Duhart, **Resolution Number 25,662** entitled **'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON RESCINDING RESOLUTION NO. 25,613 AND APPROVING AN AMENDMENT TO THE POSITION CLASSIFICATION PLAN BY ADOPTING AMENDED CLASSIFICATION SPECIFICATIONS FOR SENIOR PUMP OPERATOR AND ADJUSTING THE SALARY RANGE FROM 121 TO 143 AND AUTHORIZING THE CITY MANAGER TO AMEND THE MUNICIPAL WATER DEPARTMENT'S FISCAL YEAR 2021-2022 BUDGET TO ADD ONE SENIOR PUMP OPERATOR POSITION AND ONE ADMINISTRATIVE ANALYST II POSITION AND REMOVE ONE VACANT CROSS CONNECTION INVESTIGATOR AND ONE VACANT ADMINISTRATIVE SPECIALIST POSITION'** was adopted by the following vote on roll call:

AYES: **Council Members – Duhart, Bowers, Darden, Sharif**
NOES: **Council Members – None**
ABSENT: **Council Members – Galvan**

8. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING THE 2021-2022 FISCAL YEAR BUDGET TO TRANSFER FUNDSAND AUTHORIZING THE CITY MANAGER TO ISSUE PURCHASE ORDERS AND SIGN SUPPORTING DOCUMENTS TO EVTS, INC. AND CHARGEPOINT, INC. FOR ELECTRIC PARKING VEHICLES AND CHARGING STATIONS AND ANCILLARY INFRASTRUCTURE ($651,950.00)

It was moved by Darden, seconded by Duhart, that the resolution be adopted.

Councilman Bowers requested a presentation on the vehicles to be purchased.

Councilmember Darden questioned whether Staff had check to determine if the City's current charging station are compatible with the new vehicles.

Damion Timmons, Street Superintendent, indicated that the charging stations were purchased in 2019 and added that the charging stations are now outdated and will not work for the new vehicles. Mr. Timmons then indicated that he would provide one of the vehicles for review by the Councilmembers prior to the next City Council meeting.

After further discussion, the motion and second were withdrawn. The item will be considered at a subsequent City Council meeting.

9. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING THE MUNICIPAL WATER DEPARTMENT'S FISCAL YEAR 2021-2022 BUDGET AND APPROPRIATING SEVEN MILLION NINE HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS ($7,988,000.00) OF AMERICAN RESCUE PLAN ACT FUNDS TO THE CAPITAL BUDGET

It was moved by Darden, seconded by Galvan, that the resolution be adopted.

Councilmember Bowers questioned what machinery and what equipment is being ordered.

Don Nguyen, Water Department Manager, provided a brief presentation which detailed the location and condition of the various wells and Water Department working locations.

Resolution Number 25,663 entitled **'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING THE MUNICIPAL WATER DEPARTMENT'S FISCAL YEAR 2021-2022 BUDGET AND APPROPRIATING SEVEN MILLION NINE HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS ($7,988,000.00) OF AMERICAN**

RESCUE PLAN ACT FUNDS TO THE CAPITAL BUDGET' was adopted by the following vote on roll call:

AYES: Council Members – Duhart, Galvan, Bowers, Darden, Sharif
NOES: Council Members – None
ABSENT: Council Members – None

10. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON APPROVING FIRST QUARTER BUDGET AMENDMENT TO THE 2021-2022 FISCAL YEAR BUDGET, TRANSFERRING FUNDS BETWEEN VARIOUS ACCOUNTS, AND AMENDING THE EXISTING PERSONNEL SUMMARY

It was moved by Galvan, seconded by Duhart, that the resolution be adopted.

Sharon Rahban commented that this adjustment is needed in order to maintain a balanced budget and correct inadvertent errors. All of these transactions are "cost neutral" they do not increase or decrease net Budget appropriations.

A Resolution entitled 'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON APPROVING FIRST QUARTER BUDGET AMENDMENT TO THE 2021-2022 FISCAL YEAR BUDGET, TRANSFERRING FUNDS BETWEEN VARIOUS ACCOUNTS, AND AMENDING THE EXISITING PERSONNEL SUMMARY' failed by the following vote on roll call:

AYES: Council Members – Duhart, Darden, Sharif
NOES: Council Members – None
ABSENT: Council Members – None
ABSTAIN: Council Members – Galvan, Bowers

COUNCIL COMMENTS

Councilmember Duhart offered the following communications/announcements:

- Encouraged everyone to stay safe and have a Blessed evening.

Councilmember Galvan offered the following communications/announcements:

- Requested that the traffic signal on Alameda Street be repaired as soon as possible.

- Thanked David Garcia for assisting the City and cleaning and sanitizing the Council Chambers and the podium during the Council meetings and further urged everyone to stay safe.

Councilmember Bowers offered the following communications/announcements:

- Thanked the residents for attending the meeting and urged everyone to stay safe.

Councilmember Darden offered the following communications/announcements:

- Commented that she, along with other Compton residents, attended a meet and greet with Congresswoman Maxine Waters at the Center for Sustainable Communities whereby Ms. Waters encouraged the City to utilize all the CDBG funds available.

- Commented that she attended a wonderful event hosted by the Compton 125 Historical Society which featured Historians who shared insight into how Compton became the first minority-governed municipality in the County of Los Angeles.

- Announced that she has sent communication to the Compton Post Office regarding the upkeep of both Compton locations, whereby she questioned how the City may assist the Post Office in improving the landscape and property maintenance of their grounds.

- Invited the community to attend her District 4 Town Hall meeting scheduled for June 11, 2022, at Kelly Park, 2319 E. Caldwell Street beginning at 11:00 a.m.—featuring sharing strategies toward making the City of Compton the best safe, clean, and efficiently run for the resident of the Compton community.

- Thanked all the wonderful community members who donated items and assisted her with the lovely Mother's Day Celebration.

- Requested that the City Council meeting be adjourned in memory of **Pastor Ezell G. Mayfield, Temple of Faith Community Baptist Church.**

(Councilman Galvan exited the meeting at 8:24 p.m.)

Mayor Sharif offered the following communications/announcements:

- Mayor Sharif reminded residents that Compton Community College will continue to provide free Covid-19 testing on Mondays from 11:00 a.m. to 7:30 p.m. and Tuesdays through Fridays from 8:30 a.m. to 5:30 p.m. on campus at the Student Health center.

- Mayor Sharif further noted that the Los Angeles County Department of Health is offering free in-home Covid-19 vaccinations---please call: (833) 540-0473 for additional information.

- Mayor Sharif commented on her attendance at the California Contract Cities Association conference wherein she witnessed a presentation regarding getting the best use out of social media to improve and advance the messaging for municipalities.

- Mayor Sharif requested that the City Manager investigate whether the City is able to use federal assistance in permanently closing all illegal marijuana dispensaries, especially the dispensary on Wilmington and Greenleaf, which is very close to a school.

- Mayor Sharif invited the community to attend the Compton Human Trafficking Task Force meeting to discuss ways to eliminate the recruitment, transportation, transfer, harboring or receipt of people through force, fraud or deception. There will be local and national collaborative partners joining the meeting which will be held on May 20, 2022 from 11:00 a.m. to 1:00 p.m. at the Dollarhide Community Center, 301 N. Tamarind Avenue, Compton. For additional information contact Mariela Gonzales at (323) 877-2174.

- Mayor Sharif invited businesses and organizations to register to participate in her Job Fair scheduled for June 9, 2022 and invited them to call or text Mariela Gonzales at (323) 877-2174.

- Mayor Sharif commented on the high number of mass shootings around the United States and indicated that Congress must address the issue of gun violence and their sales to combat deadly gun violence.

- Mayor Sharif offered her condolences to all of those who have lost loved ones.

ADJOURNMENT

On motion by Duhart, seconded by Darden, the meeting was adjourned in memory of **Pastor Ezell G. Mayfield** at 8:33 p.m. by the following vote on roll call:

AYES: **Council Members – Duhart, Bowers, Darden, Sharif**
NOES: **Council Members – None**
ABSENT: **Council Members – Galvan**

_____ _____

CITY CLERK OF THE CITY OF COMPTON

MAYOR OF THE CITY OF COMPTON

June 14, 2022

TO: **MAYOR AND CITY COUNCIL**

FROM: **CITY CLERK**

SUBJECT: **APPOINTMENTS TO AUDIT AD HOC COMMITTEE, AD HOC FINANCE COMMITTEE AND MULTI-JURISDICTIONAL ASSOCIATION AND COMMITTEES**

Below is the current representation for the above committees. It is requested that your Honorable Body make any necessary appointments to the committees.

AUDIT AD HOC COMMITTEE

Representative – Isaac Galvan — Alternate: Mayor Emma Sharif
Lillie Darden

AD HOC FINANCE COMMITTEE

Representative – Jonathan Bowers — Alternate: Michelle Chambers
Mayor Emma Sharif

CALIFORNIA CONTRACT CITIES

Representative – Michelle Chambers — Alternate: Mayor Emma Sharif

COUNTY SANITATION DISTRICT

Representative – Mayor Emma Sharif — Alternate: Michelle Chambers

GATEWAY CITIES COUNCIL OF GOVERNMENTS

91/605 Freeway

Representative – Jonathan Bowers — Alternate: Michelle Chambers

INDEPENDENT CITIES ASSOCIATION OF LOS ANGELES COUNTY (NON-VOTING)

Representative – Michelle Chambers — Alternate: Jonathan Bowers

INDEPENDENT CITIES LEASE FINANCE AUTHORITY

Representative – Mayor Emma Sharif — Alternate: Michelle Chambers

LEAGUE OF CALIFORNIA CITIES

Representative – Jonathan Bowers

Alternate: Isaac Galvan
Alternate: Michelle Chambers

LA GATEWAY REGION INTEGRATED REGIONAL WATER MANAGEMENT JOINT POWERS AUTHORITY GOVERNING BOARD

Representative – Lillie Darden

Alternate: Michelle Chambers
Alternate: Mayor Emma Sharif

SOUTHERN CALIFORNIA AIR QUALITY MANAGEMENT DISTRICT

Representative – Michelle Chambers

Alternate: Vacant

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

Representative – Michelle Chambers

Alternate: Vacant

ALITA L. GODWIN, MMC
CITY CLERK

June 14, 2022

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: CITY MANAGER

SUBJECT: A REQUEST TO SCHEDULE A PUBLIC HEARING FOR AN APPEAL REQUEST TO DEVELOP A 60 UNIT GATED CONDOMINIUM COMMUNITY ON A 2.45 ACRE SUCCESSOR AGENCY OWNED SITE LOCATED ON COMPTON BOULEVARD BETWEEN DWIGHT AVENUE AND KEMP AVENUE

On May 11, 2022, the Planning Commission held a public hearing on a request by City Ventures to develop a 60 unit gated condominium community on a 2.45 acre Successor Agency owned site located on Compton Boulevard between Dwight Avenue and Kemp Avenue.

The Planning Commission voted to deny the Conditional Use Permit and to not recommend approval of the Change of Zone, General Plan Amendment, Tentative Tract Map and Mitigated Negative Declaration.

Staff recommends that City Council schedule a public hearing on this matter for **Tuesday, June 28, 2022** at **5:35 p.m**.

ROBERT DELGADILLO, SENIOR PLANNER
COMMUNITY DEVELOPMENT DEPARTMENT

APPROVED FOR FORWARDING:

THOMAS THOMAS
CITY MANAGER

June 14, 2022

TO: MAYOR AND CITY COUNCIL

FROM: CITY CLERK

SUBJECT: FIREWORKS APPLICATIONS (APPROVAL)

According to Compton Municipal Code Section (CMC) 22-2.3, Charitable organizations, associations, or corporations may sell safe and sane fireworks upon first obtaining a permit from the City of Compton. Organizations are selected through a random drawing conducted by the City Clerk's Office.

There were six (6) applications submitted to operate a 2022 fireworks stand. The CMC allows for twelve (12) fireworks stand in the city. A random drawing was not held, due to only six (6) applications being submitted.

Section 22-2.8 of the CMC gives the City Council, sole discretion to grant or deny a permit to sell safe and sane fireworks. The criteria to make such a decision is listed in CMC section 22-2.8(a) through 22-2.8(g).

It is Staff's recommendation that the following organizations be approved for a 2022 fireworks stand, providing they pass Fire Inspection:

1. Curry Temple C.M.E. Church
2. KDS & Associates
3. Light of the World Church
4. Light of the World Community Center
5. New Holy Trinity Baptist Church
6. Victory Outreach

Alita Godwin, MMC
City Clerk

application. The City Clerk shall notify the applicant of the date of the hearing on the application before the City Council.

§ 22-2.8. Granting or Denial of Permits. [Ord. #2232, § 4]

The City Council, after a hearing thereon and in its sole discretion, may grant or deny a permit to sell fireworks. The City Council shall use the following criteria for granting permits:

a. Whether the applicant in fact complies with the eligibility requirements set forth in section;

b. The amount of community activity of the applicant;

c. The length of community service of the applicant;

d. The manner in which funds have been used by the applicant for prior community services;

e. The size of the annual budget of the applicant used in community service;

f. Such other community activities of the applicant as the Council deems relevant; and

g. Applicants shall be notified by the City Clerk of the acceptance or rejection of such application for a license.

§ 22-2.9. Inspections. [Ord. #2232, § 4]

a. The applicant, by acceptance of the permit shall agree that fire officials and police officials may make inspections of the fireworks stand at any time.

b. Prior to the final issuance of a license to sell, the applicant shall have had the proposed fireworks stand inspected by the appropriate representatives of the Compton Fire Department, and shall have received certification by the Compton Fire Department that the proposed fireworks stand complies with the applicable provisions of this code, the State Fireworks Law and all regulations promulgated pursuant thereto.

§ 22-2.10. Sales of Fireworks; Stands. [Ord. #2232, § 4]

a. No person other than the permit holder shall operate the fireworks stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.

b. No person other than the individuals, who are members of the permitted, or the wives or husbands or adult children of such members, shall sell or otherwise participate in the sale of the fireworks at such stand. No person other than those actually engaged in selling the fireworks shall occupy the interior of the stand.

c. No person shall be paid any consideration for selling or otherwise participating in the sale of fireworks at such stand.

June 14, 2022

TO: **HONORABLE MAYOR AND CITY COUNCIL MEMBERS**

FROM: **CITY CONTROLLER**

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMPTON LEVYING A MUNICIPAL TAX RATE FOR THE FISCAL YEAR 2022-2023**

SUMMARY

The purpose of this Ordinance is to authorize the levy of the assessed valuation municipal tax rate for Fiscal Year 2022-2023.

BACKGROUND

The City has levied a municipal tax (parcel tax) for many years in line with Section 1402, 1600 and 1601 of the City Charter to pay for the City's obligations under the Employees' Retirement Plan managed by the California Public Employees' Retirement System (CalPERS). The municipal tax is collected by the Los Angeles County Auditor-Controller on behalf of the City. The Los Angeles County Auditor-Controller has based assessed values at market values and it is necessary to set the municipal tax at a rate based on market value. The tax rate will remain at 0.451632, the same as the prior fiscal year.

STATEMENT OF ISSUE

The Los Angeles County Auditor-Controller requires that the municipal tax rate ordinance be passed each year by the City Council even though the municipal tax rate remains unchanged. This agenda item is required to comply with the County requirements.

FISCAL IMPACT

The passing of the attached Ordinance will ensure that the City's retirement fund continues to receive the municipal parcel tax revenues in line with the requirements of the City Charter for the purposes stipulated by the Charter. The municipal parcel tax generates approximately $30 million per year.

ALTERNATIVE

The City's General Fund would have to pay the cost of the retirement obligations resulting in severe financial consequences to other City programs and services.

RECOMMENDATION

Staff recommends that the City Council adopt the attached Ordinance.

SHARON RAHBAN NAVIZADEH,
CITY CONTROLLER

APPROVED FOR FORWARDING:

THOMAS THOMAS
CITY MANAGER

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMPTON LEVYING A MUNICIPAL TAX RATE FOR THE FISCAL YEAR 2022-2023

WHEREAS, the City has levied a municipal tax (parcel tax) for many years in line with Section 1402, 1600, and 1601 of the City Charter to pay for the City's obligations under the Employees' Retirement Plan managed by the California Public Employees' Retirement System (CalPERS); and

WHEREAS, the municipal tax is collected by the Los Angeles County Auditor-Controller on behalf of the City; and

WHEREAS, the Los Angeles County Auditor-Controller has based assessed rates at market values and it is necessary to set the municipal tax at rate based on market value; and

WHEREAS, it is required that the City certify the municipal tax rate every year.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. That there is hereby levied a municipal tax upon the equalized assessment of the taxable property in the City of Compton at a market valuation of the following rates (per cent):

Taxation District #1…….0.451632

(Old City of Compton, Annexations 1 to 3 inc; 5 to 10 inc; 13 to 32 inc; 106, 107 111 to 122 inc; 125 to 133 inc; 136 to 139 inc; 141 to 143 inc; 145, 147, 149, 151, 152, 153A, 155, 158, 159, 160, 161, 163, 164, 168, 172A, 173B)

Rosecrans Redevelopment Project……0.451632

Walnut Industrial Redevelopment Project…….0.451632

Section 2. That said rate is made up as follow:

Employment Retirement (Debt Service)……0.451632

Section 3. That the City Clerk shall certify to the adoption of this Ordinance by the City Council and shall cause this Ordinance to be published as required by law.

Section 4. That pursuant to Section 611 of the Compton Charter, this Ordinance shall take effect upon adoption of the City Council.

Section 5. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Ordinance.

ADOPTED this _____ day of _____, 2022.

_____

MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF COMPTON)

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on this _____ day of _____, 2021.

That said Ordinance was adopted by the following vote, to wit:

AYES: COUNCILMEMBERS-
NOES: COUNCILMEMBERS-
ABSTAIN: COUNCILMEMBERS-
ABSENT: COUNCILMEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

June 14, 2022

TO: MAYOR AND COUNCIL MEMBERS

FROM: CITY MANAGER

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON ESTABLISHING THE HOLIDAY SCHEDULE FOR CITY EMPLOYEES FOR FISCAL YEAR 2022 – 2023

SUMMARY

Adoption of the attached resolution will establish the holiday schedule for City employees for Fiscal Year 2022-2023. The resolution includes eligibility, accrual, and use of established holidays.

BACKGROUND

In accordance with Rule 7.5A of the City of Compton Personnel Rules and Regulations, City employees shall receive time off with pay on legal holidays as designated by the City Council. Full-time regular and probationary employees are eligible for full holiday pay and permanent part-time employees receive holiday pay for one-half of the scheduled holiday.

STATEMENT OF THE ISSUE

There is a need for the City Council to establish the holiday schedule for City employees for Fiscal Year 2022-2023.

FISCAL IMPACT

The holiday schedule will have minimal financial impact.

RECOMMENDATION

Staff recommends that the City Council adopt the attached Resolution establishing the Holiday Schedule for City employees for Fiscal Year 2022-2023.

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON ESTABLISHING THE HOLIDAY SCHEDULE FOR CITY EMPLOYEES FOR FISCAL YEAR 2022 – 2023

WHEREAS, Rule 7.5A of the Personnel Rules and Regulations establishes provisions for granting legal holidays for City employees; and

WHEREAS, there is a need for the City to post a holiday schedule for each fiscal year identifying the dates on which City offices will be closed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. That the following holidays shall be established as legal holidays for City employees, as set forth herein.

HOLIDAY	DATE HOLIDAY OBSERVED
Independence Day	July 4, 2022 (Monday)
Labor Day	September 5, 2022 (Monday)
Admission's Day	Floating Holiday
Veteran's Day	November 11, 2022 *(Friday)
Thanksgiving Day	November 24, 2022 (Thursday)
Friday after Thanksgiving	November 25, 2022* (Friday)
Christmas	December 26, 2022 (Monday)
New Years Day	January 2, 2023*(Monday)
Martin Luther King, Jr.'s Birthday	January 16, 2023 (Monday)
Lincoln's Birthday	Floating Holiday
Washington's Birthday (Presidents' Day)	February 20, 2023 (Monday)
Cesar Chavez's Birthday	March 31, 2023* (Friday)
Cinco de Mayo	May 5, 2023* (Friday)
Memorial Day	May 29, 2023 (Monday)
Employee's Birthday	Floating Holiday

***Employees impacted by the 10/40 Alternative Work Schedule will use this day as a floating holiday.**

Section 2. That the Employee's Birthday Holiday must be used within one year in which the birthday falls.

Section 3. That this holiday schedule is not applicable to sworn 56-hour Fire Suppression personnel who are eligible for compensation in lieu of holidays.

Section 4. That employees whose birthdays, vacation or compensatory time off with pay falls on one of the holidays referenced above shall be entitled to another day off in accordance with the procedure established by the Department for use of paid leave benefits.

Section 5. That floating holidays accrued during Fiscal Year 2022-2023, except the Employee's Birthday, must be utilized by June 30, 2023.

Section 6. That this holiday schedule is effective July 1, 2022 and shall continue to be observed as set forth in this Resolution, unless otherwise revised by action of the City Council.

Section 7. That a certified copy of this Resolution shall be forwarded to each City department and agency.

Section 8. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, the City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested to by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2022.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

June 14, 2022

TO: **HONORABLE MAYOR AND COUNCIL MEMBERS**

FROM: **CITY MANAGER**

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON RESCINDING RESOLUTION NO. 25,160 AND AUTHORIZING THE CITY MANAGER TO RE-ESTABLISH THE CITY'S CORPORATE CREDIT CARD ACCOUNT TO BE UTILIZED SOLELY AND EXCLUSIVELY FOR APPROVED CITY BUSINESS**

SUMMARY

This resolution rescinds Resolution No. 25,160 which established a City of Compton corporate credit card account and authorizes the City Manager to re-establish the City's corporate credit card account to be utilized solely and exclusively for approved City business.

BACKGROUND

On October 11, 2005, the City Council adopted Resolution No. 21,759 authorizing the City Manager to establish a corporate credit card account to conduct City business.

Per Resolution No. 25,160 the City shall have a corporate credit card account. With Resolution No. 25,160, the City Manager is authorized to use the City's corporate credit card account, with a maximum credit limit of $50,000, to conduct City business that includes, but is not limited to, authorized travel expenses and emergency situations where the timely provision of equipment or supplies may be critical.

Further, per Resolution No. 25,001, the single transaction limit established for the City Manager that would not require adoption by a separate resolution of the City Council was $25,000 or less. Additionally, the same Resolution No. 25,001 also establishes a single transaction limit of $75,000 for the City Manager if the purchase is of urgent necessity for the preservation of life, health, property or fiscal stability. Resolution No. 25,001 is attached.

STATEMENT OF THE ISSUE

The conduct of City business relative to use of the City's corporate credit card is not limited to travel and emergency situations, but includes all aspects of City business activity wherein the use of a credit card is necessary to conduct transactions related to City operations on an as required and/or necessary basis. Per communication with the City Treasurer, he represented that the City's current banking institution, Bank of the West, will not issue a corporate credit card without a current resolution. Therefore, staff

is requesting to rescind the prior resolution No. 25,160, and to adopt a new resolution with the similar terms as resolution No. 25,160, however to more clearly indicate that the single transaction limit for the credit card should be $25,000 (which is parallel to the Purchasing Resolution No. 25,001), and also make more clear that the monthly spending limit be $50,000. Staff has deemed that a monthly spending limit of $50,000 is reasonable, and clarifies the $50,000 figure presented previously in Resolution No. 25,160.

FISCAL IMPACT

The fiscal impact resulting from the adoption of this resolution is limited to the $50,000 monthly spending limit, the $25,000 single transaction limit, as well as current budget allocations.

RECOMMENDATION

The City Manager's Office recommends that City Council adopt this resolution.

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON RESCINDING RESOLUTION NO. 25,160 AND AUTHORIZING THE CITY MANAGER TO RE-ESTABLISH THE CITY'S CORPORATE CREDIT CARD ACCOUNT TO BE UTILIZED SOLELY AND EXCLUSIVELY FOR APPROVED CITY BUSINESS

WHEREAS, on October 11, 2005, the City Council adopted Resolution No. 21,759 authorizing the City Manager to establish a corporate credit card account to conduct City business; and

WHEREAS, Per Resolution no. 25,160 the City shall have a corporate credit card account. Currently, the City Manager is authorized to use the City's corporate credit card account, with a maximum credit limit of $50,000, to conduct City business that includes, but is not limited to, authorized travel expenses and emergency situations where the timely provision of equipment or supplies may be critical; and

WHEREAS, Per Resolution 25,001, the single transaction limit established for the City Manager that would not require adoption by a separate resolution of the City Council was $25,000 or less. Additionally, the same Resolution 25,001 also establishes a single transaction limit of $75,000 for the City Manager if the purchase is of urgent necessity for the preservation of life, health, property or fiscal stability.

WHEREAS, the conduct of City business relative to use of the City's corporate credit card is not limited to travel and emergency situations, but includes all aspects of City business activity wherein it is necessary for the use of a credit card to conduct transactions related to City operations on an as required and/or necessary basis; and

WHEREAS, The City Treasurer has represented that the City's current banking institution, Bank of the West, will not issue a corporate credit card without a current resolution. Therefore, staff is requesting to rescind the prior resolution No. 25,160, and to adopt a new resolution with the similar terms as resolution No. 25,160, however to more clearly indicate that the single transaction limit for the credit card should be $25,000 (which is parallel to the Purchasing Resolution No. 25,001), and also make more clear that the monthly spending limit be $50,000. Staff has deemed that a monthly spending limit of $50,000 is reasonable, and clarifies the $50,000 figure presented previously in Resolution 25,160; and

WHEREAS, identification of this use of the City's corporate credit card account in this resolution as a specific business activity will not require the issuance to the City of any additional cards by the credit card issuer, or for the existing card to be used by anyone other than the City Manager; and

WHEREAS, the City Manager requires City Council authorization to re-establish the City's corporate credit card account to be utilized solely and exclusively for approved City business.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON RESOLVES AS FOLLOWS:

SECTION 1. That resolution No. 25,160 is hereby rescinded.

SECTION 2. That the City Manager is hereby authorized to re-establish the City of Compton's current corporate credit card account, with a maximum monthly credit limit of $50,000.00, to be utilized solely and exclusively for approved City business.

SECTION 3. That funds for these expenditures are limited to the $50,000 monthly spending limit and available pursuant to the City's purchasing policies and budget limitations.

SECTION 4. That funds for payments in future fiscal years will be budgeted as needed.

SECTION 5. The City Manager, or in the City Manager's absence, the Assistant City Manager, shall be recognized as the authorized Account Manager on the City's Corporate Credit Card account and responsible for ensuring payments are made in accordance with the credit agreement.

SECTION 6. That the City Manager shall submit credit card reports for receive and file consideration by City Council quarterly.

SECTION 7. That a certified copy of this resolution shall be filed in the offices of the City Manager, City Attorney, City Controller, and the City Clerk.

ADOPTED this _____ day of _____, 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor, and attested by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2022.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAINS: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

RESOLUTION NO. 25,001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON REVISING THE CITY'S POLICIES AND PROCEDURES FOR THE APPROVAL OF PURCHASE ORDERS, BUDGETARY TRANSFERS AND CONTRACTS, AND INCREASING THE CITY MANAGER'S MAXIMUM APPROVAL LEVEL OF EXPENDITURES TO $25,000; RESCINDING RESOLUTION NO. 24,347

WHEREAS, on May 17, 2016, the City Council adopted Resolution No. 24,347, which gave the City Manager authorization to approve expenditures up to $5,000; and

WHEREAS, currently, the Council reviews for adoption by resolution a variety of City transactions, including (1) all purchase orders over $5,000; (2) all work change orders (for capital projects) over $5,000; (3) all budgetary transfers between objects of different classifications and (4) all contracts, regardless of amount; and

WHEREAS, Staff has determined that the $5,000 limit for expenditures is no longer consistent with best practices and does not allow for administrative efficiency or flexibility to allow the City to respond to community needs in an expedient manner; and

WHEREAS, based on a survey of purchasing authority of other cities, Staff recommends that the approval authority for the City Manager be changed from $5,000 to $25,000; and

WHEREAS, the change in approval authority for the City Manager will allow the Council to focus its attention on fiscally significant transactions by reducing the number of small transactions requiring Council approval; and

WHEREAS, it should be noted that all transactions will still be required to comply with City of Compton policies and procedures for review and approval prior to execution; and

WHEREAS, elimination of the resolution requirement for small transactions will save time on the part of several City departments and allow City business to be executed more quickly and efficiently; and

WHEREAS, adoption of the attached resolution will rescind Resolution No. 24,347.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That Resolution No. 24,347, adopted by the City Council on May 17, 2016, is hereby rescinded.

SECTION 2. That Purchase Orders do not require adoption by separate resolution of the City Council if they:

- Are for an amount of $25,000 or less, however except for the purchase of materials, supplies and goods, a written contract approved as to form by the City Attorney shall be required; and
- Are properly approved by the City Manager and/or required staff; and
- Are applied to an existing appropriation; or
- Fulfill in whole or in part a budgeted expenditure as adopted by Council in the Combined Budget Resolution for the current fiscal year;
- Are purchase orders, regardless of the amount, for the City-owned utility payments (e.g. electricity, water and gas), that are applied to an existing appropriation.
-

SECTION 3. That the following Purchase Order Procedures are now in effect:

- Purchase Orders for the same vendor, for the acquisition of related goods/services, and occurring in the same fiscal year shall be treated as one combined Purchase Order for purposes of determining if the $25,000 threshold is met.
- A new addition to an existing Purchase Order shall be combined with the original Purchase Order and any previous additions to the Purchase Order for purposes determining if the $25,000 threshold is met.
- Purchase Orders will not be split in order to avoid the $25,000 threshold, including splits near the cutoff between fiscal years.
- A list of all Purchase Orders and Purchase additions over $5,000 issued during the previous month will be provided to the City Council by the City Controller on a monthly basis.

SECTION 4. That upon the advice and approval of the City Attorney, the City Manager is authorized to enter into contracts on behalf of the City, without first having City Council adoption of a separate resolution, when the total amount of compensation to be paid by the City pursuant to the contract is $25,000 or less. A list of such contracts entered into by the City wherein the amount compensation to be paid is above $5,000 but below $25,000 shall be provided to the City Council by the City Manager on a monthly basis.

SECTION 5. That when faced with an urgent situation, the City Manager may authorize a purchase order of up to $75,000 without first having City Council adoption by resolution, if the purchase order is of urgent necessity for the preservation of life, health, property or fiscal stability. The maximum amount of an emergency purchase order may be increased by $100,000 with the concurrence of the City Attorney. At the next available opportunity, the emergency purchase order will go through the normal approval process for purchase orders.

SECTION 6. That work change orders on capital projects that are within the limits of California Public Contract Code Section 20455 (a) and (b) do not require City Council adoption by resolution. Work change orders using this section must be approved by the City Manager, in addition to any other required approval. If in total the work change orders on a single City project exceed $25,000 in the same fiscal year, the City Manager shall explain the work change orders at the next City Council meeting as an agenda item.

SECTION 7. That the City Manager may transfer budgeted amounts from one object to another object if they are within the same fund group by no more than $25,000 per object. A budgetary transfer of more than $25,000 per object may only be authorized by a resolution of City Council. The administrative accounting for budgetary transfers is performed by the City Controller; therefore all such transfers shall be reported to the City Council on a monthly basis by the City Controller.

SECTION 8. That a certified copy of this Resolution shall be filed in the offices of the City Clerk and with every City department and agency.

SECTION 9. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this 23rd day of April, 2019.

MAYOR OF THE CITY OF COMPTON

ATTEST:

CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF COMPTON)

I, Alita Godwin, City Clerk of the City of Compton hereby certify that the foregoing Resolution was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on this 23rd day of April, 2019.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS- Galvan, McCoy, Brown
NOES: COUNCIL MEMBERS- Zurita, Sharif
ABSTAIN: COUNCIL MEMBERS- None
ABSENT: COUNCIL MEMBERS- None

CITY CLERK OF THE CITY OF COMPTON

June 14, 2022

TO: **MAYOR AND CITY COUNCIL MEMBERS**

FROM: **CITY MANAGER**

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH AND ESTABLISH A PURCHASE ORDER FOR INFRASTRUCTURE ENGINEERS FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT, CIP #18-01, PHASE 2B ($354,801)**

SUMMARY

Adoption of this Resolution will authorize the City Manager to enter into a professional services agreement with and establish a purchase order in the amount of Three Hundred and Fifty Four Thousand Eight Hundred and One Dollars ($354,801) to Infrastructure Engineers for the provision of construction management and inspection services for the Annual Residential Street Rehabilitation Project, CIP #18-01, Phase 2B.

BACKGROUND

The Annual Residential Street Rehabilitation Project ("Project") provides improvements to specific City streets in accordance with the plans, specifications and other contract documents as specified herein and shall consist of the following general work descriptions: construction of cold mill, ARHM pavement, AC base course, aggregate base, full depth AC slot pavement, curb and gutters, sidewalks, cross gutter, alley intersection, driveway approach, curb ramps, signing, striping, markings, and pavement legends, speed hump, traffic signal loops, adjust to grade existing sewer manholes, water valves, water meters, and storm drain manholes, and such other items or details, not mentioned above, that are required by the plans and standard specifications.

The Phase 2B street improvements are located on Compton Avenue, Slater Avenue, Rosecrans Avenue, and Santa Fe Avenue as follows:

No.	Street Name	Limits
1.	Compton Avenue	130th Street to 134th Place
2.	Slater Avenue	133rd Street to Wilmington Avenue
3.	Rosecrans Avenue	City Limit East to Alameda Street
4.	Santa Fe Avenue	City Limit North to City Limit South

On April 13, 2022, the Public Works Engineering Department ("Department") advertised for construction services of the Annual Residential Street Rehabilitation Project, CIP# 18-01, Phase 2B. An essential component of this Project is to obtain the services of a qualified and experienced engineering firm to provide construction management and inspection services.

On February 1, 2022, the City solicited Request For Proposals from qualified engineering firms and on March 2, 2022, the City received a total of six (6) proposals that were reviewed and ranked by staff. The top 3 (three) firms were selected based on their responsiveness, qualifications, costs, work experience, professional expertise and any other unique qualifications. The top three proposals are listed below:

Rank	Firm	Location	Amount
1	Z&K Consultants	San Bernardino, CA	$407,988.00
2	GK & Associates	Diamond Bar, CA	$397,543.82
3	Infrastructure Engineers	Brea, CA	$354,801.00

The scope of work for construction management and inspection services described within the RFP for CIP #18-01 Phase 2B shall include all of the following, but not limited to:

1. **Preconstruction Conference** – Outline project specifics. Inform contractor of project administration procedures.

2. **Management Information System** – Implement system for organizing, tracking, filing, and managing paper/electronic correspondence including letters, information requests, submittals, contracts, reports, O&M manuals, progress payments, change orders and etc.

3. **Review Traffic Control Plans** – Review contractor's plans for detours, shutdowns and access for emergency vehicles.

4. **Meetings** – Conduct meetings to discuss background, scope, objectives, schedule, current, and past issues as necessary.

5. **Issues Management** – Analyze issues, seek appropriate advice, and give recommendations. Review cost reduction proposals as well as contractor's methods of construction in order to ensure compliance with plans and specifications and delivery of project within budget and the time specified.

6. **Schedule** – Monitor contractor's schedule weekly. Notify parties of actual or potential deviation from schedule. Work with project team to correct noncompliance with schedule.

7. **Cost Control** – Monitor project funding. Monitor project budgets. Review contract item payments, material quantities, and change order payments.

8. **Labor Compliance** – Provide labor compliance reports to include reporting on prevailing wage, payroll documentation, compliance status, and certified payrolls.

9. **Request For Information (RFIs) & Submittals** – Provide a list of RFIs and responses. Provide a list of submittals and responses.

10. **Change Orders** – Review potential change orders for contractual and technical merit. Prepare independent cost estimate and schedule analysis of work. Negotiate and prepare change orders for execution. Keep the City appraised of impact of cumulative change orders.

11. **Dispute Resolution** – Make recommendations and implement procedures for reducing the likelihood of disputes and claims. Assist in the resolution of disputes.

12. **Quality Control/Inspection/Material Testing** – Observe and monitor all aspects of the project. Notify contractor when work is not in compliance. Prepare daily inspection reports. Provide photographic and video documentation of construction process. Encourage and stress quality in the constructed product. Provide materials testing services.

13. **Public Relations** – Communicate with local business community regarding temporary construction impacts, such as traffic changes, noise, limited access and construction schedule.

14. **Permit/Environmental Compliance** – Review and enforce requirements stipulated in permits issued by regulatory and environmental agencies.

15. **Progress Payments** – Review and approve all contractor's payment request. Verify contractor pay items. Prepare payment documentation for execution.

16. **Monthly Status Reports** – Prepare monthly reports highlighting project progress, CCO's, cost issues, and schedule.

17. **Site Safety** - Review and monitor contractor's safety program for compliance with Cal/OSHA. Notify contractor if an unsafe condition is observed. Notify City if contractor refuses to rectify unsafe condition and investigate accidents.

18. **Done Services** – Provide aerial photos and video of the various project sites.

19. **"As-Built" Drawings** – Collect, review, and transmit contractor's data to engineer.

20. **Final Walkthrough** – Make final inspections and prepare punch list. Verify that required certificates of compliance, O&M manuals and as-build drawings have been delivered.

21. **Project Completion Report** – Process final progress payment to contractor. File Notice of Completion. Prepare final report and review project records.

Selection Process

Pursuant to the Request for Proposals, it was requested that firms respond with their qualifications, scope of service, etc., in one package and their fee in a sealed, separate cover. The proposal review committee consisting of Public Works, City Manager's Office and consulting staff. The committee reviewed the material in the Request for Proposal (RFP) submitted by the consultants and ranked the most qualified proposals.

The selection of the most qualified firm for the construction management services was on the basis of demonstrated competence and professional qualifications. Qualification Based Selection ("QBS") is where selection is based on the most appropriate provider of professional services; fees are not an initial consideration nor a primary consideration for selection; however, staff will evaluate the price to ensure there is a comparability and consistency to the other proposals. The evaluation process used by the selection committee for ranking the proposal was based upon the completeness of the proposal, consultant's demonstrated understanding of the scope of services, quality of similar work previously performed by the firm, personnel assigned, resources required to perform the required services, and the proposed schedule of work. Fees are not considered until after the selection of the most qualified firms.

The review committee determined the proposal submitted by Infrastructure Engineers was deemed the lowest most responsive firm to provide the needed construction management and inspection services for this Project for the following reasons:

- Infrastructure Engineers key member has over 35 years of experience in construction civil and traffic engineering design, and project management for various public agencies
- Infrastructure Engineers has a dedicated and skilled staff of experienced professional engineers, construction managers, projects managers, inspectors, and support personnel
- Infrastructure Engineers will provide seasoned staff to conduct a constructability review for the project and identify all issues into a Risk Management Plan
- Infrastructure Engineers has a successful history of managing large street rehabilitation projects in the City of Bell Gardens, Montebello, Lynwood, and Baldwin Park with minimal change orders and timely project completion
- Infrastructure Engineers offers unique videography, surveyor and analytical statistics data that provide the City with customized data that allows staff to be more effective and efficient in managing the construction activities and creates cost savings within the project

Infrastructure has grown to become the premier provider of municipal services to cities throughout Southern California. Their staff includes construction management, inspection, and

city staff augmentation. Their staff are focused practitioners and expert technicians in every field they service. Many of their employees are former city employees, so they understand the importance of observing strict oversight of the project schedules, budgets, and maintenance. They possess first-hand knowledge of city operations and priorities, which empowers them to be strong advocates for the city they serve.

STATEMENT OF ISSUE

Therefore, in order to authorizes the City Manager to enter into a professional services agreement with and establish a purchase order in the amount of Three Hundred and Fifty Four Thousand Eight Hundred and One Dollars ($354,801) to Infrastructure Engineers for the provision of construction management and inspection services for the Annual Residential Street Rehabilitation Project, CIP #18-01, Phase 2B, City Council's authorization is necessary.

ALTERNATIVE

The Council may select another vendor to provide Construction Management Services. Nonetheless, staff recommends the utilization of professional construction management services for the oversight of the Annual Residential Street Rehabilitation Project (CIP #18-01) Phase 2B. The reason being that this project has significant technical specifications and requirements that require specific and uniquely qualified individuals to oversee and manage the project on a daily basis and the City's existing organizational structure within the Public Works Engineering Department has limited staff capacity to perform these services nor does it have the workload capacity if fully staffed to manage this project.

FISCAL IMPACT

Funds in the amount of $354,801 are available in the Public Works Engineering Department 2021-2022 Fiscal Year budget in Account No. 3031-710-000-4300.

RECOMMENDATION

Staff recommends the City Council adopt the attached Resolution.

JOHN D. STRICKLAND, JR., PROJECT MANAGER
PUBLIC WORKS ENGINEERING DEPARTMENT

APPROVED FOR FORWARDING:

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH AND ESTABLISH A PURCHASE ORDER FOR INFRASTRUCTURE ENGINEERS FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT, CIP #18-01, PHASE 2B ($354,801).

WHEREAS, adoption of this resolution will authorize the City Manager to enter into a professional services agreement with and establish a purchase order in the amount of Three Hundred Fifty Four Thousand Eight Hundred and One Sixty-Two Dollars ($354,801) to Infrastructure Engineers for the provision of construction management and inspection services for the Annual Residential Street Rehabilitation Project, CIP #18-01, Phase 2B; and

WHEREAS, the Annual Residential Street Rehabilitation Project ("Project") provides improvements to specific City streets in accordance with the plans, specifications and other contract documents as specified herein and shall consist of the following general work descriptions: construction of cold mill, ARHM pavement, AC base course, aggregate base, full depth AC slot pavement, curb and gutters, sidewalks, cross gutter, alley intersection, driveway approach, curb ramps, signing, striping, markings, and pavement legends, speed hump, traffic signal loops, adjust to grade existing sewer manholes, water valves, water meters, and storm drain manholes, and such other items or details, not mentioned above, that are required by the plans and standard specifications; and

WHEREAS, the Annual Residential Street Rehabilitation Project ("Project") provides improvements to the below- specified streets within various areas throughout the City:

No.	Street Name	Limits
1.	Compton Avenue	130th Street to 134th Place
2.	Slater Avenue	133rd Street to Wilmington Avenue
3.	Rosecrans Avenue	City Limit East to Alameda Street
4.	Santa Fe Avenue	City Limit North to City Limit South

WHEREAS, on April 13, 2022, the Public Works Department ("Department") advertised for the construction services of the Annual Residential Street Rehabilitation Project, CIP# 18-01, Phase 2B and an essential component of this Project is to obtain the services of a qualified and experienced engineering firm to provide Construction Management and Inspection Services; and

WHEREAS, February 1, 2022, the City solicited Request For Proposals from qualified engineering firms and on March 2, 2022, the City received a total of six (6) proposals that were reviewed and ranked by staff and the top 3 (three) firms were selected based on their responsiveness, qualifications, cost, work experience, professional expertise and any other unique qualifications; and

WHEREAS, the top three proposal are listed below:

Rank	Firm	Location	Amount
1	Z&K Consultants	San Bernardino, CA	$407,988.00
2	GK & Associates	Diamond Bar, CA	$397,543.82
3	Infrastructure Engineers	Brea, CA	$354,801.00

;and

WHEREAS, the scope of work for construction management and Inspection services described within the RFP for CIP# 18-01 Phase 2B shall include all of the following, but not limited to:

- Preconstruction Conference
- Management Information System
- Review Traffic Control Plans
- Meetings
- Issue Management
- Schedule
- Cost Control
- Labor Compliance
- Change Orders
- Dispute Resolution
- Quality Control/Inspection/Material Testing
- Public Relations
- Permit/Environmental Compliance
- Progress Payments
- Monthly Status Reports
- Site Safety
- Drone Services
- "As Built" Drawings
- Final Walkthrough
- Project Completion Report

WHEREAS, pursuant to the Request for Proposals, it was requested that firms respond with their qualifications, scope of service, etc., in one package and their fee in a sealed, separate cover; and

WHEREAS, the proposal review committee consisted of Public Works, City Manager's Office and Interwest Consulting staff and the committee reviewed the material in the Request for Proposal (RFP) submitted by the consultants and ranked the most qualified proposals; and

WHEREAS, the selection of the most qualified firm for the construction management services was on the basis of demonstrated competence and professional qualifications; and

WHEREAS, Qualification Based Selection ("QBS") is where selection is based on the most appropriate provider of professional services; fees are not an initial consideration nor a primary consideration for selection; however, staff will evaluate the price to ensure there is a comparability and consistency to the other proposals.; and

WHEREAS, the evaluation process used by the selection committee for ranking the proposal was based upon the completeness of the proposal, consultant's demonstrated understanding of the scope of services, quality of similar work previously performed by the firm, personnel assigned, resources required to perform the required services, and the proposed schedule of work and fees are not considered until after the selection of the most qualified firms; and

WHEREAS, the review committee determined the proposal submitted by Infrastructure Engineers was deemed the lowest most responsive firm to provide the needed construction management and inspection services for this Project for the following reasons:

- Infrastructure Engineers key member has over 35 years of experience in construction civil and traffic engineering design, and project management for various public agencies.

- Infrastructure Engineers has a dedicated and skilled staff of experienced professional engineers, building officials, construction managers, projects managers, inspectors, and support personnel.
- Infrastructure Engineers provide seasoned staff to conduct a constructability review for the project and identify all issues into a Risk Management Plan.
- Infrastructure Engineers has a successful history of managing large street rehabilitation projects in the City of Bell Gardens, Montebello, Lynwood, and Baldwin Park with minimal change orders and timely project completion.
- Infrastructure Engineers offers unique videography, surveyor and analytical statistics data that provide the City with customized data that allows staff to be more effective and efficient in managing the construction activities and creates cost savings within the project.

WHEREAS, Infrastructure has grown to become the premier provider of municipal services to cities throughout Southern California. Their staff includes construction management, inspection, and city staff augmentation; and

WHEREAS, Infrastructure Engineers staff are focused practitioners and expert technicians in every field they service and many of their employees are former city employees, so they understand the importance of observing strict oversight of the project schedules, budgets, and maintenance; and

WHEREAS, Infrastructure Engineers possess first-hand knowledge of city operations and priorities, which empowers them to be strong advocates for the city they serve; and

WHEREAS, funds in the amount of $354,801 are available in the Public Works 2021-2022 Fiscal Year budget in Account No. 3031-710-000-4300; and

WHEREAS, in order to authorizes the City Manager to enter into a professional services agreement with and establish a purchase order in the amount of Three Hundred and Fifty Four Thousand Eight Hundred and One Dollars ($354,801) to Infrastructure Engineers for the provision of construction management and inspection services for the Annual Residential Street Rehabilitation Project, CIP #18-01, Phase 2B, City Council's authorization is necessary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the proposal submitted by Infrastructure Engineers is hereby accepted.

SECTION 2. That the City Manager, upon the advice and approval of the City Attorney, is hereby authorized to enter into a professional services agreement with Infrastructure Engineers Inc. for the provision of construction management and inspection services for the Annual Residential Street Rehabilitation project (CIP# 18-01, Phase 2B).

SECTION 3. That Funds in the amount of $354,801 are available in the Public Works Engineering Department Fiscal Year 2021-2022 budget.

SECTION 4. That a purchase order in the amount of $354,801 is authorized to be established for Infrastructure Engineers for services performed for the Annual Residential Street Rehabilitation Project (CIP# 18-01, Phase 2B).

SECTION 5. That copies of this Resolution shall be filed in the offices of the City Manager, City Controller, City Clerk, City Attorney and the Public Works Department.

SECTION 6. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested to by the City Clerk, at a regular meeting thereof held on the _____ day of _____, 2022.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

Proposal for

Construction Management and Inspection Services for Annual Residential Rehabilitation Project (Phase 2B) CIP #18-01









INFRASTRUCTURE ENGINEERS

Prepared and Submitted by
Infrastructure Engineers

March 2, 2022

3060 Saturn Street, Suite 250
Brea, CA 92821
Phone: (714) 940-0100
Fax: (714) 940-0700
www.infrastructure-engineers.com

March 2, 2022

Mr. John D. Strickland, Jr.
Project Manager
City of Compton, Engineering Department
205 South Willowbrook Avenue
Compton, CA 90220

Subject: Construction Management and Inspection Services for Annual Residential Rehabilitation Project (Phase 2B) CIP #18-01

Dear Mr. Strickland,

Infrastructure Engineers (IE) is pleased to submit our proposal in response to the City of Compton's request for proposals (RFP) for Construction Management and Inspection Services for Annual Residential Rehabilitation Project (Phase 2B) CIP #18-01.

Infrastructure Engineers has the experience and capabilities to oversee the entire construction project process, from design to completion, thus ensuring smooth integration of design through constructability. We function as an extension of the City's organization by representing and protecting your best interests. We look at each construction project from your eyes, forming a clear picture of the City's vision and expectations. We develop an understanding of your budget goals, schedules, and decision-making processes. In addition, our extensive experience in providing construction management services to many different municipalities allows us to think outside of the box and offer creative solutions to construction challenges.

For each project, appropriate construction professionals and experienced staff are selected to ensure project delivery success. For this contract, we are proposing Miguel Alvarez, PE (18 years' experience) as the Construction Manager and Steve Beer as the Senior Public Works Inspector (13 years' experience). I will be acting Principal-in-Charge, providing oversight of the team, making sure all resources are available for this contract, as well as ensuring the City's complete satisfaction with our services. I have over 35 years of experience in construction, civil and traffic engineering design, and project management. Each of our proposed staff members has worked with cities to provide construction management and inspection services for many street rehabilitation projects. This experience will provide the City with peace of mind, knowing that your construction projects are being run with the highest regard for your desired goals and bottom line.

We are particularly eager to serve the City by providing you with successfully completed street rehabilitation projects that enhance the neighborhoods and the traveling experience in your community. If any additional assistance is needed, our Principal-in-Charge, Miguel Alvarez, can be reached at (626) 544-0400 or via email at malvarez@infengr.com.

Sincerely,
Infrastructure Engineers

Ray Abassi, MSCE, PE, TE, QSP/QSD
Principal

Miguel Alvarez, PE
Senior Manager, Construction Management Services

Table of Contents

A. Company Overview 1
Firm Experience 2
Infrastructure Engineers Advantages 2
Garfield Avenue Improvement Project, City of Bell Gardens 3
HSIP Cycle 8 – Various Intersection Improvements, City of Bell Gardens 3
Montebello Boulevard Widening, Bike Lane and Sidewalk Improvement Project, City of Montebello 4
Long Beach Boulevard Improvement Project, City of Lynwood 4
Frazier Street Pedestrian & Bicycle Safety Improvements Project, City of Baldwin Park 5
References 5
Team Resumes 7
B. License Number 16
C. Approach and Methodology 16
Project Understanding 17
Project Familiarity 17
Scope of Services 19
D. Proposed Schedule of Work 27
E. Fee 29
F. Consultant's Use of Disadvantaged Business Enterprises (DBE's) 29
G. Appendix (Subconsultant Resumes and Certifications) 29

A. Company Overview



Infrastructure Engineers was established in 1994 with a clear mission to provide professional engineering and municipal services to cities and counties throughout California. We are committed to making a difference in the communities we serve by maintaining and improving infrastructure and supporting civic services.

Our staff are focused practitioners and expert technicians in every field they service. Many of them are former city employees, so they understand the importance of observing strict oversight of project schedules, budgets, and maintenance. They possess first-hand knowledge of city operations and priorities, which empowers them to be strong advocates for every city they serve. We work closely with our clients to address issues before they become problems and strive to always deliver high-quality results on time and within budget.

Headquarters:	**Los Angeles County:**	**San Bernardino County:**
3060 Saturn Street Suite 250 Brea, CA 92821 Phone: 714-940-0100	13200 Crossroads Parkway Suite 400 Industry, CA 91746 Phone: 626-544-0400	473 E. Carnegie Drive Suite 244 San Bernardino, CA 92408 Phone: 909-340-9494

As a mid-sized municipal consulting firm, we have achieved great success in our pursuit of service to cities, which has allowed us to maintain a stable firm with *85 staff in three offices* conveniently located throughout Southern California. Our staff includes construction managers, building inspectors, urban planners, environmental specialists, design engineers, and architects – a truly full-service firm to our clients.

Over the past 27 years, Infrastructure Engineers has grown to become the premier provider of municipal services to cities throughout southern California, with a focus on outstanding quality and client service in civil engineering, construction management, inspection, and city staff augmentation. Today, we offer a full spectrum of services to our clients such as:

- Construction Management
- Inspection and Management
- Civil Engineering Planning & Scheduling
- Architecture and Facilities Design
- Planning and Development
- Traffic and Transportation Engineering
- Building and Safety
- Engineering and Building Plan Check Services
- Funding Administration
- Public Relations
- NPDES Implementation and Management
- Staff Augmentation
- Environmental Compliance

Every element of Infrastructure Engineers is structured to commitment and technical excellence with an emphasis on meeting your needs. We continually strive to be the best in our market by focusing on quality, efficiency, and cost-effectiveness as well as complete and timely delivery. Infrastructure Engineers has a dedicated and skilled staff of experienced professional engineers, building officials, construction managers, project managers, inspectors, plan checkers, technicians, project managers, and support personnel who are capable of providing complete turnkey services.



We liken the role of construction manager to that of a juggler. It takes the talent of a juggler to manage project schedules, work performance quality, safety oversight, inquiries from stakeholders, documentation review, and labor compliance to see a project through to successful completion. The construction managers and inspectors at Infrastructure Engineers are all veteran jugglers; each staff has decades of experience in construction management and inspection - they have fine-tuned the art of juggling competing issues and interests while, above all, being your advocate.

Our onsite construction inspectors are responsible for ensuring that the contractor effectively and efficiently executes the project in a manner that meets your expectations. To accomplish this, our team evaluates project schedules, work performance quality, safety oversight, coordination effectiveness, and performs documentation reviews for all rehabilitation and new construction work in progress.

We view the project from your perspective. This includes knowing local and regional codes, regulations and permitting. We hold value-engineering and constructability as our goal and keep an eye on subcontractor and supplier resources. We manage your project to a successful completion and help you be the hero to your community.

Firm Experience

The engineering design, construction management, and inspection of street improvements and replacements are core disciplines for Infrastructure Engineers. Cities rely on us to assist them with this important infrastructure; as such we have completed dozens of projects similar to the City's street resurfacing project. In addition, because our staff are veteran construction managers, and because we also procure funding for our clients, we are adept at ensuring funding mechanisms and labor compliance on projects.

Infrastructure Engineers Advantages

Construction Engineering and In-house Engineering Judgment to Overcome Complex Projects

Being a firm owned and led by engineers, our in-house engineering expertise is invaluable on construction projects for resolving complex issues under pressure. We know from experience the best way to save money for our clients is to get ahead and stay ahead of the key project issues. We are able to provide a seasoned staff to conduct a constructability review for every project we oversee and roll all identified issues into a Risk Management Plan. The plan can be used to ensure that we are cognizant of all risks ahead of time and have a preemptive plan to manage them with the least impact to the project.

Ability to Handle Project Changes

Two characteristics of our team and key staff that contribute to our success are flexibility and responsiveness. We are well accustomed to responding to the changing needs of ongoing construction projects. In addition, we are well accustomed to rapid mobilization of construction field staff, often within one day. Our planning and management ensure that we are always ready to respond quickly to requests from the field, and we are ready to serve on new projects. We offer the flexibility and responsiveness needed to support the City on this important project.

Cost Savings Using Multi-Skilled Staff

Infrastructure Engineers offers several proven features and techniques for saving money. To minimize management costs, Infrastructure Engineers provides staff with multiple skills to complete projects with the smallest possible field team. All our on-site field members are selected based upon their ability to provide expertise in multiple disciplines. For example, our proposed Construction Manager, Miguel Alvarez, PE, not only has the expertise overseeing construction projects from inception to completion, he is an exceptional Resident Engineer and an accomplished civil engineer.

Garfield Avenue Improvement Project, City of Bell Gardens



Members of our team provided construction management and inspection services in addition to federal contract compliance for this major arterial roadway improvement in Bell Gardens. The project consisted of pavement rehabilitation, new landscaped median islands, bus pads, ADA improvements, sidewalks, curbs and gutters, roadway safety improvements, and signing and striping. Our team ensured the project was in compliance with plans, specifications, and all construction documents, including approved change orders; monitored and enforced traffic control; maintained and provided change orders, materials submittals, RFI's and change order logs; daily inspection reports and statement of working days were also prepared; Infrastructure Engineers prepared and submitted to the City Engineer weekly update reports; reviewed contractor's payment applications, and recommended City to process them once completed work was verified and approved.

HSIP Cycle 8 – Various Intersection Improvements, City of Bell Gardens



As part of Caltrans' Highway Safety Improvement Program (HSIP) to reduce injuries and fatalities on roads and highways throughout California, Infrastructure Engineers' team provided construction management and inspection services for the modification of existing signal systems throughout Bell Gardens - including installation of conduits, pull boxes, new signal heads, sensor units, reprograming of signal controller, traffic striping, markings, and traffic control; hauling and disposal; and all appurtenant

equipment and work. Contract administration included preparation of staff reports, Notice to Proceed issuance, and recommendations for change orders and progress payments. As well, the team prepared daily reports, reviewed change orders and progress payment requests, and coordinated soils testing.

Montebello Boulevard Widening, Bike Lane and Sidewalk Improvement Project, City of Montebello



Members of the Infrastructure Engineers team provided construction management and inspection services on this project to widen Montebello Boulevard to accommodate a new bike lane on the easterly side of the Boulevard. Activities included the excavation of approximate 8,000 CY of dirt to make room for the widening required; construction of 5 FT high retaining wall; installation of a raised PCC median with decorative percolation system and landscaping; traffic signal upgrades; construction of a reclaimed water line from Lincoln Avenue to Jefferson Avenue; relocation of water lines, gas lines and streetlights; grind and overlay of approximately 500,000 SF ground and 10,000 tons of AC; new thermoplastic striping; coordination with Fish and Wild Life to protect nesting of birds due to the potential impact of the roadway widening adjacent to a natural reserve along Montebello Blvd; coordination was also necessary with SCE for the removal and reinstallation of streetlights. Our team prepared daily reports, reviewed change orders and progressed payment requests, and coordinated the required soils testing services***. The project was awarded "Project of the Year" in 2021 by the American Public Works Association. (APWA)***



Long Beach Boulevard Improvement Project, City of Lynwood

The Infrastructure Engineers team provided construction management, inspection, and labor compliance for the resurfacing of 192,779 square feet of roadway in Lynwood, CA. Additional activities included renovating sidewalks, driveway approaches, curbs and gutters, and constructing six new bus pads. Beautification enhancements included the removal and replacement of 23 trees, construction of landscaping in median islands with irrigation systems, and the installation of a City monument sign. Additionally, existing streetlights were relocated, and traffic signals were improved at two intersections. ***The project was awarded "Project of the Year" in 2020 by the American Public Works Association (APWA).***

Frazier Street Pedestrian & Bicycle Safety Improvements Project, City of Baldwin Park



Infrastructure Engineers' team members provided construction management and inspection for this project - bringing the project to a successful conclusion. The project included various traffic calming strategies, as identified in the application that was submitted to Los Angeles METRO for award to the City. The project entailed removal and replacement of sidewalks, curb ramps, curbs and gutters, alley approaches, driveways, localized full-depth AC pavement (dig outs), crack sealing, cold-milling of existing AC, installation of new ARHM paving, installation of new thermoplastic striping, and changing Frazier Street to a single lane in both directions to accommodate the pedestrian and bicycle safety improvements.

References

City of Huntington Park
Cesar Roldan, Director of Public Works
6550 Miles Avenue
Huntington Park, CA 90255
Phone: (323) 584-6320
Email: CRoldan@hpca.gov

City of Bell Gardens
Grissel Chavez, Director of Public Works
8327 Garfield Avenue
Bell Gardens, CA 90201
Phone: (562) 806-7770
Email: GChavez@bellgardens.org

City of Lynwood
Thomas W. Thornton, PE
City Engineer/Director of Public Works
11330 Bullis Road
Lynwood, CA 90262
Phone: (310) 603-0220, ext. 834
Email: TThornton@lynwood.ca.us

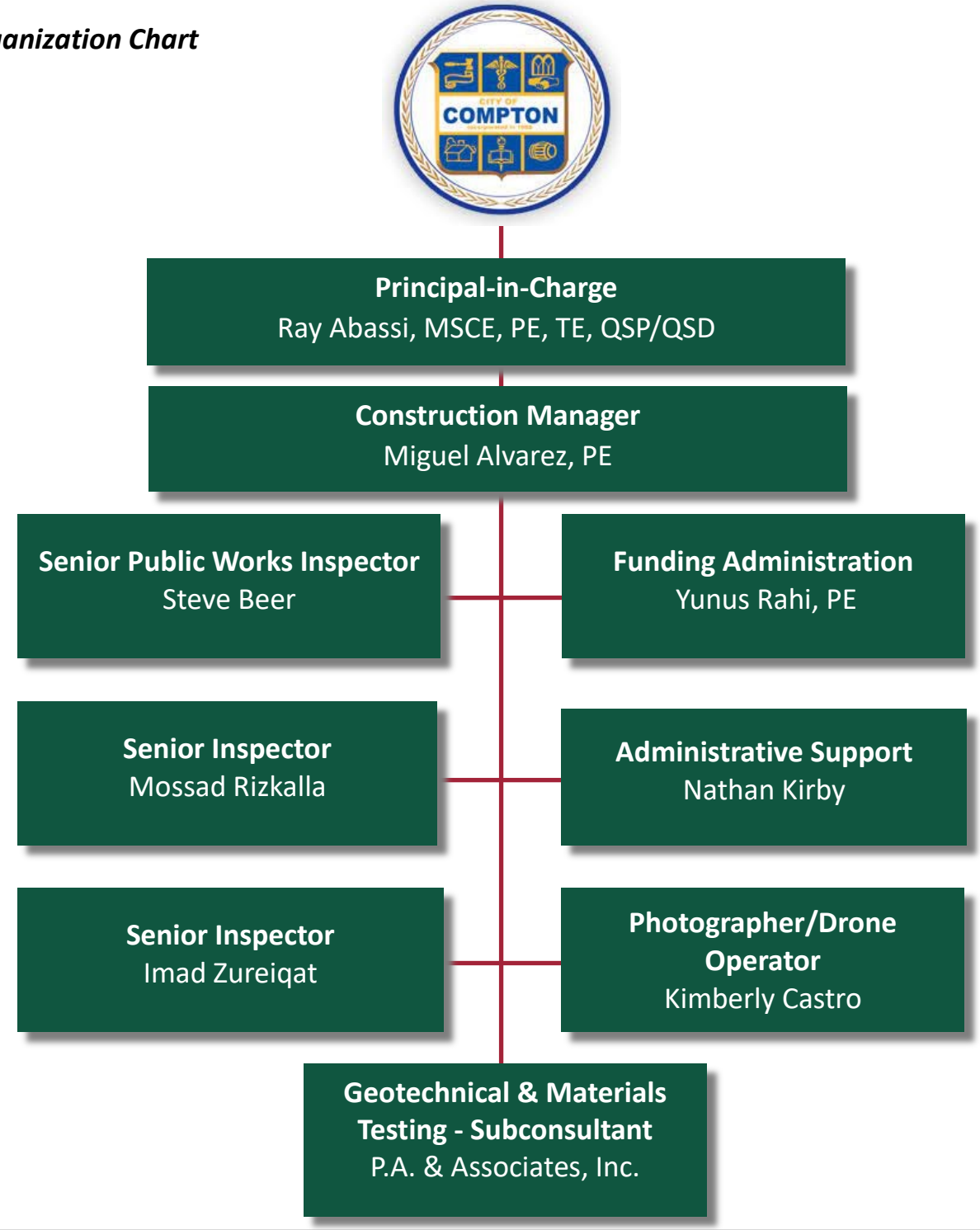
City of Baldwin Park
Sam Gutierrez, Director of Public Works
14403 East Pacific Avenue
Baldwin Park, CA 91706
Phone: (626) 960-4011
Email: SGutierrez@baldwinpark.com

City of Montebello
James Enriquez, PE, Director of Public Works
1600 W. Beverly Blvd.
Montebello, CA 90640
Phone: (323) 887-1460
Email: JEnriquez@cityofmontebello.com

Project Team, Key Personnel and Resumes

The staff we propose for this contract are all veterans in construction management and inspection, having worked on a wide variety of public works projects. In addition, they have all worked together on similar projects in the past. The organization chart, below, illustrates how our team will communicate with the City and within the team. Resumes for these team members are shown on the following pages and present the qualifications and experience of our team.

Organization Chart



Team Resumes

Education

MS, Transportation
BS, Civil Engineering

Registrations/Certifications

Registered Civil Engineer, CA, No. 48091

Registered Traffic Engineer, CA, No. 1759

QSP/QSD No. 41797

Years of Experience: 35

Raymond R. Abassi, MSCE, PE, TE, QSP/QSD

Principal-In-Charge

Raymond Abassi has more than 35 years of professional experience in both civil and traffic engineering design, as well as project management. His professional certifications include professional civil engineer, traffic engineer, and storm water management. Ray has worked on hundreds of street improvement projects involving investigations, studies, design plans and specifications, construction documents, and quality assurance as well as taking projects through the bid process and construction management. He has also provided construction oversight associated with infrastructure improvements, such as pavement, drainage, utilities, and onsite water and wastewater systems.

Relevant Experience

Project Manager, Various Projects, City of Montebello.
Manager supporting City engineering efforts on a variety of work including final design PS&E for street improvements and pavement rehabilitation. Projects included:

- **Prop C Street Rehabilitation**. Several arterial streets were rehabilitated by various methods based on geotechnical recommendations and available budget. These included areas of slurry seal, milling and overlay, and selective areas of reconstruction.
- **Wilcox Street Widening**. Widened both sides of the existing street from Beverly Boulevard to Lincoln Avenue (approximately 1,700 feet) to accommodate an additional lane in each direction. This project required the existing parkway to be removed, right-of-way acquisition, numerous utility relocations (on public and private properties), and existing pavement rehabilitation.
- **Traffic Signal Modifications along Wilcox Street (Beverly Boulevard, Lincoln Avenue, and Westmoreland Street).** Three separate signal modifications included relocating existing equipment and upgrading standards and functionality (adding protected left-turns; improving lane storage and designation; and improving phasing).

Contract City Traffic Engineer, City of Montebello.
Ray provided traffic engineering expertise to help the City implement many safety improvements, including intersection traffic signal modifications and traffic signal timing. He conducted studies involving neighborhood traffic calming, stop sign warrant analysis, speeding, and cut-through traffic. He would attend the Traffic Safety Commission and the City Council meetings providing needed expertise to help the Council members and Commissioners decide on traffic-related issues.

Education

BS, Civil Engineering, California State University, Long Beach

Registrations/Certifications

Registered Civil Engineer, CA, No. 79638

Years of Experience: 18

Miguel Alvarez, PE

Construction Manager

Miguel Alvarez has over 18 years of Construction Management and Resident Engineer experience. During these years, he has held management positions in which he has been responsible for budgets, staff management, equipment, public works projects, design and construction, and quality control. Miguel served the City of Lawndale as Acting Director of Public Works/City Engineer from April 2018 to September 2018, and Associate Engineer, from November 2010 to April 2018.

Relevant Experience

SB1 Arterial Street and Various Residential Streets Improvement Projects, City of Bell Gardens.
As Construction Manager, Miguel managed day-to-day field operations to ensure the correctness of the project records, contractor's monthly payments, issue and administer Contract Change Orders (CCO), negotiate and resolve potential claims, monitor the project schedule, and ensure that the design intent of the project is met, conduct safety inspection of the project and hold safety tailgate meetings.

Paving the Way Phase II Street Improvements Project, City of Montebello.
Miguel served as construction manager for this unique street improvement project involving a revolutionary street asphalt rejuvenation treatment process. He managed all aspects of the day-to-day field operations. Assigned and maintained proper number of the most qualified public works inspectors required in the field to ensure the method of construction was followed by the contractor as called out in the plans and specifications. Other duties and responsibilities included, but were not limited to, responded to requests for information (RFI), coordinated the receipt of materials submittals from the contractor with the design engineer, reviewed daily and weekly statement of working days inspection reports, reviewed progress payments, reviewed and negotiated change orders, constantly reviewed the construction schedule, and informed city staff of project updates.

Firmona Avenue Street Improvement and Storm Drain Project, City of Lawndale.
Miguel served as Resident Engineer/Construction Manager for this street improvement project to improve safety for those who walk, bike, and drive in the neighborhood. Scope of work included removal and replacement of sidewalks, curbs and gutters, street trees, regulatory signs, curb ramps, striping, and new pavement, which included manhole and valve adjusting. Miguel also served as Resident Engineer/Construction Manager during the installation of approximately 1,700 linear feet of new reinforced concrete pipe (RCP), nine catch basins, and manholes on Firmona Avenue between Manhattan Beach Boulevard and 162nd Street.

Associate Engineer, City of Lynwood.
Miguel assisted in the design of engineering plans, specifications and estimates for public works projects; designed, managed, administered, and inspected the citywide striping CIP project; planned, designed, managed and inspected the citywide in-pavement lighted crosswalk project; managed, administered and inspected various water and street CIP projects; coordinated contractor bidding and selection process for CIP projects; and prepared design drawings for grading, water, street, sewer, and curb/gutter improvements.

Education

PhD, Civil Engineering, Washington State University, Pullman, Washington, 1987

MS, Civil Engineering, Washington State University, Pullman, Washington, 1984

BS, Civil Engineering, Bangladesh University of Engineering and technology, Dhaka, Bangladesh, 1980

Registrations/Certifications:

Registered Civil Engineer, CA, No. C59183

Registered Traffic Engineer, CA, No. TR1726

Years of Experience: >30

Yunus Rahi, PhD, PE, TE

Principal Engineer

Yunus Rahi, PhD, has more than 30 years of experience in major civil engineering, traffic and transportation engineering, and planning projects. He was the contract Deputy City Engineer for the City of Temple City; Consultant City Traffic Engineer for the cities of Alhambra, Temple City, Monrovia, Commerce, Monterey Park, and San Bernardino; and Resident Engineer for public works construction projects funded by federal, state, local governments, SRTS, SR2S, HSIP, STPL, MTA and ARRA programs. Yunus was the Program Manager for capital improvement projects for local agencies performing various tasks, including applications for project funding, federal and state funds reimbursement requests, local agency disadvantaged business enterprise plan preparation and renewals, federal and state fund obligation and project close-out reports, attendance and representation in agency and community meetings. He successfully completed major civil, transportation and traffic engineering projects for local cities and agencies, school districts, private developers, as well as regional, county, state, and federal government agencies in Southern California.

Relevant Experience

Project Manager - Update 2019 Pavement Management System Report, City of Hawaiian Gardens.
Supervised and directed the preparation of Pavement Management Systems (PMS) Report for the City's next five-year street pavement rehabilitation program, prepared priority listing of street segments based on deterioration index and cost estimate to upgrade the streets per allocated budget.

Project Manager, Sidewalk Gap Closure Safe Routes to School, City of San Bernardino.
Provided design services for safe route to school projects funded by ATP Cycle 2 program for 3 school sites in the City. Developed pedestrian and school safety elements, including in-roadway lighted crosswalks, rectangular rapid-flashing beacons (RRFB), enhanced pedestrian push buttons and traffic signals. Provided labor compliance services and prepared project close-out reports per Caltrans project management manual.

Project Manager - Various Streets Improvement Project, City of Baldwin Park.
Provided oversight of the team producing design plans, cost estimate and specifications. The project also included a geotechnical investigation and surveys for the specific streets and intersections in accordance with the City's Pavement Management System report recommendations.

Project Manager - Montebello Boulevard Street Widening, Bike Lane and Sidewalk Improvement, City of Montebello.
Responsible for leading the design and PS&E preparation of this on-going, ATP Cycle 2-funded project. This roadway improvement and construction project involved widening 1.3-mile segment of Montebello Boulevard, a major arterial street providing freeway access through slightly rolling area and included construction of longitudinal retaining walls to support landscaped parkway and sidewalk along the

widened side of roadway, in addition to median improvement, storm drain improvement, bike lane, ADA corner and curb ramps, signal modification, streetlights and signing and striping plans.

Project Manager - Traffic Signal Plans, Chakemco Street-Wright Road and Atlantic Avenue, City of South Gate.

Designed and prepared new traffic signal plans for the existing uncontrolled (1-way stops on Chakemco Street and Wright Road), unsignalized intersection for Los Angeles Unified School District and approved by the City. Developed optimum timing and phasing plans using SYNCHRO, and prepared construction specifications and estimates.

Project Manager - City of Baldwin Park: Signal Warrant Study for the intersection of Olive Street and Phelan Avenue.

Analyzed various data and prepared a traffic signal warrant analysis at the 4-Way intersection of Phelan Avenue and Olive Street. The scope of the work included field checking of the intersection geometry, conducting peak-hour and 24-hour approach traffic volume counts, analyzing data collected, reviewing traffic collision history and evaluating signal warrants in accordance with the California MUTCD.

Project Manager/Principal Engineer - Elm Avenue Shopping Center Parking Lot/Layout Design Plans, City of Temple City.

Provided lead in researching and preparing design plans for parking stall layouts for over 200 spaces at a major regional shopping center for a private developer, maximizing utilization of the lot for parking occupancy per City and County standards of parking spaces and internal circulation.

City Traffic Engineer - Camelia Square Mixed-use Project, City of Temple City.

Provided civil and traffic engineering expertise for this City-sponsored multi-level Office/Retail mixed-use project in designing parking garage access routes, ADA curb ramps, sidewalk and driveway improvements and construction inspection.

Education

Public Works Courses, Santiago Canyon College: 2005-2007,2018

Certificate in Paralegal Studies, Pacific College, 1987

Registrations/Certifications:

NPDES Public Certificate
Member APWA

Years of Experience: 13

Steve C. Beer
Senior Public Works Inspector

Steve Beer has 13 years of experience in civil engineering, capital improvement projects and construction management. His experience includes management of federal- and Caltrans-administered projects including Safe Routes to School, Highway Safety Improvement Programs, and Surface Transportation Program Local. Steve was a Public Works Inspector for the City of Rosemead for nine years as well as spending two years as a contract inspector for the cities of Paramount, Upland and Hawaiian Gardens. In this capacity, he has performed project inspection and management for annual capital improvement projects. His duties included contractor coordination, maintenance of all project paperwork, and day-to-day inspection and oversight of projects in field. Steve has provided construction management for federal- and Caltrans-funded projects as well as coordination with Caltrans auditors. Steve's expertise is in managing and coordinating all construction activities with a focus on safety, quality, and cost.

Relevant Experience

Inspector, Construction Inspector for Pavement Rehabilitation Project, Phase I, City of Lynwood.
Inspects work by the contractor selected by the City of Lynwood daily to ensure compliance with project's plans, specifications and compliance with the City's requirements and ordinances (hours of work, noise ordinance, etc.). Reviews all construction materials against approved material submittals as they arrive onsite. Verifies that construction is proceeding in accordance with contract document requirements. Verifies the SWPPP and public safety provisions are implemented at the construction site at the start of each workday. Any deviations will be documented, and the City will be advised. Oversee the general performance of the contractor (continuous cleanup of construction site, compliance with NPDES requirements). Prepares daily field reports that document all observed project activities, including location of activities, number of workers present, construction equipment used, inspector present, weather conditions, and construction progress. The Construction Inspector assists in establishing and implementing procedures for maintaining updated shop drawings.

Inspector, Rosemead Civic Plaza Project, Phase I, II, III – Downtown Plaza, City of Rosemead.
Project included reconstruction of existing parking lot in concrete and installation of new lighting and landscaping. Construction also included a new public plaza area including specialty concrete, three water features, extensive landscaping, and decorative lighting. Project budget: $2.7M.

Inspector, Montebello Blvd./Towne Center Drive Resurfacing and Median Enhancements, City of Rosemead.
Project included cold milling, ARHM overlay, miscellaneous concrete work, and landscape median modifications. Project budget: $750k.

Inspector, Federal Safe Route to School –Walnut Grove Avenue Enhancement Project, City of Rosemead.
Project included the construction of new landscaped median, sidewalk installation and replacement, traffic signal upgrades, striping modifications and street lighting. Project was federally funded. Project budget: $850k.

Inspector, Hellman/San Gabriel Intersection Improvement – STPL, City of Rosemead.
Project included the removal of existing AC intersection and construction of 9-inch PCC pavement including colored crosswalk, traffic signal upgrade, landscape improvements and striping modifications. Project was federally funded. Project budget: $500k.

Inspector, Various Parks, City of Rosemead.
Parks projects included Jay Imperial, Zapopan and Rosemead Park. Projects included extensive landscaping, decorative lighting, new walking paths and construction of new basketball courts. Project budget: $1M.

Inspector, Mission Drive Street Resurfacing Project, City of Rosemead.
The project consisted in 2-inch rubberized asphalt overlay, sidewalk removal and replacement, curb ramps, flashing in pavement markers including radar feedback signs and appurtenances. Project completed in two phases. Project budget: $1.2M.

Inspector, Catch Basin Inserts/Modification for NPDES, City of Rosemead.
Project consisted of installation of trash excluder devices in catch basins for NPDES compliance. Project, in two phases, completed the retrofit of approximately 400 catch basins.

Inspector, Earle/Wells Sidewalk Project-Inspection, City of Rosemead.
Project included sidewalk installation, retaining curb and walls and tree planting. Project budget: $400K.

Inspector, Federal Safe Route to School –Savannah School, City of Rosemead.
Project included the construction of new landscaped median, sidewalk installation and replacement, traffic signal upgrades, striping modifications and street lighting. Project budget: $660K.

Inspector, Hellman/Delmar Improvement – STPL, City of Rosemead.
Project included the removal of existing AC intersection and construction of 9-inch PCC pavement including colored crosswalk, traffic signal upgrade, landscape improvements and striping modifications. Project was federally funded. Project budget: $600K.

Education

BS, Telecommunication Engineering, Helwan University, Cairo, Egypt

Certified - Construction Project Management, California State University Dominguez Hills, CA

Registrations/Certifications

ICC - Master of Special Inspection
ICC - Reinforced Concrete
ICC - PT Concrete
ICC - Structural Masonry
ICC – Structural Bolting

ICC - Structural welding

ICC – Spray-applied Fire Proofing
Special Inspector
ACI - Field Test Technician

Years of Experience: 14

Mossad Rizakalla
Senior Inspector

Mossad has 14 years of field experience inspecting Capital Improvements Program projects in various cities in the Los Angeles County area. Mossad has managed and supervised all activities of job sites, set-up project plans, purchase orders, required staffing and conducted job-site meetings.

Relevant Experience

Montebello Hills Housing Project – Installation Underground Utilities, City of Montebello.
As a member of the City's Dept. of Public Works staff augmentation, Mossad performed inspection services on this project for the installation of storm drain reinforced concrete pipe and sewer lines. The project involved the development of about 1,200 new homes.

Water Main Replacement Project, City of Huntington Park.
As Senior Inspector, Mossad performed inspection services on this project to install an 8-inch water main. Additional activities included inspection and installation of fire hydrants; replacement of 350 water lateral services with new meters and meter boxes; removal and construction of new curbs, gutters, sidewalks, and curb ramps; grinding AC pavement; pavement overlays; and striping.

HSIP Cycle 8 – Various Intersection Improvements, City of Bell Gardens.
Mossad served as Senior Inspector on this effort to improve safety for those who walk, bike, and drive in the community as part of Caltrans' Highway Safety Improvement Program (HSIP). Responsibilities included preparation of daily reports, review of change orders and progress payment requests, and coordinating soils testing service. The scope of this project included design, geotechnical investigation, survey, project management, bidding, award of contract, construction management, inspection, and labor compliance.

Garfield Avenue Improvement Project, City of Bell Gardens.
Mossad serves as Senior Inspector for this major arterial roadway improvement and pavement rehabilitation project in Bell Gardens. The project consists of pavement rehabilitation, new landscaped median islands, bus pads, ADA improvements, sidewalk and curb and gutter improvements, roadway safety improvements, and signing and striping.

Frankel Avenue (Bluff Rd.-5th St.) and 16th Street (Madison Ave.-Harding Ave.) Street Improvements (FY 2015-2016), City of Montebello.
Mossad's responsibilities included preparation of daily reports, review of change orders and progress payment requests, and coordinating soils testing service. The scope of this project included design, geotechnical investigation, survey, project management, bidding, award of contract, construction management and inspection as and labor compliance.

Education

MS, Engineering

Registrations/Certifications:

Engineer-in-Training, CA

Special Inspector Certificates: Structural Masonry, Reinforced Concrete, Prestressed Concrete

ACI Field Technician Grade 1 Certificate

General Building Contractor License (B)

Division of the State Architect (DSA) Regulations & Procedures (Part I, II, III)

Years of Experience: 24

Imad Zureiqat

Senior Inspector

Imad Zureiqat has 24 years of experience in construction inspection and resident engineering tasks. He has been responsible for preparation of plans, cross-sections, details and specifications for various civil and landscape projects. Imad has coordinated with other engineering disciplines, responded to plan check comments and prepared material, take-off and cost estimates.

Relevant Experience

Water Main Replacement Project, City of Huntington Park.
Imad performed inspection services on this project to install 10,000 LF of 8-inch PVC water main. Additional activities included construction of fire hydrants, replacement of 350 water lateral services with new meters and meter boxes, removal and construction of curbs and gutters, sidewalks, curb ramps, grinding AC pavement, overlays, striping, etc. Imad reviewed progress payments, verified all quantities and approved them. He also prepared daily and weekly reports.

ATP Cycle 3 Project at Pacific Ave and Maine Ave, City of Baldwin Park.
As construction inspector, Imad's duties included the removal and construction of sidewalks, curbs and gutters; relocation of catch basins; rain gardens and planters construction; construction of traffic loops; grinding in AC pavement and construction overlays, striping and signs; replacement of pedestrian push buttons. Imad endured compliance with plans, specifications and the contract; oversaw traffic control, and provided daily log and inspection report entries, including pictures of the project. As well, he reviewed and reported contractor claims, prepared weekly update reports, and reviewed contractor's invoices, verified completed work, and approved all quantities.

Long Beach Boulevard Improvement Project, City of Lynwood.
Imad served as construction inspector for the resurfacing of 192,779 SF with a section of 2-inch AC top course and 1-inch AC leveling course. Other improvements included 4-inch sidewalk, driveway approaches, cross gutters, curb and gutter, curb ramps, and construction of six new bus pads. He provided compliance with plans, specifications, and the contract; oversaw traffic control, and provided daily log and inspection report entries.

Mines Avenue Street Improvements (Montebello Blvd.-Greenwood Ave.), City of Montebello.
Imad provided construction inspection, preparation of daily reports, review of change orders and progress payment requests, and coordinating of soils testing services. The project involved roadway improvements, and pavement rehabilitation with concrete improvements of Frankel Avenue from Bluff Road to 5th Street and 16th Street from Madison Avenue to Harding Avenue.

Education

Business Administration

Years of Experience: 3

Nathan Kirby

Administrative Support

Most of Nathan Kirby's career has been spent in service to municipalities in Los Angeles County. He has held positions of responsibility for administrative duties related to public works projects, construction, and quality control.

Relevant Experience

Complete Street Improvements on Maine Avenue Project, City of Baldwin Park.
Nathan served as project assistant on this project, for which the scope of work included removal and replacement of sidewalks, curbs and gutters, driveway approaches, catch basins, and manholes, rain garden, landscape and new pavement, including manhole adjusting and streetlight system. Responsible for preparations and/or organization of all construction documents including Contract Change Orders, Meeting Agendas, Progress Payments, Project Budgets, RFI's, rights-of-way maps, Daily Reports and Weekly Statements.

Garfield Avenue Improvements Project, City of Bell Gardens.
Nathan served as project assistant for the removal and replacement of sidewalk, curb and gutter, traffic loops, regulatory signs, curb ramps, and new pavement, which included manhole and valve adjusting. Responsible for preparations and/or organization of all construction documents including Contract Change Orders, meeting agendas, progress payments, project budgets, RFIs, rights-of-way maps, daily reports and weekly statements.

ATP Cycle 2 Uncontrolled Crosswalk Pedestrian Safety Enhancements Improvements Project, City of Huntington Park.
Nathan served as project assistant. Scope of work included removal and replacement of traffic signal systems, vehicle and pedestrian heads, cabinets, controllers, pedestrian push buttons, curb and gutter, curb ramps, flashing beacon, HAWK signal, street name signs, traffic striping and tree removal. Responsible for preparations and/or organization of all construction documents including Contract Change Orders, meeting agendas, progress payments, project budgets, RFIs, rights-of-way maps, daily reports and weekly statements.

Water Main Replacement Project, City of Huntington Park.
Nathan served as project assistant on this project that included removal and replacement of concrete sidewalk, curb and gutter, driveway approaches, curb ramps, 8-inch and 10-inch water main line, water meters, water service lines, tree pruning, and new pavement as well as manhole and valve adjusting. Responsible for preparations and organization of all construction documents including Contract Change Orders, meeting agendas, progress payments, project budgets, RFIs, rights-of-way maps, daily reports and weekly statements.

Years of Experience: 3

Kimberly Castro
Photographer/Drone Operator

Kimberly is experienced with social media applications, photography, and drone operation. She possesses exceptional customer skills can be utilized to assist clients. She continually seeks the opportunity to continue learning and growing.

Relevant Experience

Executive Administrative Assistant/Social Media Coordinator, Infrastructure Engineers.
Kimberly is Executive Assistant to the Chief Operations Officer at Infrastructure Engineers. She also manages all social media platforms, is the in-house photographer, and drone operator.

B. License Number

Miguel Alvarez is the designated Construction Manager for this project. He has over 18 years of experience and is a Registered Civil Engineer, CA, No. 79638.

The inspectors for this project are Steve Beer, Mossad Rizakalla, and Imad Zureiqat.

C. Approach and Methodology

Infrastructure Engineers (IE) understands the City of Compton (City) seeks an experienced Project Manager and a team of accomplished inspectors to oversee, monitor, and provide construction management and inspection services for the Annual Residential Rehabilitation Project. Our team is comprised of industry leaders and seasoned experts with extensive experience that allows us to offer a broad spectrum of services in the areas of specialized earthwork, concrete and asphalt paving, construction of cold mill, ARHM pavement, AC base course, aggregate base, full depth AC slot pavement, curb and gutters, sidewalks, cross gutter, alley intersection, driveway approach, curb ramps, signing striping, markings, electrical/traffic signal/lighting/fiber optics, bridge and grade separation construction, stormwater pollution prevention plans, office engineering, Critical Path Method scheduling, and dispute resolution.

IE's approach and methodology is to provide a team comprised of an experienced Project Manager and construction inspectors, to oversee and monitor the project with anticipated duties including attending pre-construction meetings, reviewing shop drawings and submittals from the contractor, providing field inspections of work in progress to ensure compliance with plans and specifications, filing all required forms providing labor compliance, taking digital photos of each construction phase throughout the duration of a project, serving as inspector of record to create redline(s) on as-built drawings for work inspected; and processing submittals, Requests for Information (RFIs), Requests for Changes (RFCs), Contract Change Orders (CCOs), field directives, Notices of Potential Claim (NOPCs), and Non-Conformance Reports (NCRs). IE will assign a construction inspector and a resident engineer (Registered Engineer in the State of California) who will serve as a construction manager to the project. As a Resident Engineer/Construction Management and a Construction Inspection consultant, IE will manage and inspect the improvements of the project in the areas specified in the RFP posted. IE will act as the liaison between the City and the outside contractors, engineers, and property owners (if needed) on the project during construction. IE will be responsible to communicate project details with all affected city services including Riverside County Sheriff's Department and Fire Department, Hemet Unified School District, Riverside

Transit Authority (RTA), waste disposal service providers and utility agencies. IE will be responsible to coordinate the Contractor's field work with affected utility companies, such as Southern California Gas Company, Southern California Edison, Riverside County Flood Control and Water Conservation District, and other water purveyors (if applicable), and all other utility companies and agencies affected by the project. IE will also respond to inspection requests and coordinate inspections with other City departments, public agencies, and utilities. IE's assigned team is capable of handling the project efficiently.

Project Understanding

It is our understanding that the City of Compton is requesting proposals from qualified firms to provide construction management and construction inspection services for the Redondo Beach Boulevard Improvement Project from Artesia Boulevard to Prairie Avenue.

As your construction management and construction inspection (CM/IS) consultant, Infrastructure Engineers will manage and inspect the improvements of the project in the areas specified in the RFP posted.

The scope of work consists of edge milling of existing pavement, 4" of cold-in-place- recycling (CIR), material testing, 1-1/2" to 2" asphalt rubber hot mix (ARHM) overlay, removal and reconstruction of damaged PCC sidewalks, curbs and gutters, cross gutters, local depressions, driveway approaches, added medians, future irrigation conduit installation, ADA curb ramps; utility adjustments, reconnecting existing curb drains, installation of new water meter, traffic loop replacement, replace traffic signing, thermoplastic striping and pavement markings; and traffic control and other associate elements of work.

It is also our understanding that the City wishes the Consultant to coordinate and monitor all testing services to perform field and laboratory testing during construction, including review of test results, and maintain a log of all test reports, including the type of testing performed, location, result and action taken. As part of our construction management and inspection services, we will coordinate with the Contractor to perform retesting on any failing tests. Infrastructure Engineers will also coordinate delivery of all testing results to the City and will prepare and forward to the City a progress payment report along with test results and accurate detailed inspection logs.

Infrastructure Engineers understands that the City of Compton expects the selected consultant to strictly inspect the project in compliance with Caltrans Construction Manual, American Public Works Association (APWA), best industry practices, and the Manual of Uniform Traffic Control Devices (MUTCD).

Construction duration is 160 calendar days.

Project Familiarity

Infrastructure Engineers is confident that our team assigned to this project possesses the ability and technical expertise to provide all the necessary services to assist the City of Compton to successfully and efficiently manage and complete this important project on time and within the allocated budget. Our proposed Construction Manager, Miguel Alvarez, PE, brings 18 years of project delivery experience. He not only has the expertise needed to oversee construction projects from inception to completion, Miguel is also an exceptional Resident Engineer, an accomplished civil design engineer, and is skilled in a variety of support services such as Storm Water Pollution Prevention Plan (SWPPP).

Our team's extensive experience and proactive approach enables Infrastructure Engineers to stay ahead of the contractor and maintain the project schedule and budget for successful completion. Prior to commencing any work, Miguel will ensure collaboration between our team and City staff assigned to the project. Our team and City staff will meet to converse and agree on key points to produce an overall project work plan. Key points to be discussed and agreed upon include, but are not limited to, the following actions:

- Review of all pertinent existing plans, special provisions, construction and materials submittals, and specifications that apply to the assigned project
- Agree on a plan to minimize the impact within the project area and the adjacent traffic, parking, and businesses and residents
- Review day-to-day project tasks and responsibilities
- Review the content and format of the daily inspection reports for the project
- Review the required testing procedures and forms
- Discuss roles and responsibilities regarding City procedures for notifications, changes, corrections, delays, rejections, and tolerances

We present our typical Construction Management Plan (CMP) below; however, we will customize our plan to meet the City's expectations and project requirements.

Kick-Off Meeting

Infrastructure Engineers will prepare an agenda and coordinate the project kick-off meeting. The purpose of this meeting is to review the project scope of work with City staff, iron out any questions and concerns City staff might have, and obtain a clear directive from the City Project Manager regarding our role in assisting the City with this project. We believe this first step is of utmost importance and very critical before commencement of any work on the project by the contractor. The primary focus will be placed on project team roles and responsibilities, flow of information, public relations activities, communications, review of project documents, scope, schedule, quality assurance, cost control and funding compliance. Last but not less important, to reach an agreement on a plan for an effective public relations effort and a program to keep the affected public constantly informed and responding to their inquiries, concerns, and complaints in an effective manner throughout the duration of the project.

Getting Familiar with the Project

First things first - Our team will walk the project site and the construction areas within the project limits to catch areas that may have been potentially missed during design. We will carefully review the project scope and become familiar with the following:

- Construction drawings showing details of the proposed method of construction (When plans and specs become available)
- Phasing, scheduling, and sequencing of operations to be performed during construction
- Methods of pedestrian and vehicular traffic control in the project vicinity
- Required project signage and notifications to the public
- Methods of resolving conflicts in the plans and specifications
- Methods of resolving delay construction

- Methods of resolving contract change order
- Methods of establishing and maintaining a positive working relationship with the Contractor
- Methods of maintaining daily construction reports and project construction records
- Coordinating construction with underground utility agencies
- Reviewing soil reports, material testing, and construction material submittals
- Water, sewer, storm drain pipeline construction methods and testing, if applicable
- Traffic signal, streetlights, and other electric underground construction methods and standards, if applicable
- Various grant (e.g., Federal, State, Metro) procedures and manage requirements various grant program, if applicable
- Obtaining various permits from other agencies
- Material testing and reports
- Cold-in-place-recycling (CIR) processes

Scope of Services

1. Pre-Construction Engineering Services

Task 1: Pre-Construction

Infrastructure Engineers will coordinate with the City's Project Manager and attend the pre-construction conference, including notification to the contractor, utility agencies, and other stakeholders; prepare the meeting agenda and conduct the pre-construction meeting with the contractor and agencies mentioned earlier. Infrastructure Engineers will write the meeting minutes and will distribute to all parties within 72 hours after the meeting, or as desired by the City. In addition, the items listed below will be discussed:

- Issuance of Notice to Proceed to contractor
- Move-in/mobilization period for the contractor
- Contractor's schedule submittal requirements
- Point of contact – chain of command
- Submittals and requests for information (RFIs)
- Review of contractor's traffic control plans for the project
- Working hours per City's policies
- Phasing, scheduling, and sequencing of operations to be performed during construction
- Site safety
- National Pollutant Discharge Elimination System (NPDES) and Storm Water Pollution Prevention Plans (SWPPP) submittal and review
- Weekly meetings with contractor, City staff and other parties
- Weekly status reports, or per City's direction
- Schedule updates
- Design clarifications and change orders requests protocol
- Progress payments – process and timeframes
- Public relations – project notification to residents and businesses

- Labor compliance
- Contact numbers of critical services (Sheriff, Fire Department, trash collection, street sweeping, school district, etc.)

Task 2: Construction Support and Shop Drawings Review

We will review the contractor's construction baseline schedule to make sure it conforms with the specifications and analyze the schedule to determine that it represents a realistic approach to the work. Upon request by the City, Infrastructure Engineers will provide shop drawing review of manufacturer's submittals, provide change order review, and meet with City and its Construction Manager to discuss change orders and construction issues.

2. Construction Management/Inspection Services

Task 1: Records and Documentation

Complete and current project files will be kept at a central location at our San Gabriel Valley office, or at a location agreeable to the City; all project documents will always be available to the City. All file categories relevant shall be identified and all logs, submittal logs, RFI logs, summary pages, and standard forms shall be prepared for use during construction by Consultant with City's consent.

Infrastructure Engineers will record the progress of the project and maintain current records of all necessary contracts, insurance certificates, construction documents, permits, specifications and codes, project photographs, as-built drawings, samples and submittals, operation and maintenance manuals, material tickets, test results and other construction-related documents. At the completion of the project, Infrastructure Engineers shall deliver all documents and records to the City. In addition to the above, we will keep the following records: contracts, correspondence relating to or modifying the contract, clarifications, permits, reports, field orders, change orders requests (CORs), approved construction change orders (CCOs), claims information, daily inspection reports, quantity calculations, progress payment requests, stop payment notices, test reports, etc. Our team will prepare a detailed log to track any and all issues, change management, RFIs, submittals, digital data and scanned documents. This detailed tracking system will enable us to provide an accurate assessment of the progress to the City with recommendations to maintain or improve adherence to the approved project schedule.

Task 2: Schedule and Progress

Meetings with the contractor, City, and other involved parties will be held on a weekly basis during construction. The meetings may involve discussions regarding the project schedule status, change orders, progress payments, disputes, site safety, traffic control, environmental compliance, and other project-related concerns. The Construction Manager will prepare and distribute meeting agendas and minutes. The agenda will be prepared and emailed, at least 48 hours in advance, to the contractor, City staff, and all other pertinent parties. Meeting minutes will be distributed to all parties within 72 hours after the meeting, or as desired by the City.

Miguel Alvarez, our Construction Manager, and the inspector will schedule field meetings, as many times as necessary, to assess and confirm quality control and bid item quantities installed, or items of concerns observed by our team during the course of construction. Miguel will document issues (current or potential), findings, request for changes in scope of work, solutions, and resolutions, etc. The goal of these meeting is to resolve issues that may potentially affect the goal – completion of the project on time and within budget. Meeting minutes will be distributed to all parties in the same manner, as noted previously.

Our team will supervise the contractor and subcontractors' construction operations during the City-approved working days for the project.

We also will constantly review the project schedule to determine if the project is on schedule and to resolve all problems with the contractor. Our inspector(s) will be assigned the task of constantly and promptly advising Miguel Alvarez of any construction or any other potential issue. The goal is to resolve any issue in an effective and prompt manner before it escalates with the potential to affect the successful completion of the project.

Contract Time Monitoring - Using the Statement of Working days and inspectors' daily reports, Miguel and the inspector will closely monitor the number of cumulative workings days remaining at the end of each working day and at the week's end. This tool, the Statement of Working Days, which includes information such as non-working days due to weather, City-observed holidays, utility delays, unforeseen conditions that merit a delay, strikes, union labor disputes, and/or material shortages, will serve as a valuable tool to keep a written record of the project progress at any point. The Construction Manager will keep a written record that will include anticipated changes to the character of the work, disputed work, and/or potential claim(s). These records will be maintained in a dedicated server folder.

Progress Payment Processing - A cost control system based on the contractor's schedule of values, approved change orders and the contract amount will be developed and implemented to monitor progress costs.

The Construction Manager and inspector will review the payment applications submitted by the contractor, check, and verify construction quantities using measurement of bid items and verification of the quantities installed as noted by the construction inspector in his signed daily reports. The construction inspector daily reports and measurements will determine whether the amount requested reflects the progress of the contractor's work. Appropriate adjustments to each payment application will be required by the contractor.

Task 3: Construction Observation/Inspection

Construction inspection is all about the inspector properly capturing daily construction activities performed by the contractor and subcontractors, and then concisely, effectively, and clearly documenting them in the daily inspection reports. The inspector is onsite to observe and confirm the quality and quantity of installed bid items of the field work. In addition to the following inspection elements: Compliance with APWA and Caltrans Construction; Construction Traffic Control and Safety; Strom Water Pollution Prevention Plans (SWPPP); HMA Paving Inspection; Inspection of Signs, Striping, Marking and Traffic Safety Devices; WPCP Compliance Inspection; Pre-Construction Photo logs; and construction Photos; Conduct interview and prepare interview labor compliance forms; Prepare daily diaries, our inspector assigned to the project will provide the following services:

The inspector will compile daily observation reports documenting the contractor's workforce, details prior to construction starting, all materials and equipment used or idle, a summary of the construction operations, any field problems, any disputes or claims, resolutions of issues and information provided or written directives to the contractor. Completed daily reports will be transmitted to the City on a weekly basiswith originals filed and stored appropriately. Our Construction Manager will review and approve all daily reports. We typically include job photos with each daily report and categorize them by date and location for electronic storage and 'searchability' by title date, location, or key words on the computer.

Infrastructure Engineers' inspectors will prepare a weekly statement of working days documenting the construction progress, time of completion, delays and time extensions, and submit to contractor and the City on a weekly basis. The weekly statement of working days is typically discussed and agreed upon at each progress meeting and transmitted as an attachment to the minutes.

Infrastructure Engineers staff will make sure that the approved Storm Water Pollution Protection Plan (SWPPP) is distributed to the contractor and City staff, check that the project is loaded on the state database, and that the project complies with the approved Water Quality Management Plan. Infrastructure Engineers will enforce all provisions of the plan and other requirements set forth in the specifications. Infrastructure Engineers staff are well versed in National Pollutant Discharge Elimination System (NPDES) monitoring through provision of dedicated services for oversight of developers and contractors on behalf of several public agencies. In addition, Infrastructure Engineers affords personnel with Qualified SWPPP Practitioners (QSP) certification, who will prepare and execute the necessary weekly reports as well as mandated pre- and post-storm reporting as needed.

To minimize any complaints from concerned citizens, it will be necessary to coordinate with the City, the contractor, and other stakeholders to ensure that proper public notification is provided. Effective coordination will also help mitigate any short-term construction-related impacts that may be associated with the project. We will ensure proactive relations during construction, using advisories and periodic updates to keep all parties, including residents affected by construction works, well informed, and to minimize delays or interruptions to the project. Our construction inspector(s) will closely monitor the work of the contractor. The contractor will be required to submit construction schedules at the pre-construction meetings, and to submit revised schedules as the Construction Manager deems necessary.

Infrastructure Engineers assigned team member will conduct interviews and prepare interview labor compliance forms in compliance with Caltrans manual. Information collected will include personnel names, labor classification of work performed, number of hours worked on a particular date covered by a report period.

Infrastructure Engineers will periodically review the contractor's as-built updates on the approved job plan set, identify missing items,and require the contractor to keep as-built records up to date throughout the project. At the City's option, Infrastructure Engineers will keep its own set of as-built plans, which will note the location of subsurface utilities encountered and/or installed, identify where any design or field changes were required (utilizing the corresponding RFI and/or change order numbers), and note the location of critical construction areas that are covered by finish work. Miguel will assist the contractor in maintaining a field set of as-built plans to be as necessary and delivered them to the City upon project completion

Safety is paramount. Our inspector(s) will attend the contractor weekly tailgate meetings. The Construction Manager will review contractor's safety plan and implement a tracking system to monitor that the contractor follows it to the letter.

Infrastructure Engineers will review all traffic control and public safety plans for compliance with all applicable safety laws and regulations. These will be reviewed on a daily basis. Infrastructure Engineers will ensure that Police, Fire, Sanitation, Park, and other affected City agencies are notified of potential construction impacts.

Infrastructure Engineers can prepare comprehensive reports for the project stakeholders covering the construction projects that we are inspecting. These reports are typically compiled monthly and would include the following information:

- Summarized report of construction activities including significant events and accomplished goals
- Construction observation reports
- Description of progress with photos to enhance the descriptions
- Description of equipment used
- Comparison of planned vs. actual budget expenditures
- Report of progress payments made to date and invoices in process
- Analysis of change order impacts or potential problems on schedule and budget progress, and completion date.

Infrastructure will prepare and maintain an electronic photo journal documenting the construction progress. Photos will be taken before construction begins, during construction and upon completion of the project. Infrastructure Engineers will be readily available to provide design capabilities as required and directed by the City. Infrastructure Engineers will investigate any and all accidents that are related to the project construction of this project, occur during construction activities only and that take place within the project limits only, and prepare accident reports, if deemed necessary.

Task 4: Control of Materials/Cost Control Management

Infrastructure Engineers will review material submittals and provide recommendations to the City. The proper control of materials used in the work of the project will be administered Infrastructure Engineers.

Infrastructure Engineers will carefully measure all work performed and materials used by Contractor and will assist in preparing Contractor's request for payment with respect to the actual work completed.

Infrastructure Engineers will keep accurate, detailed daily inspection logs, which shall include progress of the work, labor and equipment utilized, track usage of the bid quantity items, log of inspector shift hours, problems encountered, and direction given to the Contractor. Daily logs are to be submitted on a weekly basis.

Infrastructure Engineers will prepare monthly construction reports or more frequently as required by the City that will include progress of work, major tasks accomplished, budget status, schedule overview, summary of change orders, logs of submittals and RFIs, progress as- built plans, project photographs, as well any specific requirements stipulated in the construction contract. Monthly construction reports will be submitted with each consultant progress payment request. All submittals must be properly dated for purposes of administrative record.

Task 5: Change Order Preparation, Negotiation and Processing

Infrastructure Engineers will establish, implement, and coordinate a system for processing all Contract Change Orders (CCOs). The Construction Manager will determine whether a change order request should be considered. The plans and specifications will be reviewed against the change order request. If the issue does not appear to be included in the plans or specifications, a Request for Change Order (COR) will be sent to the contractor. The contractor's response to the COR will be evaluated for reasonableness and completeness. The Construction Manager will maintain a Log, listing potential changes as identified, either

formally or informally. This Log will be used such that potential change items are not overlooked or deferred until the end of the job. Upon approval by the City, the Construction Manager will prepare, log and process change orders for full execution, and administers their implementation. Once fully executed, the Construction Manager will review the timely completion of the work and coordinate inclusion of the change order in the appropriate payment application.

Task 6: Quality Review

Quality assurance and quality control (QA/QC) are top priorities for Infrastructure Engineers. To ensure the highest quality of services, our team will implement a comprehensive QA/QC program. Our Construction Manager has extensive experience in providing and overseeing the implementation of Infrastructure Engineers QA/QC program. Miguel will review the design drawings, estimates, specifications, reports, and any other documents being delivered to the City for accuracy and completeness. He will assure constructability and compliance with the City of Compton. In addition, Miguel will provide daily supervision and guidance to the entire team.

Regular progress review meetings will be held internally by Infrastructure Engineers to update the project team on project development and critical tasks. Prior to releasing any documents to the City or other agencies, an extensive review will be performed by our team.

Task 7: Progress Payments

A cost control system based on the contractor's schedule of values, approved change orders and the contractamount will be developed and implemented to monitor progress costs.

Miguel and the inspectors will review the payment applications submitted by the contractor, check, and verify construction quantities using measurement of bid items and verification of the quantities installed as noted by the construction inspector in his signed daily reports. The construction inspector daily reports and measurements will determine whether the amount requested reflects the progress of the contractor's work. Appropriate adjustments to each payment application will be required by the contractor.

When the payment application has been thoroughly reviewed by the Construction Manager and inspector(s), and corrected, if needed, by the contractor, Infrastructure Engineers will present it to the City for payment processing.

Task 8: Testing Services

Our inspectors will coordinate and monitor all testing services, track documentation and record laboratory testing results in weekly construction progress meetings. When necessary, corrective measures will be implemented then re-inspected to verify acceptable completion. We will review test reports submitted by our subconsultant or others to substantiate compliance and ensure that Certificates of Compliance or source release tags are furnished by the contractor along with the applicable delivered materials at the project.

Task 9: Project Close-Out

Miguel and the inspector will perform the final job walk and prepare the punch list. Should the contractor delay on a portion of the completion of project work, Infrastructure Engineers will estimate the value of the incomplete items and recommend specific retention amount in accordance with the contract to preserve the City's financial interest.

The Construction Manager will prepare a final report identifying all project costs and final cost status, complete an as-built schedule, final project photos, punch list of deficiencies and status summary of all change orders, etc. We will ensure that documents are organized, indexed, and complete prior to transferring to the appropriate agencies. More specifically, at a minimum, the Construction Manager will provide the following tasks:

- Recommend when work is ready for a final inspection.
- Walk the job with the contractor, City staff, and all stakeholders after the project is complete to produce a punch list of items requiring correction by the contractor
- Follow through with certification that all items have been completed and it would be recommended to the City to acceptance the project.
- Ensure that copies of record drawings, along with an electronic version, are submitted to the City.
- Organize and finalize the project's record drawings, contract bid items, change orders and claims, if any, and provide the City with all documents in case of an audit or other needs.
- Assist the City with receiving all construction records and files and archive accordingly, if requested.
- Assure the City receives an electronic version of all project drawings.
- Resolve any outstanding issues with the project including change orders, claims, and all other items.
- Complete job documentation as required by funding agencies.
- Resolve and final out all prime contractor and subconsultant claims, invoices, and purchase orders.
- Obtain affidavit of payment from all trade contractors.
- Obtain Unconditional Waiver and Release Upon Progress Payment from the contractor.
- Conditional Waiver and Release Upon Final Payment.
- Obtain lien wavers from subconsultants.
- Process lien bonds if required.
- Produce and transmit to the City all final reports including completion of the project and City acceptance thereof.

Warranties and Guarantees - We will track all material warranties and guarantees identified in the specifications and make sure that we receive the required scope of these as well as the correct number of these documents with contact information, product names and manufacturer’s representative and contact information. It is recommended that the City include a follow up schedule to have warranty items checked prior to their anniversary date so that any issues can be resolved under the contract warranty. These will be included in a binder as well as electronically stored for the City.

Infrastructure Engineers will work closely with our sub-consultant P.A. & Associates on an On-Call basis to provide the services as required by the City and to abide to the following for services rendered:

A. On-Call Material Testing and Geotechnical Services

Infrastructure Engineers will work closely with our sub-consultant P.A. & Associates on an On-Call basis to provide the services as required by the City and to abide to the following for services rendered:

1. Sub-consultant shall possess of Caltrans Certification of the laboratory conducting the material testing. All sampling and testing shall be done by personnel with the appropriate accreditation for the testing and sampling designated to perform.

2. Qualified technician as necessary to conduct density tests on roadway sub-grade, aggregate base, asphalt concrete, slope fill and trench backfill placement as required. The tests will be performed with a nuclear densometer in accordance with ASTM 6938- 10 or sand cone in accordance with ASTM D1556. Maximum density curves (ASTM D1557) will be performed on various material types as they are encountered.
3. Provide an ACI-certified technician as necessary to make sets of concrete cylinders as needed and perform slump tests for the curb, gutter, concrete drainage devices, channel slope paving and other minor concrete.
4. Sub-consultant shall be capable in performing compression strength tests on concrete cylinders in accordance with ASTM C39.
5. Sub-consultant shall keep records of all samples and tests in the project files as permanent job records. Materials incorporated into the project, represented by failing tests, must be documented in the project files also. Test results shall cite applicable contract requirements, test and/or analytical procedures used. Provide actual results and include a statement that the item tested or analyzed conforms or fails to conform to specified requirements. Test results shall be signed by a testing laboratory representative authorized to sign certified documentation and forward to the City.
6. Sub-consultant shall provide filed technician for construction observation for trench backfill, subgrade/asphalt concrete, etc., as requested by the City.
7. Sub-consultant shall provide staff engineer for geotechnical observation, deputy inspection, pre-construction meeting, etc., as requested by the City.
8. Sub-consultant shall provide fee schedule. The fee schedule shall include, but not be limited to hourly rates for applicable personnel, unit prices of various laboratory tests (include all labor, fringe benefits, overhead, material, equipment, transportation, and appurtenance work as necessary to have the item complete). The travel fees and time will not be billable.

D. Proposed Schedule of Work

Infrastructure Engineers "Proposed schedule of Work" appears on the following page.

Infrastructure Engineers
3060 Saturn St., Suite 250
Brea, CA 92821

3/2/22

City of Compton
Construction Management and Inspection Services for Annual Residential Rehabilitation Project (Phase 2B) CIP #18-01
Schedule of Tasks and Deliverables

Tasks	Preliminary	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23
Review Available PS&E																								
Initial Field Visit (Video/Photos)																								
Kick-off Meeting with City																								
Develop CM/Insp. Plan																								
Pre-Construction Meeting																								
Permit/Environmental Compliance																								
Public Relations																								
Review Contractor Pre-Con Submittals																								
Notice to Proceed																								
Construction (160 Days Total)																								
Bi-Weekly Const./Field Meetings																								
Issues Management & Dispute Resolution																								
Management Information System (MIS)																								
Project Schedule Monitoring																								
Cost Control																								
As-Built Plans - Continually Performed																								
Change Orders																								
Progress Payments Processing/Monthly Status Report																								
Request for RFI's and Submittal Processing																								
AC/Inspections/Traffic Control Plans Review																								
Site Safety																								
Drone Services -Various Visits as Project Progresses																								
Labor Compliance																								
Materials Testing																								
Final Walk-Through																								
Prep Prelim Punch List																								
Prep Substantial Completion Report																								
Close-out																								
Recommend Project Acceptance																								
Process Final/Retention Payment																								

E. Fee

Infrastructure Engineers' fee schedule appears in a separate envelope, per the RFP.

F. Consultant's Use of Disadvantaged Business Enterprises (DBE's)

Infrastructure Engineers will not utilize a Disadvantaged Business Enterprise for this project.

G. Appendix (Subconsultant Resumes and Certifications)

Infrastructure Engineers' subconsultant resumes appear on the following pages.

P.A. & ASSOCIATES, Inc.

February 24, 2022
Proposal File No. B222111-1

Geotechnical Engr.
Material Testing
Engineering Geology
Environmental

Mr. Miguel Alvarez, P.E.
Senior Manager, Construction Management Services
13200 Crossroads Parkway North, Suite 400
City of Industry, CA 91746

Subject: **Professional Services**
Geotechnical Engineering Services & Material Testing
Annual Residential Street Rehabilitation Project (Phase 2B0), (CIP #18-01)
Rosecrans Ave, Compton Ave, Slater Ave, and Santa Fe Ave.
City of Compton, California

Dear Mr. Alvarez,

We are pleased to submit this Professional Services Proposal for Geotechnical Engineering Services and Materials Testing Services.

Currently we provide geotechnical, environmental, material testing & inspection services to the cities throughout Southern California. Our Laboratory is certified by the City of Los Angeles and we utilize local Caltrans certificated laboratory as Sub consultant, please referred to Appendix A to all of the Certificates.

The opportunity to be of service is greatly appreciated. Should questions arise pertaining to this proposal, please contact the undersigned for clarification. The technical and professional experience that we can provide will hopefully resonate in the following pages.

Respectfully submitted:
P.A. & Associates, Inc.

Parviz A. Azar
President

P.A. & ASSOCIATES, INC.
RESUMES & SCHEDULES OF FEES

RESPONSIBLE PERSONNEL

PARVIZ A. AZAR, P.E.
Principal Engineer
parviz@paassociates.com

EXPERIENCE

Experienced in geotechnical engineering, consulting services, material testing & inspection, and environmental consulting. Mr. Azar has performed geotechnical report review and investigations and provided geotechnical consulting services during large scale grading projects, street pavement design and rehabilitation, slope stability analysis, Tiebacks, seawalls, deep foundations studies, as well as geoenvironmental site evaluations, site remediation and cleanup. His experience is practically oriented, having served as field and principal engineer for challenging large-scale projects throughout southern California. Mr. Azar's educational background and expertise provide a sound basis for Geotechnical consulting services.

PROFESSIONAL LICENSE

California, Registered Civil Engineer 37818

EDUCATION

M.S. Soil Mechanics and Structural Engineering, Utah State University, Logan.
B.S. Civil and Environmental Engineering, Utah State University, Logan.

CONTINUING EDUCATION AND AFFILIATIONS

Down to Earth Soil Engineering, California State Polytechnic University, Pomona.
ASCE, American Society of Civil Engineers
ASTM, American Society for Testing and Materials

JAMES M. RENFREW
Principal Engineering Geologist
james@paassociates.com

EXPERIENCE

Mr. Renfrew's experience is environmentally and Geotechnical related and has performed Geotechnical report reviews for the County of Orange. Numerous projects have utilized his expertise in these fields, which include: landslide and slope stability investigations, hillside grading supervision, in-grading mapping and inspection, surface and subsurface geologic investigation, and investigation of distressed property. Mr. Renfrew is responsible for supervision of engineering geologic research and investigation for P.A. & ASSOCIATES.

PROFESSIONAL LICENSE

California, Certified Engineering Geologist, 1970; California, Professional Geologist 5929 California; Hazardous Materials Handling & Response

PROFESSIONAL HISTORY

P.A. & ASSOCIATES, Inc., Principal; Geologist/Environmental
Manager; Baker Hughes/ Western Geolophysical
Latin American Division - Assistant Party Chief/ Seismic Processor- Kleinfelder, Inc.
Consulting Engineer Geologist Nolte & Associates, Inc.,Project Geologist

EDUCATION

M.S., Geology, University of California, Riverside; B.A., Geological Sciences, University of California, Santa Barbara

---

CYRUS RADVAR, P.E., G.E.
Geotechnical Engineer

EXPERIENCE

Mr. Radvar has more than 15 years of experience in geotechnical and mining engineering on projects throughout Western Europe and the United States, including various civil, mining and mineral exploration projects. His field experience includes geological and geotechnical core logging, construction monitoring including deep excavation and shoring installation, seawalls, tieback and soil nail design and monitoring, subsurface investigations, piezometer and inclinometer installation, and permeability testing. His project experience includes foundation design, seismic ground motion analyses, vibratory compaction and replacement, blast monitoring and analysis, rock-slope stability analysis, open-pit design, preparation/drafting of construction drawings, rock and soil anchor design, retaining & sea wall design, and preparation of technical reports.

Mr. Radvar has extensive background and proficiency in computer-aided analysis for geotechnical and earthquake engineering design. He is proficient in geotechnical engineering software programs such as: SLOPE-W, SIGMA-W, SEEP-W, QUAKE-W, SHAKE 91, FLAC, LPILE, CLARA W, and GOLDSIZE.

PROFESSIONAL LICENSE

California, Registered Geotechnical Engineer No. 2742
California, Registered Professional Engineer No. 66139

PROFESSIONAL HISTORY

Several Public Works, Industrial, commercial, and residential projects
Several Caltrans Transportation Projects; SR-22, US101, Foothill Transportation Corridor
Several Landfill Projects; Bowerman Landfill; Carroll Canyon Landfill
Geotechnical Investigation, Proposed Aquatic Center, La Mirada, CA
Proposed High-rise Park Towers at Town Center, Costa Mesa, CA
Campus Center Development, Irvine, CA

EDUCATION

B.S., M.S., Rock Mechanics, Berlin Technical University, Berlin, Germany, 1993
Master of Engineering, Civil Engineering, University of Alberta, Edmonton, Canada, 1999
American Society of Civil Engineers

ZACHARY AZAR, EIT, ICC
Staff & Field Engineer, Deputy Material Inspector
zach@paassociates.com

EXPERIENCE

Experienced in geotechnical consulting and construction industry with 5 years of direct geotechnical experience as a staff engineer, field engineer, and construction material technician. Professional conduct for the successful completion of 3 years Southern California projects that included school, public street pavement, custom homes, and commercial building projects.

EDUCATION

B.S., Civil Engineering, Arizona State University

CERTIFICATION

Register FE (Fundamental of Engineering)
Radiation Safety and Operation Certified
ICC Registered Reinforced Concrete
ICC Registered Steel/Bolting
ICC Register Steel Masonry

STEPHEN D. WRIGHT
ICC Registered Special Inspector

EXPERIENCE
Mr. Wright has 20+ years of experience in the field conducting field inspections. He has worked on various schools projects in Orange County and Riverside Counties. These include post tensioning pull tests, skidmore testing of bolts, special inspections, and Spray-Applied Fireproofing inspection. He is also certified Asphalt Batch Plant and lay-down inspector, concrete batch plant, core drilling for new samples,

CERTIFICATION
Certified Hot Mix Asphalt Inspector
Troxler, Use of Nuclear Testing Equipment
Concrete Field Testing Technician Grade I –
ICC Registered Post Tensioning Special Inspector
ICC Registered Structural Masonry Special Inspector
ICC Registered Reinforced Concrete Special Inspector
ICC Registered Spray-Applied Fireproofing Special Inspector
ICC Registered Structural Steel and Welding, and Bolting Special Inspector

LA DBS
DEPARTMENT OF BUILDING AND SAFETY

OSAMA YOUNAN P.E.
GENERAL MANAGER

JOHN WEIGHT
EXECUTIVE OFFICER

Department of Building & Safety
Materials Control Section
221 N. Figueroa, 7th Floor
Los Angeles, CA 90012
Telephone: (213) 482-0315
Email: ladbs_materialscontrol@lacity.org

TESTING AGENCY CERTIFICATE OF APPROVAL

P.A. and Associates, Inc/Mission Geoscience, Inc.
Parviz Abdaviazar
30 Edelman
Irvine, CA 92618

Laboratory Location
30 Edelman
Irvine, CA 92618

License No:	**TA10094**
Branch No:	**0**
Expiration Date:	**09/01/2022**
Lab Manager:	**Parviz Abdaviazar**
Approval Type:	**Soils**

You are hereby notified that your certificate of approval is valid until the expiration date shown above under the provisions of the City of Los Angeles Municipal Code, section 98.0503 and information bulletin P/BC 2017/028 (Part I) Renewal.



Adam Burgess
Principal Inspector
Materials Control Section
(213) 202-9856

SIAD TL-0113: CALTRANS ACCREDITATION LABORATORY INSPECTION REPORT

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

CALTRANS ACCREDITATION LABORATORY INSPECTION REPORT

Expiration Date: 2022-02-23
Inspected By: Brandt Houchen
IA No.: 117
Phone: 916-203-7992
RSP #: 53
File: Material Category 500
Laboratory: Labelle-Marvin
Address: 2700 S. Grand Ave. Santa Ana CA, 92075
Lab QC Mgr.: Tom Williams
E-mail: twilliams@labellemarvin.com
Telephone: 714-546-3468
Fax #.:

A certified Independent Assurance (IA) visited this laboratory on 2021-02-23

Only the equipment to be used on Caltrans Construction projects and/or local construction projects on the National Highway System was checked for qualification. At the time of Caltrans Accreditation, this laboratory had all necessary equipment to perform the test methods indicated below.

Testing personnel shall be Caltrans Qualified and possess a current Caltrans Certification Form TL-0111 or AASHTO Proficiency Form TL-0115 prior to performing any sampling or testing.

AASHTO T11	AASHTO T27	AASHTO R47	AASHTO T84	AASHTO T85
AASHTO R90	AASHTO T166	AASHTO T176	AASHTO T209	AASHTO T248
AASHTO T255	AASHTO T269	AASHTO T275	AASHTO T283	AASHTO T304
AASHTO T308	AASHTO T312	AASHTO T329	AASHTO T335	ASTM D4791
CT 105	CT 106	CT 125 ADMIX	CT 125 AGG	CT 125 BIT
CT 125 CEM	CT 125 GEN	CT 125 HMA	CT 201	CT 202
CT 205	CT 206	CT 207	CT 208	CT 216
CT 217	CT 226	CT 227	CT 229	CT 231
CT 234	CT 235	CT 301	CT 304	CT 308
CT 309	CT 366	CT 367	CT 370	CT 371
CT 375	CT 382			

A visual check was performed and documents provided as necessary for the following items:

- ✓ Facility Safety Manual
- ✓ Laboratory Procedures Manual
- ✓ Laboratory Quality Control Manual
- ✓ Proper test equipment
- ✓ Copies of current applicable test procedures
- ✓ Calibration and service documentation
- ✓ Calibration stickers affixed to test equipment (dated within the 12 months)

On 2021-03-25, this laboratory was Caltrans Qualified by:

Brandt Houchen IA 117

Brandt Houchen

Please verify lab accreditation by visiting SIAD website: https://sia.dot.ca.gov/

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF COMPTON
AND
INFRASTRUCTURE ENGINEERS
[CIP No. 18-01, Phase 2B]

This **AGREEMENT** is entered by and between the **CITY OF COMPTON**, a municipal corporation of the State of California (hereinafter referred to as **"CITY"**) located at 205 South Willowbrook Avenue, Compton, California 90220, and **INFRASTRUCTURE ENGINEERS** (hereinafter referred to as **"CONSULTANT"**), located at 3060 Saturn Street, Suite 250, Brea, California 92821.

RECITALS:

WHEREAS, the City will be implementing the Annual Street Rehabilitation Project (CPI #18-01, Phase 2B), which consists of improvements to specific streets within various areas throughout the City; and

WHEREAS, the City has identified a need for a qualified and experienced engineering consulting firm to provide construction management and construction inspection services for the Annual Street Rehabilitation Project (Phase 2B); and

WHEREAS, Consultant (Infrastructure Engineers) warrants that it is specifically trained, experienced, competent, and has the resources to provide construction management and inspection services on the Annual Street Rehabilitation Project (Phase 2B); and

WHEREAS, City desires to engage Consultant to provide these services by reason of its qualifications and experience in performing such services; and

WHEREAS, by Resolution No. _____, adopted on the ___st, of June 2022, the City Council authorized the City Manager to accept the proposal of the Consultant and enter into a professional services agreement to provide the necessary services; and

WHEREAS, Consultant is willing to render such professional services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Consultant and City**,** for the consideration, terms and conditions herein described, mutually agree as follows:

1. Services to be rendered by Consultant. It is the mutual understanding of the parties that the Consultant shall perform and be responsible for providing professional construction management and construction inspection services relative to the Annual Street Rehabilitation Project, (CIP #18-01, Phase 2B). This includes delivering management, construction management, contract administration, construction engineering and inspection, material quality assurance and post construction services. Services to be rendered shall include, but not be limited to the below-indicated tasks and deliverables:

Task 1: **Preconstruction Conference** – Deliverables: Outline project specifics. Inform contractor of project administration procedures.

Task 2: **Management Information System** – Deliverables: Implement system for organizing, tracking, filing, and managing paper/electronic correspondence including letters, information requests, submittals, contracts, reports, O&M manuals, progress payments, and change orders, etc.

Task 3: **Review Traffic Control Plans** – Deliverables: Review contractor's plans for detours, shutdowns and access for emergency vehicles.

Task 4: **Meetings** – Deliverables: Conduct meetings to discuss background, scope, objectives, schedule, current, and past issues as necessary.

Task 5: **Issues Management** – Deliverables: Analyze issues, seek appropriate advice, and give recommendations. Review cost reduction proposals as well as contractor's methods of construction in order to ensure compliance with plans and specifications and delivery of project within budget and the time specified.

Task 6: **Schedule** – Deliverables: Monitor contractor's schedule weekly. Notify parties of actual or potential deviation from schedule. Work with project team to correct noncompliance with schedule.

Task 7: **Cost Control** – Deliverables: Monitor project funding. Monitor project budgets. Review contract item payments, material quantities, and change order payments.

Task 8: **Labor Compliance** – Deliverables: Provide labor compliance reports to include reporting on prevailing wage, payroll documentation, compliance status, and certified payrolls.

Task 9: **Request for Information & Submittals** – Coordinate and ensure prompt processing and turnaround time for contractor requests for information and submittals.

Task 10: **Change Orders** – Deliverables: Review potential change orders for contractual and technical merit. Prepare independent cost estimate and schedule analysis of work. Negotiate and prepare change orders for execution. Keep the City appraised of impact of cumulative change orders.

Task 11: **Dispute Resolution** – Deliverables: Make recommendations and implement procedures for reducing the likelihood of disputes and claims. Assist in the resolution of disputes.

Task 12: **Quality Control/Inspection** – Deliverables: Observe and monitor all aspects of the project. Notify contractor when work is not in compliance. Prepare daily inspection reports. Provide photographic and video documentation of construction process. Encourage and stress quality in the constructed product. Provide materials testing services.

Task 13: **Public Relations** – Deliverables: Communicate with local business community regarding temporary construction impacts, such as traffic changes, noise, limited access and construction schedule.

Task 14: **Permit/Environmental Compliance** – Deliverables: Review and enforce requirements stipulated in permits issued by regulatory and environmental agencies.

Task 15: **Progress Payments** – Deliverables: Review and approve all contractor's payment request. Verify contractor pay items. Prepare payment documentation for execution.

Task 16: **Monthly Status Reports** – Deliverables: Prepare monthly reports highlighting project progress, CCO's, cost issues, and schedule.

Task 17: **Site Safety** - Deliverables: Review and monitor contractor's safety program for compliance with Cal/OSHA. Notify contractor if an unsafe condition is observed. Notify City if contractor refuses to rectify unsafe condition and investigate accidents.

Task 18: **Drone Services –** Deliverables: Provide aerial photos and video of the various project sites.

Task 19: **"As-Built" Drawings** – Deliverables: Collect, review, and transmit contractor's data to engineer.

Task 20: Final Walkthrough – Deliverables: Make final inspections and prepare punch list. Verify that required certificates of compliance, O&M manuals and as-build drawings have been delivered.

Task 21: Project Completion Report – Deliverables: Process final progress payment to contractor. File Notice of Completion. Prepare final report and review project records.

As more fully described in the City's **"Annual Residential Rehabilitation Project (Phase 2B - CIP #18-01, Phase 2B) – Request for Proposals for Construction Management and Inspection Services** and in Consultant's **"Proposal to Provide Annual Residential Rehabilitation Project (CPI #18-01, Phase 2B)"** dated March 2, 2022, both of which are incorporated herein by this reference.

Consultant acknowledges that in entering into this Agreement the City is relying on Consultant's special skills and experience to do and perform the services in accordance with best standards of professional practice. While performing the services, Consultant agrees to perform all the said work and furnish all the necessary materials at its own cost and expense necessary to complete said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and to the reasonable satisfaction of the City**.**

Consultant services hereunder shall be performed in good, competent and professional manner. Consultant shall be responsible for correcting and completing all errors and omissions related to the services provided by the Consultant for this Agreement at no additional cost to the City**.** "Errors" and "Omissions" for purposes of this paragraph are defined to mean a failure by the Consultant to meet the standards of its profession as set forth in the preceding paragraph. The acceptance of the services by City does not release Consultant from these obligations.

Consultant will be responsible for employing or engaging all persons necessary to perform the services. All of Consultant's staff will be qualified by training and experience to perform their assigned tasks. Consultant will give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and will keep the services under its control. On demand of City, if any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from performing services rendered pursuant to this Agreement.

Ray Abassi, Principal of Consultant, shall be primarily responsible for representing Consultant in performance of this Agreement.

2. Duration of Contract. The Consultant shall commence services provided for herein upon written Notification to Proceed from the City and to continue in a diligent and professional manner until the services to be rendered are complete, unless this Agreement is extended or terminated as provided herein.

Consultant will generally adhere to any schedule set forth within Consultant's Proposal or by the City provided, that City will grant reasonable extensions of time for the performance of the services occasioned by unusually lengthy governmental reviews of Consultant's work product or other unavoidable delays occasioned by unforeseen circumstances; provided, further, that such unavoidable delay will not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees.

Consultant acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the services in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound practices. Consultant will work such overtime or engage such personnel and equipment as necessary to maintain the schedule, without additional compensation.

3. Compensation. The method of payment for this Contract will be on a fee-for-services basis as specified within Consultant's **"Proposed Fee & Schedule"** and incorporated herein. The total price

paid the Consultant will include compensation for all work, including travel, materials, supplies, vendor services, expenses and subcontracted work. No additional compensation will be paid to the Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change

in the scope of work or scope of the project, adjustment to the total compensation will be negotiated between the Consultant and the City. Adjustment in the total compensation will not be effective until authorized and approved in writing by the City**.**

Progress payments may be made in arrears based on the percentage of work and deliverables completed by the Consultant. If Consultant fails to submit the required deliverable items according to schedule or as required by the Agreement, except for those amounts that are due and not reasonably in dispute, the City shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions noted herein.

Consultant shall be reimbursed within thirty (30) days, or as promptly as fiscal procedures may permit, upon receipt by the City of itemized invoices for services completed. Invoices shall be submitted no later than 45 calendar days after the performance of work for which the Consultant is billing. Invoices shall detail the work performed on each task as applicable. Invoices shall be delivered or mailed to the **Director of Public Works Engineering Department** at the following address: **City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.**

As full and complete compensation for performance of all the services to be performed by the Consultant pursuant to this Agreement, City shall pay, and Consultant agrees to accept a not-to-exceed maximum sum of **Three Hundred Fifty Four Thousand Eight Hundred and One Dollars ($354,801.00).**

In the event of termination, the Consultant shall be entitled to compensation for the undisputed reasonable value of services performed to the effective date of termination, including any non-cancellable obligations incurred prior to termination; provided, however, that the City may condition payment of such compensation upon the Consultant's delivery to the City of any and all City property, documents, reports, records, materials and work product associated with the performance of this Agreement.

4. **Ownership of Materials.** All product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of City. In the event this Agreement is terminated, all Work Product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement.

The Work Product may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable, without further employment of or payment of any compensation to Consultant; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another consultant to use the Work Product, City agrees to hold Consultant harmless from any and all liability, costs, and expenses relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Work Product. Consultant will not be responsible for deficiencies solely attributable to modifications of the Work Product performed by others, or that arise from use of the Documents in connection with a project or site other than that shown in the Work Product.

5. **Independent Contractor Status.** Consultant, its officers, employees, subconsultants, subcontractors, agents and volunteers (collectively hereinafter the "Consultant"), will perform the services in Consultant's own way and pursuant to this Agreement as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide the services under this Agreement will not be considered employees of City for any purposes. Neither the City nor any of its officers, employees, agents or volunteers shall have any control over the conduct of the Consultant, except as expressly set forth in this Agreement. Consultant expressly warrants

that while engaged in carrying out and complying with any terms and conditions of this Agreement that Consultant shall not at any time or in any manner, represent that Consultant is in any manner officers, employees, agents or volunteers of the City. Consultant shall obtain no rights to retirement, health care or any other benefit that accrue to City officials, officers, or employees. Consultant expressly waives any claim to such rights.

The payment(s) made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment that City may be required to make on behalf of Consultant or any agent, employee, or contractor of Consultant for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Consultant.

6. Successors, Assignment and Delegation. City and the Consultant each binds themselves, their partners, successors, assigns and legal representatives to the other hereto and to partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in this Agreement.

The expertise and experience of Consultant are material considerations for this Agreement. Consultant shall not assign or transfer any interest in this Agreement or the performance of any of Consultant's obligations under this Agreement without the prior written consent of the City. Any attempted assignment or transfer of any of Consultant's rights, duties or obligations arising under this Agreement shall be null and void.

7. Nondiscriminatory Employment Practices. During the performance of this Agreement, the Consultant agrees not to discriminate against any employee or applicant for employment because of race, sex, creed, color, religion, age, sexual orientation, marital status, national origin, political affiliation, handicap or belief in accordance with requirements of City, State or Federal laws and regulations. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, creed, color, religion, age, sexual orientation, marital status, national origin, political affiliation, handicap or belief in accordance with requirements of City, State or Federal laws and regulations. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees, applicants and subcontractors for employment, notices setting forth the provisions of this non-discrimination clause.

In the event of the Consultant's non-compliance with the non-discrimination clause of this Agreement, this Agreement may be immediately canceled, terminated or suspended in whole or in part.

8. Subcontracting. Consultant's services are unique and personal. Except as may be specified in Consultant's Proposal and agreed to by the City, Consultant will not subcontract any portion of the services without prior written approval of City Manager or his/her designee. If Consultant subcontracts any of the services, Consultant will be fully responsible to City for the acts, errors and omissions of Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

9. Other Consultants. The City reserves the right to employ other consultants in connection with the services.

10. Indemnification. Consultant shall indemnify and save harmless the City, its officials, officers, employees, agents and volunteers (collectively hereinafter the "City"), against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City and shall indemnify and save the City from any and all liability and expense including reimbursement of reasonable defense costs and legal fees, and claims, demands, suits, actions or proceedings of any kind or nature, including Workers' Compensation claims, of or by anyone whomsoever to the extent resulting from or arising out of the negligent, reckless or willful misconduct for the Consultant, its officers, employees, subconsultants, subcontractors or agents in the performance of the duties undertaken by Consultant pursuant to this Agreement.

This indemnification and hold harmless obligation does not extend to claims arising out of the negligence or willful misconduct of the City.

11. Insurance. Without limiting the Consultant's indemnification of the City, Consultant shall obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Consultant or Consultant's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. Such evidence shall specifically identify this Agreement and shall contain express conditions that the City is to be given written notice at least thirty (30) days in advance of any termination or implementation of a reduction of limits or material change of insurance coverage as specified herein. Failure on the part of the Consultant to procure or maintain insurance shall constitute a material breach upon which the City may immediately terminate this Agreement. All insurance required hereunder shall be primary with respect to any insurance maintained by the City**.**

Coverages and Limits. Consultant will maintain the types of coverages and minimum limits indicated below, unless the City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Consultant's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. The coverage will contain no special limitations on the scope of its protection to the below-designated insureds except for Workers Compensation and errors and omissions insurance. Consultant will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage, as Consultant deems adequate, at Consultant's sole expense.

11.1 Commercial General Liability Insurance. $1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

11.2 Automobile Liability. $1,000,000 combined single-limit per accident for bodily injury and property damage.

11.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of $1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Consultant has no employees and provides, to City's satisfaction, a declaration stating this.

11.4 Professional Liability. Errors and omissions liability appropriate to Consultant's profession with limits of not less than $1,000,000 per claim. The coverage shall also provide an extended two (2) year reporting period commencing upon termination or cancellation of this Agreement.

Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Consultant will ensure that the policies are endorsed to name the City of Compton and its respective elected and appointed officers, officials, employees, agents and volunteers as **"additional insureds"** with respect to liability arising out of the activities of the Consultant. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. ***Prior to City's execution of this Agreement, Consultant will furnish certificates of insurance and endorsements to City.***

Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

12. Permits and Licenses. Consultant, at its own expense, during the term of this Agreement, shall obtain and maintain all appropriate business and professional permits, licenses and certificates that may be required in connection with the performance of services by the Consultant. Upon execution of this Agreement, the Consultant shall show evidence of a business license permit in conformance with *Section 9-1.2* of the *Compton Municipal Code*.

13. Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years, or longer if required by law, from the date of final payment under this Agreement.

14. Warranties. Consultant represents and warrants (i) that Consultant has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Consultant's undertaking this relationship with City, (ii) that the performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party, (iii) that Consultant will not use in the performance of his responsibilities under this Agreement any confidential information or trade secrets of any other person or entity and (iv) that Consultant has not knowingly entered into or will enter into any agreement (whether oral or written) in conflict with this Agreement.

15. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations, which in any manner affect those, employed by Consultant, or in any way affect the performance of the services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the services with all applicable laws, ordinances and regulations. In the event the Consultant encounters any conflict between such laws and ordinances, Consultant shall notify the City in writing and the parties agree to work cooperatively to resolve the conflict.

16. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the services, after giving written notice of default and two (2) days to correct the same, then, in addition to any other remedies, City may terminate this Agreement for nonperformance by notifying Consultant in writing. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Consultant has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Consultant, whether located at the project site, at Consultant's place of business, or at the offices of a subconsultant.

The City's obligation is payable only from funds appropriated for the purpose of this Agreement. All funds for payments after the end of the current fiscal year are subject to the City's legislative appropriation for this purpose. In the event this Agreement extends into succeeding fiscal year periods and

the City Council does not allocate sufficient funds for the next succeeding fiscal year payments, this Agreement shall terminate immediately upon written notice from the City.

Either Party, upon tendering fifteen (15) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

17. Force Majeure. In the event that performance by either party is rendered impossible (permanently or temporarily) due to acts of war, acts of terrorism, fires, floods, epidemics, quarantine restrictions, or other natural occurrences, strikes, work slowdowns, lockouts (other than lockout by Consultant), or other similar acts to those described above or other causes beyond the reasonable control of such party, and without fault or negligence, said event shall excuse performance by such party, or in the case of temporary impossibility, shall excuse performance only for a period commensurate with the period of impossibility. Notwithstanding the foregoing, City shall have the right to terminate this Agreement upon any event that renders performance impossible. In such case, City shall be responsible for payment of compensation for the reasonable value of services rendered to the point at which this Agreement is terminated, but in no event to exceed the total lump sum fee payable under this Agreement.

18. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

19. Certifications. The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

.a Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local agency; and

.b Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local agency within the past 3 years; and

.c Does not have a proposed debarment pending; and

.d Has not been indicted, convicted, or had a civil judgment rendered against him/her/it by a court of competent jurisdiction in any matter involving fraud or official misconduct in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property within the past 3 years; and

.e Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph; and

.f Have not had one or more public transactions (Federal, State or local) terminated for cause or default within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Supply exceptions on separate page]

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

[Attach separate page]

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. The above certifications are part of this contract. Signing this agreement on the signature portion thereof shall also constitute signature of the above Certifications.

_____ _____

Ray Abassi, Principal **(Date)**

20. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Los Angeles, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This Agreement will be governed by the laws of the State of California.

21. Testimony. Consultant will testify at City's request if litigation is brought against City in connection with Consultant's services under this Agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City, upon prior written agreement with Consultant will compensate Consultant for time spent in preparation for testimony, testimony, and travel at Consultant's standard hourly rates at the time of actual testimony.

22. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment that may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

23. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

24. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

25. Amendments. This Agreement may be modified or amended only be written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

26. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of the services pursuant to the Agreement are confidential until released by the City to the public, and the Consultant will not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before any such release.

27. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-

material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

28. Notices. Any notices required or permitted under this Agreement shall be effective when delivered in person or via reputable delivery service (e.g. FedEx, DHL, UPS, etc.) or (b) on the fifth (5th) calendar day after the deposit thereof in the United States mail, postage prepaid and addressed as hereinafter provided, or (c) one business day after sent by facsimile transmission.

To Consultant:	**Infrastructure Engineers** **3060 Saturn Street, Suite 250** **Brea, California 92821** **Attn: Ray Abassi-Principal** **(714) 940-0100** **(714) 940-0700**
To City:	**City of Compton** **205 South Willowbrook Avenue** **Compton, California 90220** **Attn: Director, Public Works Department** **(310) 605-5505** **(310) 605-6326 – fax.**
Copy to:	**City of Compton** **205 South Willowbrook Avenue** **Compton, California 90220** **Attn: City Manager**

In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may amend, supplement and update the notice list to add, delete or replace any listed individuals; however, the amendment must be in writing.

29. Miscellaneous. No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision.

Should either party hereto, or any representative, successor or assign of either party hereto, resort to litigation to enforce the provisions of this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorney's fees and costs in such litigation from the party or parties against whom enforcement is sought.

IN WITNESS WHEREOF, CONSULTANT has executed this Agreement, and the **CITY**, by its City Manager, who is authorized to do so, has executed this Agreement.

INFRASTRUCTURE ENGINEERS/CONSULTANT

Dated: _____ **By _____**
Ray Abassi, Principal

Approved by:

Dated: _____ **By _____**
Thomas Thomas, City Manager

Approved as to form:

By _____ **Dated: _____**
Eric J. Perrodin, City Attorney

ATTEST:

Dated: _____ **By _____**
Alita Godwin, City Clerk

Annual Residential Street Rehabilitation Project (CIP #18-01), Phase 2B - CONSTRUCTION MANAGEMENT

	CMTS				5	GK & ASSOCIATES				2	INFRASTRUCTURE				3
Rating Criteria	Rater #1	Rater #2	Rater #3	Rater #4	Total	Rater #1	Rater #2	Rater #3	Rater #4	Total	Rater #1	Rater #2	Rater #3	Rater #4	Total
Completeness of Proposal	20	16	15		51	20	16	15			20	18	15		
Demonstrated Understanding of the Scope of Services	15	17	16		48	20	17	16			20	17	16		
Quality of Work Previously Performed by Firm	15	17	15		47	20	16	15			15	18	16		
Depth of Resources to Perform Work	10	13	12		35	15	13	13			14	13	13		
Proposed Schedule of Work	15	13	14		42	15	13	14			15	13	13		
Quality of Staff For Work to be Performed	4	4	3		11	5	4	3			4	4	4		
Location of Office	5	3	4		12	3	3	3			3	4	3		
TOTAL	84	83	79		246	98	82	79		259	91	87	80		258
Ranking Order	4	4	6			1	5	5			3	2	4		

	INTERWEST				4	PACIFICA				6	Z&K CONSULTANTS				1
Rating Criteria	Rater #1	Rater #2	Rater #3	Rater #4	Total	Rater #1	Rater #2	Rater #3	Rater #4	Total	Rater #1	Rater #2	Rater #3	Rater #4	Total
Completeness of Proposal	20	18	18			20	17	17			20	17	18		
Demonstrated Understanding of the Scope of Services	18	18	18			15	16	17			20	16	18		
Quality of Work Previously Performed by Firm	10	17	17			8	16	17			15	16	18		
Depth of Resources to Perform Work	10	14	14			8	12	14			15	13	14		
Proposed Schedule of Work	15	14	13			15	13	14			15	13	14		
Quality of Staff For Work to be Performed	3	4	3			1	4	3			5	4	4		
Location of Office	3	4	3			5	3	3			2	4	3		
TOTAL	79	89	86		254	72	81	85		238	92	83	89		264
Ranking Order	5	1	2			6	6	3			2	3	1		

June 14, 2022

TO: **MAYOR AND CITY COUNCIL MEMBERS**

FROM: **CITY MANAGER**

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION CONTRACT WITH AND ESTABLISH A PURCHASE ORDER FOR ALL AMERICAN ASPHALT FOR THE ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT, CIP# 18-01, PHASE 2B ($6,840,971.50)**

SUMMARY

Adoption of this resolution will authorize the City Manager to enter into a construction contract with and establish a purchase order in the amount of Six Million, Two Hundred Nineteen Thousand and Sixty-Five Dollars ($6,219,065) for All American Asphalt and Six Hundred Twenty-One Thousand, Nine Hundred Six Dollars and Fifty Cents ($621,906.50) contingency amount for the Annual Residential Street Rehabilitation Project, CIP# 18-01, Phase 2B.

BACKGROUND

The Annual Residential Street Rehabilitation Project ("Project") provides improvements to streets in accordance with the plans, specifications and other contract documents as specified herein and shall consist of the following general work descriptions: construction of cold mill, ARHM pavement, AC base course, aggregate base, full depth AC slot pavement, curb and gutters, sidewalks, cross gutter, alley intersection, driveway approach, curb ramps, signing, striping, markings, and pavement legends, speed hump, traffic signal loops, adjust to grade existing sewer manholes, water valves, water meters, and storm drain manholes, and such other items or details, not mentioned above, that are required by the plans and standard specifications.

The Phase 2B street improvements are located on Compton Avenue, Slater Avenue, Rosecrans Avenue, and Santa Fe Avenue as follows:

No.	Street Name	Limits
1.	Compton Avenue	130th Street to 134th Place
2.	Slater Avenue	133rd Street to Wilmington Avenue
3.	Rosecrans Avenue	City Limit East to Alameda Street
4.	Santa Fe Avenue	City Limit North to City Limit South

STATEMENT OF ISSUE

The Annual Residential Street Rehabilitation Project (CIP# 18-01, Phase 2B) was advertised for competitive bids on April 20th, April 27th, May 4th and May 11th, 2022. Bids were received and opened on May 25, 2022. Four (4) bids were received as follows:

Contractors	Amount
All American Asphalt	$6,219,065
Hardy & Harper, Inc.	$6,777,000
Palp dba Excel Paving	$6,527,870
Sully Miller Contracting	$6,783,000

Based upon review of the submitted bid documents, it was determined that All American Asphalt was the apparent lowest bidder. Additionally, staff recommends that a ten percent (10%) contingency in the amount of $621,906.50 for any unforeseen costs be authorized for this Project. The Engineer's Estimate for this Project was $5,817,405. The project is specified to be completed in 180 working days.

Therefore, in order to award the construction contract with and establish a purchase order for All American Asphalt in the amount of $6,219,065 and a contingency amount of $621,906.50 for the Annual Residential Street Rehabilitation Project, CIP# 18-01, Phase 2B, City Council's authorization is necessary.

FISCAL IMPACT

Funds in the amount of $6,840,971.50 are available in the Public Works 2021-2022 Fiscal Year in Account No. 3031-710-000-4300 (MTA Bond Funds).

ALTERNATIVE

Council can reject all bids and instruct staff to re-advertise, however, due to the desire of the City to move forward with this project, no other alternative is being proposed at this time.

RECOMMENDATION

Staff recommends that the City Council adopt the attached Resolution.

JOHN D. STRICKLAND, JR., PROJECT MANAGER
PUBLIC WORKS ENGINEERING DEPARTMENT

APPROVED AS TO FORWARDING:

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION CONTRACT WITH AND ESTABLISH A PURCHASE ORDER FOR ALL AMERICAN ASPHALT FOR THE ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT CIP #18-01, PHASE 2B ($6,840,971.50)

WHEREAS, the Annual Residential Street Rehabilitation Project ("Project") provides improvements to streets in accordance with the plans, specifications and other contract documents as specified herein and shall consist of the following general work descriptions: construction of cold mill, ARHM pavement, AC base course, aggregate base, full depth AC slot pavement, curb and gutters, sidewalks, cross gutter, alley intersection, driveway approach, curb ramps, signing, striping, markings, and pavement legends, speed humps, traffic signal loops, adjust to grade existing sewer manholes, water valves, water meters, and storm drain manholes, and such other items or details, not mentioned above, that are required by the plans and standard specifications; and

WHEREAS, the Phase 2B street improvements are located on Compton Avenue, Slater Avenue, Rosecrans Avenue, and Santa Fe Avenue as follows:

No.	Street Name	Limits
1.	Compton Avenue	130th Street to 134th Place
2.	Slater Avenue	133rd Street to Wilmington Avenue
3.	Rosecrans Avenue	City Limit East to Alameda Street
4.	Santa Fe Avenue	City Limit North to City Limit South

WHEREAS, the Annual Residential Street Rehabilitation Project (CIP# 18-01, Phase 2B) was advertised for competitive bids on April 20th, April 27th, May 4th and May 11th, 2022; and

WHEREAS, bids were received and opened on May 25, 2022 and four (4) bids were received as follows:

Contractors	**Amount**
All American Asphalt	$6,219,065
Hardy & Harper, Inc.	$6,777,000
Palp dba Excel Paving	$6,527,870
Sully Miller Contracting	$6,783,000; and

WHEREAS, based upon review of the submitted bid documents, it was determined that All American Asphalt was the apparent lowest bidder; and

WHEREAS, staff recommends City Council award the construction contract to All American Asphalt in the amount of $6,219,065; and

WHEREAS, staff recommends that a ten percent (10%) contingency in the amount of $621,906.50 for any unforeseen costs be authorized for this Project; and

WHEREAS, the Engineer's Estimate for this Project was $5,817,405 and the project is specified to be completed in 180 working days; and

WHEREAS, in order to award the construction contract with and establish a purchase order for All American Asphalt in the amount of $6,219,065 and a contingency amount of $621,906.50 for the Annual Residential Street Rehabilitation Project, CIP# 18-01, Phase 2B, City Council's authorization is necessary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the bid of All American Asphalt in the amount of Six Million Two Hundred Nineteen Thousand and Sixty Five Dollars ($6,219,065.00) is hereby accepted and all other bids rejected.

SECTION 2. That the City Manager, upon the advice and approval of the City Attorney is hereby authorized to enter into a construction contract with All American Asphalt for services performed on the Annual Residential Street Rehabilitation Project, CIP #18-01, Phase 2B.

SECTION 3. That funds in the amount of $6,840,971.50 are available in the Public Works 2021-2022 Fiscal Year budget in Account No. 3031-710-000-4330.

SECTION 4. That a purchase order in the amount of $6,219,065.00 is authorized to be established for All American Asphalt for services to be rendered on the Annual Residential Street Rehabilitation Project, CIP# 18-01, Phase 2B.

SECTION 5. That a project contingency amount of Six Hundred Twenty-One Thousand Nine Hundred Six Dollars and Fifty Cents ($621,906.50) is hereby authorized.

SECTION 6. That a copy of this Resolution shall be filed in the offices of the City Manager, City Controller, City Clerk, City Attorney and Public Works Department.

SECTION 7. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2022.

That said Resolution was adopted by the following vote to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

Annual Residential Street Rehabilitation Project (Phase 2B)				All American Asphalt		Hardy & Harper		Palp dba Excel Paving		Sully-Miller Contracting	
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	Mobilization	1	LS	$290,000.00	$290,000.00	$300,000.00	$300,000.00	$298,000.00	$298,000.00	$330,000.00	$330,000.00
2	Traffic Control	1	LS	$400,000.00	$400,000.00	$593,700.00	$593,700.00	$529,000.00	$529,000.00	$583,220.00	$583,220.00
3	Best Management Practices	1	LS	$13,000.00	$13,000.00	$25,000.00	$25,000.00	$18,000.00	$18,000.00	$24,000.00	$24,000.00
4	Clearing & Grubbing and Unclassified Excavation	1	LS	$740,000.00	$740,000.00	$500,000.00	$500,000.00	$682,000.00	$682,000.00	$800,000.00	$800,000.00
5	Cold Mill Existing Pavement	1,320,000	SF	$0.28	$369,600.00	$0.28	$369,600.00	$0.30	$396,000.00	$0.38	$501,600.00
6	Construct 2" Asphalt Rubber Hot Mix (ARHM)	19,000	TON	$117.00	$2,223,000.00	$120.00	$2,280,000.00	$118.00	$2,242,000.00	$120.00	$2,280,000.00
7	Construct 2" AC Base Course	3,000	TON	$96.00	$288,000.00	$100.00	$300,000.00	$120.00	$360,000.00	$105.00	$315,000.00
8	Construct 8" CAB	5,000	CY	$41.00	$205,000.00	$92.00	$460,000.00	$72.00	$360,000.00	$90.00	$450,000.00
9	Sawcut, Remove Existing and Construct 4" PCC Sidewalk	1,200	SF	$12.00	$14,400.00	$13.00	$15,600.00	$14.00	$16,800.00	$22.00	$26,400.00
10	Sawcut, Remove Existing and Construct PCC Driveway Approach	31	EA	$4,500.00	$139,500.00	$4,100.00	$127,100.00	$5,300.00	$164,300.00	$4,400.00	$136,400.00
11	Sawcut Existing and Construct PCC Cross Gutter	20,000	SF	$19.00	$380,000.00	$30.00	$600,000.00	$22.00	$440,000.00	$18.00	$360,000.00
12	Sawcut, Remove Existing and Construct PCC Curb Ramp	70	EA	$7,800.00	$546,000.00	$8,000.00	$560,000.00	$6,700.00	$469,000.00	$5,500.00	$385,000.00
13	Sawcut Existing and Construct Alley Intersection	1	EA	$7,250.00	$7,250.00	$7,500.00	$7,500.00	$11,000.00	$11,000.00	$9,500.00	$9,500.00
14	Adjust to Grade Water Valve	121	EA	$930.00	$112,530.00	$950.00	$114,950.00	$890.00	$107,690.00	$900.00	$108,900.00
15	Adjust to Grade Sewer Manhole	86	EA	$1,300.00	$111,800.00	$1,150.00	$98,900.00	$950.00	$81,700.00	$1,000.00	$86,000.00
16	Adjust to Grade Storm Drain Manhole	26	EA	$1,300.00	$33,800.00	$1,150.00	$29,900.00	$950.00	$24,700.00	$1,000.00	$26,000.00
17	Adjust to Grade Test Well Box	3	EA	$930.00	$2,790.00	$1,200.00	$3,600.00	$975.00	$2,925.00	$1,000.00	$3,000.00
18	Remove and Construct Speed Hump	4	EA	$4,400.00	$17,600.00	$4,500.00	$18,000.00	$2,000.00	$8,000.00	$2,600.00	$10,400.00
19	Funish and Install Street Name Sign	84	EA	$195.00	$16,380.00	$200.00	$16,800.00	$200.00	$16,800.00	$265.00	$22,260.00

20	Furnish and Install Overhead Reflective Street Name Sign	43	EA	$975.00	$41,925.00	$1,000.00	$43,000.00	$940.00	$40,420.00	$1,400.00	$60,200.00
21	Furnish and Install Regulatory Sign	101	EA	$140.00	$14,140.00	$150.00	$15,150.00	$135.00	$13,635.00	$155.00	$15,655.00
22	Install Traffic Detector Loop	228	EA	$300.00	$68,400.00	$500.00	$114,000.00	$285.00	$64,980.00	$290.00	$66,120.00
23	Sawcut Existing and Construct Curb and Gutter	40	LF	$100.00	$4,000.00	$80.00	$3,200.00	$138.00	$5,520.00	$155.00	$6,200.00
24	Construct Truncated Domes	3	EA	$1,650.00	$4,950.00	$2,000.00	$6,000.00	$800.00	$2,400.00	$715.00	$2,145.00
25	Miscellaneous Concrete Items, etc.	1	LS	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00
26	Striping, Markings, & Pavement Legends	1	LS	$125,000.00	$125,000.00	$125,000.00	$125,000.00	$123,000.00	$123,000.00	$125,000.00	$125,000.00
	TOTAL			**1**	$6,219,065.00	**3**	$6,777,000.00	**2**	$6,527,870.00	**4**	$6,783,000.00

CONSTRUCTION SERVICES AGREEMENT
BETWEEN
CITY OF COMPTON
AND
ALL AMERICAN ASPHALT
[Annual Residential Street Rehabilitation Project– CIP #18-01, Phase 2B]

This **AGREEMENT** is entered into by and between the **CITY OF COMPTON**, a municipal corporation of the State of California (hereinafter referred to as **"CITY"**) located at 205 South Willowbrook Avenue, Compton, California 90220, and **ALL AMERICAN ASPHALT** (hereinafter referred to as "**CONTRACTOR"**) located at 400 East Sixth Street, Corona, California 92879, (each a "Party" and collectively, the "Parties").

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the law of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. Contractor is a corporation duly organized and in good standing in the State of California. Contractor represents that it is duly licensed by the State of California (License No. 267073) and has the background, knowledge, experience and expertise to perform the obligations set forth in this Agreement.

C. City and Contractor enter into this Agreement for the purpose of retaining Sully-Miller Contracting Company (Contractor) to perform that work required pursuant to the Annual Residential Street Rehabilitation Project CIP# 18-01, Phase 2B ("Project")**.**

D. Authorization to enter into this Agreement is pursuant to Resolution No. _____adopted by the City Council on _____, 2022.

WHEREFORE, the City and Contractor, for the consideration, terms and conditions herein described, mutually agree as set forth below:

1.0 GENERAL PROVISIONS

1.1 Definitions.

1.1.1 "Work" consists of all of the Construction Services, including but not limited to all of the labor, materials and equipment necessary to complete the Project in accordance with the Contract Documents.

1.1.2 "Contract Documents" consists of this Agreement (interchangeably "Contract") (including all exhibits and schedules), any amendments and clarifications issued thereto, the "Notice Inviting Bids," "Instructions to Bidders," any "Supplementary Instructions to Bidders," and any addendum(s) and supplements thereto issued by the City, the "Proposal" and any "Bid/Unit Price Proposal" submitted by the Contractor, the plans, general conditions, special provisions, standard and technical specifications, schedules, exhibits, drawings, designation of subcontractors, information required of bidder, all required bonds, insurance policies, endorsements, certificates, permits, notices and affidavits, notice to proceed, notice of completion, any Change Orders, the provisions of the Standard Specifications for Public Works Construction (SSPWC), latest Edition (except as modified), Standard Specifications of the State of California Department of Transportation (CalTrans), latest Edition (except as modified), Work Area Traffic Control Handbook (WATCH), latest Edition, CalTrans Standard Drawings, latest edition, Manual on Uniform Traffic Control Devices (MUTCD), latest Edition, MUTCD Latest

California Supplement, and any and all other documents identified in the Contract Documents which together form the agreement between the City and the Contractor.

1.2 Public Work of Improvement.

City and Contractor acknowledge that City is a political subdivision of the State of California and that construction of the Project is to be funded with public funds.

1.3 Trust and Confidence.

Contractor accepts the obligation of trust and confidence established between it and City by this Agreement and shall act in the best interests of City, as its fiduciary, in carrying out Contractor's duties and responsibilities under this Agreement, including, without limitation, the furnishing of efficient business administration, sufficient senior level management and other qualified personnel to complete Contractor's obligations under the Contract Documents in an expeditious and economical manner and within the Contract Price and Contract Time.

1.4 Standard of Care.

Contractor shall perform all its obligations under the Contract Documents in accordance with the highest standard of care applicable to the performance of services and Work required by the Contract Documents. In the event portions of the Project are to be performed in accordance with a specific performance standard, the Work shall be performed so as to achieve such standard.

1.5 Compliance with Applicable Laws.

Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project, and shall give all notices and comply with all applicable laws and lawful orders of any governmental authorities (including, without limitation, those laws, ordinances, rules, regulations and lawful orders relating to safety, prevailing wage, Hazardous Substances, and equal employment opportunities); pay all local, state and federal taxes; and pay all benefits, insurance, taxes and contributions for Social Security and Unemployment Insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. Contractor shall be liable for all violations of such laws and regulations in connection with the Contractor's obligations on this Project. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a Charter city are a part of this Agreement to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents (hereinafter "City") free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

This Agreement is subject to and incorporates the terms of the Housing and Community Development Act of 1974, as amended by the Cranston-Gonzalez National Affordable Housing Act, 1990, and the 24 CFR Part 85. If the compensation under this Agreement is in excess of $100,000 then Contractor shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 18579h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15).

The Contractor must obtain and present all relevant state and local insurance, training and licensing pursuant to Work required within this Contract. Contractor shall also comply with the following laws:

1.5.1 Prohibition Against Employment Discrimination. During the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, gender, marital status, ethnicity, religion, age or medical condition as set forth in the California Labor Code Section 177.6, Government Code, Title VII of the Civil Rights Act and the Civil Rights Act of 1991 and any amendments to the above. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, gender, marital status, ethnicity, religion, age or medical condition.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or part and the Contractor may be declared ineligible for further Government contracts and such other sanctions may be imposed and remedies invoked as provided by law.

1.5.2 Clayton Act and Cartwright Act. In accordance with Section 7103 of the California Public Contract Code, in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the City all rights, and interest in and all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act, arising from the purchases of goods, services or materials pursuant to this Contract.

1.5.3 Federal Lobbyist Requirements. The Contractor is prohibited by the Department of Interior and Related Agencies Appropriations Act, known as the Byrd Amendments, and HUD's 24 CFR Part 87, from using federally appropriated funds for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment or modification of said documents.

1.5.4 Subletting and Subcontracting. Contractor acknowledges and agrees that it is the City's intent for the provisions of the Subletting and Subcontracting Fair Practices Act (commencing with Section 4100 of the California Public Contract Code) to apply to all phases of the Work.

1.5.5 Prevailing Wage Requirements. This Project is funded in whole or in part with Federal Housing and Community Development funds. The Federal Labor Standards Provisions, including prevailing wage requirements of the Davis-Bacon and Related Acts will be enforced.

This Project is a public work in the State of California, which may be funded in whole or in part with public funds. Therefore, the higher of the two applicable prevailing wage rates, federal or state, will be enforced. Contractor's duty to pay State prevailing wages can be found under California Labor Code Section 1770 et seq. and the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment can be found in California Labor Code Sections 1775 and 1777.7, as such wage rates are amended from time to time. It is the Contractor's responsibility to ensure payment of prevailing wages and inform all subcontractors that prevailing wage requirements apply to this construction project from commencement of the Contract through completion of the Work.

.a Contractor shall pay all employees on said Work a salary or wage at least equal to the prevailing salary or wage established for such Work as set forth in the wage determinations and wage standards applicable to this Work. Contractor shall forfeit to the City**,** as penalty, **Fifty Dollars ($50.00)** for each calendar day or portion thereof for each worker paid (either by him or any subcontractors under him) less than the prevailing rate described above on the Work provided for in this Agreement, all in accordance with the State Labor Code and be subject to debarment from future public works projects with the City for a period not to exceed three (3) years. The Contractor shall not require more than eight (8) hours in a day from any person employed by him hereunder, except as provided in the Labor Code. The Contractor shall conform to the State Labor Code and it is agreed that the Contractor shall forfeit to the City, as penalty, the sum of **Twenty Five Dollars ($25.00)** for each worker employed in the execution of this Contract by the Contractor or any subcontractors for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in one day or 40 hours in one week in violation of said article. The Contractor shall indemnify, defend and hold harmless the City, its officials, officers, employees and agents from any and all liability including, but not limited to wages, overtime pay, liquidated damages, penalties, court costs, and attorneys fees arising under any wage and hour law including, but not limited to the Federal Fair Labor Standards Act, as amended, for work performed by the Contractor's employees for which the City may be found jointly or solely liable.

1.5.6 Employment of Apprentices. Pursuant to California Labor Code Section 1777.5, Contractor shall file with the appropriate Joint Apprenticeship Training Committee ("JATC"), a DAS-140 form registering to train apprentices. Only those programs approved by the California Apprenticeship Council are applicable to accept DAS-140 registration forms. In addition, Contractor is required to make appropriate training contributions as set forth in the prevailing wage determination to each appropriate JATC, or in the alternative, to the California Apprenticeship Council.

.a Contractor shall forfeit to the City**,** as penalty, **Fifty Dollars ($50.00)** for each calendar day and be subject to debarment from future public works projects with the City for a period not to exceed three (3) years for failure of Contractor to register to train apprentices or failure to pay the appropriate training contribution.

1.5.7 Certified Payrolls. Pursuant to California Labor Code Section 1776, Contractor shall keep weekly payroll records, which shall be certified under penalty of perjury to record the proper payment of prevailing wages for this Project. City shall accept computer printouts (which are then certified) in lieu of the standard form as long as the computer printout provides all of the same information as required on the certified payroll form. Failure of Contractor to provide the certified payrolls within ten (10) days of a written deficiency notice from the City shall result in a penalty of **Twenty Five Dollars ($25.00)** per day per worker for each day of violation. City maintains the right to withhold any and

all funds due the Contractor and/or his/her subcontractors in the event that certified payrolls are not maintained and provided to the City upon request.

1.5.8 Employment Eligibility. Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to the Immigration Reform and Control Act of 1986, as may be amended from time to time. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of this Agreement. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors performing any work relating to this Project or this Agreement to make the verifications and comply with all requirements and restrictions provided herein. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in this Section 1.5.8. Should Contractor employ undocumented aliens for the performance of Work covered by this Agreement, and should any liability or sanctions be imposed against the City for such use of undocumented aliens, Contractor hereby agrees to and shall reimburse City for the cost of all liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

1.5.9 Water Pollution Control.

1.5.9.1 Best Management Practices (BMPs). Contractor, without limitation, shall be responsible to provide and implement Best Management Practices to comply with National Pollution Discharge Elimination System ("NPDES") standards and practices. The Contractor shall be responsible, to the fullest extent possible, not to permit any contaminants, including soil, to enter any drainage system. Contractor shall be responsible to maintain equipment so that oil, grease, gasoline, diesel fuel, et al., does not contaminate areas subject to run-off. The Contractor and its surety shall fully indemnify the City for any pollution damage and/or cleaning costs. All construction of off-site and on-site improvements shall adhere to NPDES Best Management Practices to prevent deleterious materials or pollutants from entering the City or County storm drain systems. Best Management Practices shall be defined as any program, technology, process, site criteria, operating method, measure or device which controls, prevents, removes or reduces pollution. Contractor shall obtain and refer to the California Storm Water Best Management Practice Handbooks, Volume 3 Construction BMP Handbook and the Los Angeles County Department of Public Works Best Management Practices Handbook for Construction Activities.

The City, as permittee, is subject to enforcement actions by the State Water Resources Control Board, Environmental Protection Agency and private citizens. The City may assess the Contractor a penalty of **One thousand Dollars ($1,000.00)** for each calendar day that the Contractor has not fully implemented the BMPs specified for the contract and/or is otherwise in noncompliance with these provisions. In addition, the City will deduct, from the final payment due the contractor, the total amount of any fines levied on the City, plus legal and staff costs, as a result of the Contractor's lack of compliance with these provisions and/or less than complete implementation of the specified BMPs.

1.5.10 Upon City's request, Contractor shall furnish evidence satisfactory to City that any and all of the foregoing obligations have been fulfilled. Without limiting the foregoing, Contractor shall pay all employees on said Work a salary or wage at least equal to the prevailing salary or wage established for such Work as set forth in the wage determinations and wage standards applicable to this Work.

1.6 Key Personnel.

1.6.1 Contractor's Representative. Contractor hereby designates **Mark Luer,**

President of Contractor as Contractor's Representative, who shall be deemed to be Contractor's agent with express authority to bind Contractor with respect to all matters requiring Contractor's approval or authorization.

1.6.2 City's Representative. City hereby designates the Director of the Public Works Department, or his/her designee as City's Representative for this Project.

1.7 Independent Contractor.

Contractor shall be an independent contractor, and neither Contractor, its officers, principals, employees, agents, volunteers and subcontractors (collectively hereinafter the "Contractor"), shall be considered employees or agents of City. Neither the City nor any of its officers, employees, agents or volunteers shall have any control over the conduct of the Contractor, except as expressly set forth in this Agreement. Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor expressly warrants that while engaged in carrying out and complying with any terms and conditions of this Agreement that Contractor shall not at any time or in any manner, represent that Contractor is in any manner officers, employees, agents or volunteers of the City. Contractor shall obtain no rights to retirement, health care or any other benefit that accrue to City officials, officers, or employees. Contractor expressly waives any claim to such rights.

1.7.1 Contractor verifies that it possesses a **"Class A"** Contractor's License(s) adequate to perform the Work herein described and that all subcontractors of Contractor have equivalent licenses for their specific trades. Contractor further verifies that it and its subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under the Labor Code.

1.8 Permits.

Contractor understands and assumes all risk and sole responsibility, without any adjustment to the Contract Price or Contract Time, for obtaining all permits, licenses and approvals that may be necessary for the Project to be completely constructed and ready for acceptance or occupancy by City.

Prior to or at the time of execution of this Agreement, the Contractor, and all Contractor's subcontractors, shall purchase a business license permit in conformance with *Section 9-1.2* of the *Compton Municipal Code* and obtain applicable no-fee construction permits.

2.0 SCOPE OF SERVICES

2.1 It is the mutual understanding of the Parties that all construction services to be performed hereunder shall be performed pursuant to the fee schedule, scope of work, the City Engineer and/or Project Manager, and other requirements contained in the Contract Documents. Contractor agrees to provide and furnish all necessary professionals, managers, supervisors, staff, equipment, materials, laborers, necessary tools, expendable equipment, all utility and transportation services and other facilities required to complete the following work:

ANNUAL RESIDENTIAL STREET REHABILITATION PROJECT (CIP#18-01, PHASE 2B)

The Annual Residential Street Rehabilitation Project ("Project") provides improvements to streets in accordance with the plans, specifications and other contract documents as specified herein and shall consist of the following general work descriptions: construction of cold mill, ARHM pavement, AC base course, aggregate base, full depth AC slot pavement, curb and gutters, sidewalks, cross gutter, alley intersection, driveway approach, curb ramps, signing, striping, markings, and pavement legends, speed hump, traffic signal loop, adjust to grade existing sewer manhole, water valve, water meter, and storm drain manhole, and such other items or details, not mentioned above, that are required by the plans and standard specifications. The Project locations are as follows:

No.	Street Name	Limits
1.	Compton Avenue	130th Street to 134th Place
2.	Slater Avenue	133rd Street to Wilmington Avenue
3.	Rosecrans Avenue	City Limit East to Alameda Street
4.	Santa Fe Avenue	City Limit North to City Limit South

2.2 Management of Construction Work.

In addition to the Construction Work, Contractor shall cooperate with the City, City's Engineer and/or any construction management firm it may utilize as concerns and is incidental to construction projects of the nature and scope of this Project. The services required are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

Contractor shall bear all costs associated with this Work, including, but not limited to, all professional, technical, clerical services, materials, tools, equipment, transportation, telephone, etc., used by Contractor in connection with this Work.

3.0 CONTRACT PRICE

3.1 Total Compensation.

As full and complete compensation for the faithful performance of all of the Work hereunder performed by Contractor in accordance with the Contract Documents, City shall pay, and Contractor agrees to accept, a not-to-exceed maximum sum of **Six Million Two Hundred Nineteen Thousand and Sixty-Five Dollars ($6,219,065.00)** ("Contract Price"), subject to adjustments for changes in the Work as may be agreed to in writing by the City and Contractor.

3.2 The Contract Price, unless changed by a properly authorized and written Change Order, represents the absolute limit of obligation or liability that City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor are concerned. Should additional amounts be required to be expended, over and above the Contract Price, to achieve completion of the Work, including project construction, and payment to Contractor, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract surety herein, and City shall not be liable for same. Should the final cost of the construction work and Contractor's compensation total less than the Contract Price, or

any approved revision thereof, the difference shall inure to the benefit of City and no claim for all or any portion of said difference shall be valid against or payable by City.

3.3 Payments.

Progress payments may be made in arrears based on the percentage of work and deliverables completed by the Contractor. If Contractor fails to submit the required deliverable items according to schedule, the City shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions noted herein.

Contractor shall be reimbursed in accordance with the provisions of *California Public Contract Code, Section 20104.50*, upon receipt by the City of itemized invoices for services completed. City will verify the accuracy of the request, correct the charges where appropriate and make payment to the Contractor in an amount equal to the amount of such invoice, as verified or corrected by City. Invoices shall be submitted no later than 45 calendar days after the performance of Work for which the Contractor is billing. Invoices shall be delivered or mailed to the **Public Works Director** or his/her designee at the following address: **City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.**

3.4 Retention.

Contractor agrees to the withholding of a 5% retention fee by the City**.** Unless there is a dispute, within sixty (60) days after the date of completion of the Work, the retention fee shall be released. If there is a dispute, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount. For purposes of this section, "completion" means any of the following:

- The occupation and use of the improvement by the City after cessation of labor on the Work; or
- The acceptance of the Work by the City; or
- Cessation of labor on the Work of improvement for continuous period of at least 100 days, due to factors beyond the control of the City; or
- Cessation of labor on the Work of improvement for continuous period of at least 30 days if the City files for record a notice of cessation or a notice of completion.

-Or-

Pursuant to *Section 22300 of the Public Contract Code*, this Contract permits the substitution of securities for any monies withheld by a public agency to ensure performance under this Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this section shall include those listed in *Government Code Section 16430* or bank or savings and loan certificates of deposit. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, Contractor may request the City to make payment of earned retentions directly to the escrow agent at the expense of Contractor. Also at Contractor's expense, Contractor may direct investment of the payments in securities, and Contractor

shall receive interest earned on such investment upon the same conditions as provided for securities deposited by Contractor. Upon satisfactory completion of the Contract, Contractor shall receive from the escrow agent all securities, interest and payments received by escrow agent from the City pursuant to the terms of Section 22300. Contractor shall pay to each subcontractor, not later than 20 days after receipt of such payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure performance of Contractor.

3.5 Contractor's Warranty of Contract Price.

Contractor warrants and represents that the Contract Price, includes without Limitation: (i) all overhead, general and administrative expenses, including without limitation, both on-site and off-site direct job expenses and home office overhead for the Project and all fees and assessments for building and other permits for which Contractor is responsible, licenses and inspections required for the Project, and (ii) includes and assumes that from time to time Contractor will encounter delays, difficult conditions arising from limited access to work areas or other interferences for which responsibility is not otherwise attributable to Contractor and unforeseen conditions at the Site not constituting differing site conditions. Except as otherwise provided in the Contract Documents, Contractor assumes full responsibility for its examination, investigation and understanding of such delays and difficulties which may be encountered, and shall be deemed to have included in its Contract Price a sum to cover the cost and expense associated therewith.

4.0 TIME

4.1 Time of Essence.

Time is of the essence with respect to all time limits set forth in the Contract Documents.

4.2 Commencement.

4.2.1 Construction Services. Contractor agrees to commence the Work provided for herein within **10 calendar days** after receipt of the **Notification to Proceed** or as otherwise agreed in writing with the Director of his/her designee, and continue in a diligent, professional and worker-like manner as directed by the City without interruption until the each of the requested segment(s) and/or location(s) identified by the City for repairs and work is completed or within a total of **180 working days** (this period is inclusive of time to procure needed materials, mobilization, etc.), whichever occurs first, unless this Agreement is extended, suspended or terminated as provided herein.

.a Notwithstanding any other provisions of this Contract, Contractor shall not be obligated to perform any work and the City shall not be obligated to accept or pay for any work performed by the Contractor prior to issuance of a Notice to Proceed. The City's knowledge of work being performed prior to issuance of the Notice to Proceed shall not obligate the City to accept or pay for such work. Contractor shall provide all required contract bonds and evidences of insurance prior to commencing work pursuant to this Contract.

4.3 Extensions.

The Contract Time shall not be extended except by a properly authorized and written Change Order issued in accordance with the Contract Documents.

4.4 Compensation for Delay.

4.4.1 Sole Remedy. Extensions of time adjusting the Contract Time shall be Contractor's sole and exclusive remedy for delay for reasons beyond its reasonable control.

4.5 Liquidated Damages.

IF CONTRACTOR FAILS TO ACHIEVE SUBSTANTIAL COMPLETION OF THE WORK WITHIN THE PERIODS OF TIME REFERRED TO IN PARAGRAPH 4.2.1 OF THIS AGREEMENT (AS ADJUSTED BY CHANGE ORDER FOR EXTENSIONS PERMITTED BY THE CONTRACT DOCUMENTS), CITY WILL INCUR DAMAGES, THE AMOUNT OF WHICH WILL BE DIFFICULT OR IMPOSSIBLE TO ESTABLISH WITH CERTAINTY, INCLUDING BUT NOT LIMITED TO INEFFICIENCY AND DISRUPTION OF CITY'S OPERATIONS. THE PARTIES THEREFORE AGREE THAT FOR EACH DAY PAST THE COMPLETION DATES REFERRED TO IN PARAGRAPH 4.2.1 (AS ADJUSTED BY CHANGE ORDER FOR THE EXTENSIONS PERMITTED BY THE CONTRACT DOCUMENTS) THAT THE WORK IS NOT SUBSTANTIALLY COMPLETE, CONTRACTOR SHALL PAY CITY THE SUM OF ONE THOUSAND DOLLARS ($1,000) FOR EACH CALENDAR DAY DELAYED BEYOND THE TIME PRESCRIBED FOR FINISHING THE WORK AS LIQUIDATED DAMAGES. THIS SUM REPRESENTS A REASONABLE EFFORT TO ESTIMATE FAIR COMPENSATION FOR THE FORESEEABLE LOSSES CITY WILL INCUR ON ACCOUNT OF DELAYS IN SUBSTANTIAL COMPLETION OF THE WORK AND IS NOT A PENALTY. IF LIQUIDATED DAMAGES ARE NOT PAID, THE CITY MAY DEDUCT THE AMOUNT THEREOF FROM ANY MONEY DUE OR THAT MAY BECOME DUE TO THE CONTRACTOR UNDER THIS AGREEMENT IN ADDITION TO ANY OTHER REMEDY AVAILABLE TO THE CITY. CONTRACTOR SHALL NOT BE ASSESSED LIQUIDATED DAMAGES IF THE DELAY IS CAUSED BY ACTS OF GOD WHICH COULD NOT REASONABLY HAVE BEEN FORESEEN OR GUARDED AGAINST; STRIKES, BOYCOTTS OR LIKE OBSTRUCTIVE ACTIONS BY CONTRACTOR'S OR IT'S SUBCONTRACTOR'S EMPLOYEES WHICH ARE BEYOND CONTRACTOR'S CONTROL; FAILURE OF CITY TO PERFORM; OR FAILURE OF A PUBLIC UTILITY TO RELOCATE OR REMOVE AN EXISTING UTILITY REQUIRED FOR PERFORMANCE OF THIS CONTRACT. CITY AND CONTRACTOR HEREBY INDICATE THEIR AGREEMENT TO THE FOREGOING LIQUIDATED DAMAGES PROVISION:

_____	_____
City of Compton – City Manager	**Contractor – All American Asphalt**

4.6 Construction Schedule.

Contractor shall prepare and submit to City a detailed Construction Baseline Schedule (showing all milestones with critical activities on the Baseline Schedule) for each street segment(s) and/or location(s) identified and requested for repairs and Work prior to commencing construction. No Work shall be started until the Schedule has been approved in writing by the City. The Construction Schedule shall be prepared, utilizing a time-scaled bar chart showing continuous flow from left to right and major milestones which are critical to the completion of the construction of the Project and a clearly highlighted critical path. Durations and specific calendar dates shall be clearly and legibly shown for the start and finish of each activity. Activities shall be in sufficient detail to demonstrate a practical plan to complete the construction within the Contract Time. There shall be no extension of time granted due to delay caused by inability to obtain materials without the advance written approval of the Public Workers Director or his/her designee.

Contractor shall be held responsible for coordination of all phases of the operations/Work so that the schedule can be met. If Contractor desires to make a major change in its methods or

operations after commencing construction or if its Schedule fails to reflect the actual progress, the Contractor shall submit to the City a revised Construction Schedule. Said revised Schedule shall be submitted in advance of beginning revised operations. The City may suspend all progress payments if the Contractor fails to comply.

4.7 City Review Periods.

All schedules prepared by Contractor, shall include such City review periods as are required by the nature of the work and/or as requested by the City. Contractor shall in all cases deliver to City prior to commencement of a City review period a written request for review, accompanied, if appropriate, by the document, question or other information requiring the City or Architect review, response, approval or consideration. For purposes of determining compliance with the City review periods, if Contractor does not deliver its request for review before the first day of a City review period scheduled in the governing schedule, the City review period shall not commence until Contractor delivers such request and the respective City review date shall be extended (without any corresponding adjustment to the Contract Time) on a day-for-day basis until Contractor delivers such request to the proper entity from which a response, review or approval is sought. To the extent that such an extension causes delay to Contractor's performance within the Contract Time, such delay shall be deemed an inexcusable delay.

4.8 Governmental Authority Review Periods.

Contractor shall include in all of the schedules it prepares estimates of the time required for governmental authorities to inspect, review and approval of the Work while in progress. Contractor is solely responsible for the sufficiency and accuracy of its estimates of time for all governmental authority review periods.

5.0 CONSTRUCTION PHASE

5.1 General.

5.1.1 Contractor shall completely perform, to City's satisfaction, all of the Work in accordance with this Agreement and other Contract Documents.

5.1.2 Unless otherwise provided in the Contract Documents, Contractor shall furnish, or cause to be furnished, and shall pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

5.1.3 Contractor shall attend meetings with City as frequently as is necessary to the expeditious performance of the Work for the purpose of discussing construction issues which may arise during the Project.

5.2 Supervision of Work.

Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

5.3 Permits, Approvals, Licenses and Notices.

Contractor shall obtain and pay for (i) all permits, approvals, licenses and easements; and (ii) government charges and inspection fees pertaining to the construction of the Project.

5.4 Safety.

5.4.1 Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work.

5.4.2 Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

.a Employees and all other persons at the Site;

.b Materials and equipment stored on the Site or off the Site at locations for use in performance of the Work; and

.c The Project and all property located at the Site, whether or not said property or structures are part of the Project or involved in the Work.

5.4.3 Contractor shall designate an individual at the Site in the employ of Contractor who shall act as Contractor's designated safety representative with a duty to prevent accidents.

5.4.4 Losses not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Contractor or anyone for whose acts Contractor may be liable, shall be promptly remedied by Contractor at Contractor's cost and without reimbursement by City as a cost of work, or in any other manner.

5.4.5 If City deems any part of the Work or Site unsafe, City may require Contractor, without assuming responsibility for Contractor's safety program, to immediately stop performance of the Work or take corrective measures. Neither City's order nor Contractor's action in response thereto shall be the basis for adjustment in the Contract Price or Contract Time.

5.4.6 Should this work involve digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

.a Material the Contractor believes may be material that is hazardous waste, as defined in *Section 25117 of the Health and Safety Code that* is required to be removed to a Class I, Class II or Class III disposal site.

.b Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to deadline for submitting bids.

.c Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

5.4.7 Contractor represents that in advance of the excavation of any trench deeper than five (5) feet, it shall submit for acceptance by the City or a registered civil or structural engineer, employed by the City, to whom authority to accept has been delegated, in advance of excavation, of a

detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

5.5 Substitutions.

There shall be no substitutions in the Work or procedures or methods specified by the Contract Documents for performing the Work, unless Contractor first receives written approval for such substitution from City.

5.6 Trade Contractors.

5.6.1 If applicable, Contractor shall employ only Trade Contractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Each Trade Contractor, of every tier, shall be fully bound to the Contract Documents in the same manner as Contractor is bound to City for all the requirements of the Contract Documents to the extent applicable to the Trade Contractor's portion of the Work.

5.6.2 Contractor assumes responsibility for the proper performance of the Work of Trade Contractors, of every tier, and any acts or omissions in connection with such performance. Contractor shall coordinate the activities of all Trade Contractors, of every tier.

5.7 Separate Contractors.

5.7.1 Contractor agrees to reasonably cooperate with, and coordinate its activities so as not to interfere with, those Separate Contractors performing work at the Site, so that the Project can be completed in an orderly and coordinated manner without delay.

5.7.2 If any part of the Work depends upon other work performed by Separate Contractors, Contractor shall, prior to proceeding with that part of the Work, inspect such other work and promptly notify the City of any circumstance or fact that would render such other work unacceptable for the proper performance of the Work. Contractor shall not proceed with such part of the Work without further direction from the City. Contractor shall be liable for losses incurred due to any defects in such other work not so reported by Contractor.

6.0 ACCOUNTING RECORDS

6.1 Access.

Contractor shall keep, and shall include in its contracts with its Trade Contractors, provisions requiring its Trade Contractors to keep, full and detailed accounts in accordance with the requirements of the Contract Documents and exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar Projects and be satisfactory to City and shall include preservation of such records for a period of four (4) years after final completion of the Work, or for such longer period as may be required by law.

Contractor shall allow, and shall include in its contracts with its Trade Contractors, provisions requiring its Trade Contractors to allow, City or its authorized representative(s) and accountants, within twenty-four (24) hours after requested by City, to inspect, audit or reproduce any and all records relating to the Project. Such records shall include all information, materials and data of every

kind and character (hard copy, as well as computer readable data if it exists), that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, including without limitation the following: agreements; purchase orders; leases; contracts; commitments; arrangements; notes; schedules; daily diaries; superintendent reports; drawings; receipts; vouchers; memoranda; accounting records; job cost reports, job cost files (including documentation covering negotiated settlements); backcharge logs; general ledgers; documentation of cash and trade discounts earned, insurance rebates and dividends; any documents customarily maintained by contractors performing work on a cost plus a fee basis; other documents that City otherwise deems necessary to substantiate charges or claims related to the Project.

6.2 Enforcement.

Contractor hereby consents and agrees that any failure by Contractor to provide access to records as provided in this Article 6.0 shall be specifically enforceable by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit and/or reproduction of the records or to require delivery of the records to City for inspection, audit and/or reproduction.

7.0 INDEMNITY, BONDS

7.1 Indemnity.

7.1.1 General Indemnity. To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify, and hold harmless City, its City Council, boards and commissions, officials, officers, agents, employees, representatives, insurers and volunteers (hereinafter collectively referred to as "City") through legal counsel acceptable to City, from and against any and all Losses arising directly or indirectly from, or in any manner relating to, any of the following: (i) any act or omission (negligent or otherwise) of Contractor, or by its Trade Contractors, of any tier; (ii) performance or nonperformance by Contractor or its Trade Contractors, of any tier, of any of the obligations under this Agreement or the other Contract Documents; (iii) the construction activities of Contractor, or its Trade Contractors, of any tier, either on the Site or on other properties; (iv) the payment or nonpayment of money by Contractor, or by any of its Trade Contractors, of any tier; or (v) any personal injury, property damage or economic loss to third persons or entities associated with the performance or nonperformance by Contractor, or any of its Trade Contractors, of any tier; provided, however, that nothing contained herein shall be construed as obligating Contractor to indemnify the City for losses resulting from the City's sole negligence, active negligence or willful misconduct. Contractor shall pay City for any costs incurred in enforcing the defense and/or indemnity obligations under this provision. Nothing in this Section 7.1 shall be construed to give rise to any implied right of indemnity in favor of Contractor against the City.

7.1.2 Survival. The provisions of Paragraph 7.1.1 shall survive complete performance or termination of this Agreement.

7.1.3 Severability. The invalidity of any portion of Paragraph 7.1.1 shall not affect or render unenforceable any other portions thereof.

7.2 Bonds.

7.2.1 Bond Forms. Prior to commencing any construction of the Work, Contractor shall file with City good and sufficient "Labor and Material Payment" and "Performance" bonds in the amount of one hundred percent (100%) of the Contract Price for each. Contractor shall take steps to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to

the Contract Price due to Change Orders. The bonds shall be on forms satisfactory to and approved by City, signed by both Contractor and surety and properly notarized. Should any bond required hereunder or any surety on such bond become or be determined by City to be insufficient, it shall be replaced within ten (10) days by a bond that fully complies with the requirements of this Paragraph 7.2.1. No further payments to Contractor for work performed shall be made or become due until Contractor has fully complied with the requirements of this Section 7.2.

7.2.2 Duration. The payment bond shall remain in effect until sixty (60) days after final completion of the Work and all claims by Contractor and Trade Contractors, of every tier, have been satisfied. The performance bond provided by Contractor shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all of Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive final completion or termination, such as but not limited to Contractor's obligations under its warranties, guarantees and to defend and indemnify City.

7.2.3 Premiums. The premiums for all bonds are included in the Contract Price and shall be paid by Contractor.

7.2.4 Obligees. The performance and payment bonds shall name City as obligee.

7.2.5 Changes. Change Orders, Field Orders, Modifications, Scope Changes and other Changes in the Work and adjustments to the Contract Price or Contract Time shall in no way release or exonerate Contractor or its sureties from their obligations and notice thereof shall be waived by such sureties.

7.2.6 Communications. City shall have the right to communicate with Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Such communications shall not create or be interpreted as creating any contractual relationship between City and any such surety.

8.0 INSURANCE

8.1 Insurance Requirements. The Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this Section 8.0.

As a condition precedent to the effectiveness of this Contract for work to be performed hereunder and without limiting the Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operations hereunder. ***Failure on the part of the Contractor to procure or maintain insurance shall constitute a material breach upon which the City may immediately terminate this Agreement.*** Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

8.2 Minimum Scope of Insurance. Insurance coverage specified herein constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of the Contractor under the terms of the Agreement. Contractor shall procure and maintain, at its own costs and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary for its proper

protection of the work.

All insurance required hereunder shall be primary with respect to any insurance maintained by the City and shall not call on the City's program for contributions. Program(s) of insurance shall include:

8.2.1 Commercial General Liability. Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 11 88, with minimum limits of at least **One Million Dollars ($1,000,000.00)** per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits. Products and completed operations coverage shall be maintained for a minimum of two years after completion of the Work.

.a The policy shall contain no endorsements or provisions limiting coverage for (1) explosion, collapse or underground hazard (XCU); (2) products and completed operations; (3) contractual liability; (4) third party action over claims; (5) cross liability exclusion for claims or suits by one insured against another; or (6) contain any exclusions contrary to the Contract.

8.2.2 Automobile Liability. Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 06 92 covering "Any Auto" (Symbol 1) with minimum limits of **One Million Dollars ($1,000,000.00)** each accident. If Contractor does not own any company vehicles, the requirement may be satisfied by providing (a) a Personal Automobile Liability policy for the Contractor's own vehicle (as specified in the following paragraph); and (b) a non-owned auto endorsement to the Commercial General Liability policy if Contractor may use vehicles of others (e.g., vehicles of employees). Independent Contractors may not be able to purchase a Business Automobile policy and consideration may be given to accepting a Personal Automobile Liability policy. Requirements should stipulate "Automobile Liability Insurance with a limit of not less than $1,000,000 each accident."

8.2.3 Workers' Compensation. Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance, with a limit of not less than **One Million ($1,000,000.00)** per accident for bodily injury and disease. Workers' Compensation and Employer's Liability insurance may not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

8.2.4 Builder's Risk Insurance. Builder's Risk Insurance for any property constructed on behalf of the City, to cover "all risk" of physical loss providing for loss or damage from collapse, including collapse resulting from design error. The value insured shall cover 100% of the completed Contract cost and shall be maintained until full acceptance of the Work.

8.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

8.3.1 The policy or policies of insurance required by Section 8.2.1 (Commercial General Liability) shall be endorsed to provide the following:

.a Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be named as ***"additional insured"*** with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

.b Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4)

contain any other exclusions contrary to the Contract.

.c Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City, except ten (10) days written notice shall be provided for non-payment of premium.

8.3.2 The policy or policies of insurance required by Section 8.2.2 (Automobile Liability) shall be endorsed to provide the following:

.a Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City, except ten (10) days written notice shall be provided for non-payment of premium.

8.3.3 The policy or policies of insurance required by Section 8.2.3 (Workers' Compensation) shall be endorsed to provide the following:

.a Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

.b Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City, except ten (10) days written notice shall be provided for non-payment of premium.

8.4 Waiver of Subrogation. Required insurance coverage's shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

8.5 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

8.6 Evidence of Insurance. The Contractor, concurrently with the execution of the Contract, and as a condition precedent to the effectiveness thereof, shall deliver certified copies of the required policies on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

8.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

8.8 Insurance for Subcontractors. All subcontractors shall be included as additional insured's under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an ***"additional insured"*** to the subcontractor's policies. Contractor shall submit proof of compliance with this provision upon request of the City.

8.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

9.0 CHANGE ORDERS

9.1 Changes. City has the right, in its sole discretion, to make whatever changes it deems necessary or desirable to the Work; no change ordered by City shall entitle Contractor to an adjustment of the Contract Price or Contract Time unless it constitutes a Scope Change.

9.2 Change Orders. A Change Order is a duly authorized written order signed by City and Contractor, and issued after execution of this Agreement, authorizing an adjustment in the Contract Price and/or Contract Time. The Contract Price and Contract Time can be adjusted only by Change Order. No action, conduct, omission, prior failure or course of dealing by City shall act to waive, modify, change or alter the requirement that Change Orders must be duly authorized and in writing signed by City.

10.0 CERTIFICATIONS

10.1 Certification of Contractor. I, **Mark Luer**, **HEREBY CERTIFY** that I am the **President**, and duly authorized representative of the Contractor firm of **All American Asphalt** and that, except as hereby expressly stated, neither I nor the above firm that I represent have: (i) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor (ii) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor (iii) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

10.2 Debarment and Suspension Certification. The Contractor, under penalty of perjury, certifies that, except as noted below, he/she/it or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

a. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local agency; and
b. has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local agency within the past 3 years; and
c. does not have a proposed debarment pending; and
d. has not been indicted, convicted, or had a civil judgment rendered against him/her/it by a court of competent jurisdiction in any matter involving fraud or official misconduct in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property within the past 3 years; and
e. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph; and
f. have not had one or more public transactions (Federal, State or local) terminated for cause or default within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Supply exceptions on separate page]

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

[Attach separate page]

These certifications are a material representation of fact upon which reliance was placed when this transaction was made or entered into. The above certifications are part of this Contract. Signing this Agreement on the signature portion thereof shall also constitute signature of the above Certifications.

_____ _____
Mark Luer, President **(Date)**

10.3 Non-Lobbying Certification for Federal-Aid Contracts. The Contractor certifies to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

These certifications are a material representation of fact upon which reliance was placed when this transaction was made or entered into. The above certifications are part of this Contract. Signing this Agreement on the signature portion thereof shall also constitute signature of the above Certifications.

_____ _____
Mark Luer, President **(Date)**

11.0 DEFAULT AND TERMINATION

11.1 Default by Contractor.

11.1.1 Notice of Default. Without limitation to any of City's other rights or remedies at law or in equity, City shall have the right to terminate this Agreement in the event that Contractor fails or refuses to perform any of the obligations set forth in this Agreement or the other Contract Documents, and fails to cure such default in the manner required hereafter.

11.1.2 Opportunity to Cure Default. Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) business days after receipt of written notice of such default from City; provided, however, that if the breach cannot reasonably be cured within such time then Contractor will commence to cure the breach within two (2) days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) calendar days after receipt of such written notice.

11.2 City's Rights and Remedies Upon Default.

11.2.1 Remedies Upon Default. In the event that Contractor fails to cure any breach of this Agreement within the time periods set forth above, then City may pursue any remedies available under law or equity, including, without limitation, the following:

.a Delete Certain Services. City may, without terminating this Agreement, delete certain portions of the Work, reserving to itself all rights to recover losses related thereto.

.b Perform and Withhold. City may, without terminating this Agreement, engage others to perform the Work or portion of the Work that has not been performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to recover losses related thereto.

.c Suspend this Agreement. City may, without terminating this Agreement and reserving to itself all rights to recover losses related thereto, suspend all or any portion of this Agreement for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Price or Contract Time, and shall have no liability to Contractor for adjustment to the Contract Price, Contract Time, or for losses, if City directs Contractor to resume Work.

.d Terminate this Agreement. City may terminate all or any part of this Agreement for cause according to the notice provisions set forth in this Agreement, reserving to itself all rights to recover losses related thereto.

.e Invoke the Performance Bond. City may, with or without terminating this Agreement and reserving to itself all rights to recover losses related thereto, exercise its rights under the Contractor's performance bond.

11.2.2 Rights Cumulative. All of City's rights and remedies under this Agreement are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as "material" shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate or the exercise of its other rights or remedies for default to only material breaches. City shall determine whether there has been noncompliance with the Contract Documents so as to warrant exercise by City of its rights and remedies for default. No termination or action taken by City after termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all losses suffered by City.

11.2.3 Monies. In the event of a termination or suspension of all or a portion of the Work due to a default by Contractor, City shall have the right, without releasing Contractor or its sureties from liability for failure to fulfill this Agreement, to withhold all or a portion of the monies owing or retained until final completion of the Work. Any cost over and above the Contract Price arising from the suspension of operations of this Agreement and the completion of the Work shall be paid by Contractor's

sureties. Contractor will be paid any surplus monies remaining after all contract disputes have been resolved and finally determined.

11.2.4 Delays by Sureties. Without limitation to any of City's other rights or remedies under the law or in equity, City has the right to suspend the performance by Contractor's sureties in the event of any of the following: (i) failure of the sureties to begin work within a reasonable time in such manner as to ensure full compliance with the Contract Documents within the Contract Time; (ii) abandonment of the Work; (iii) if at any time City is of the opinion the Work is unnecessarily or unreasonably delayed; (iv) willful violation of any terms of this Agreement; (v) failure to perform according to this Agreement or the other Contract Documents; or (vi) failure to follow instructions of City for performance of the Work within the Contract Time. City will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, City shall have the power to suspend the operation or any part thereof of Contractor's sureties.

11.2.5 Contractor Obligations. Upon receipt of a notice of termination for default, Contractor shall, unless the notice states otherwise, perform each of the obligations set forth in Paragraph 11.4.1, below.

11.2.6 Damages to City.

.a Reservation of Remedies. City will be entitled to all damages available under the law, and all rights in equity, in the event of Contractor's breach of this Agreement or the other Contract Documents.

.b Deductions. If City suffers a loss due to Contractor's nonperformance, then such loss shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon completion of the Project. If the loss incurred by City exceeds the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

.c No Release. If, however, City elects to terminate this Agreement for cause, all monies due Contractor or retained under the terms of the Contract Documents shall be forfeited to City. Such forfeiture shall not release Contractor or its sureties from liability for failure to fulfill this Agreement. Contractor and its sureties will be credited with the amount of monies forfeited toward any greater sum they may be liable for in connection with Contractor's default.

11.3 Suspension by City for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as City may determine, with such period of suspension to be computed from the date of the written order. Without limitation to the foregoing, Contractor acknowledges that issuance of a suspension order by City due to circumstances relating to City's compliance with the California Environmental Quality Act is foreseeable and that such suspension order, regardless of its duration, shall not be considered a breach by City of this Agreement. Upon receipt of a suspension order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the suspension order during the period of work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the suspension order or it shall have the right, without incurring a liability to Contractor for lost profits or consequential damages, to delete the Work covered by such suspension order by issuing a Change Order.

11.3.1 Resumption. If a suspension order is canceled or expires, Contractor shall

resume and continue with the Work. A Change Order will be issued adjusting the Contract Price and/or the Contract Time for additional costs of work and delay necessarily caused by such suspension.

11.3.2 Suspension Order Required. The provisions of this Section 11.3 shall not apply if a suspension order is not issued by City. A suspension order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

11.4 Termination Without Cause. City shall have the option, at its sole discretion and without cause, to terminate this Agreement in part or in whole by giving thirty (30) days' written notice to Contractor as provided herein. Contractor agrees to accept such sums as allowed under this Section 11.4 as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, Loss of anticipated profits, Loss of revenue, lost opportunity, or other consequential, direct, indirect, incidental Losses or damages, of any kind.

11.4.1 Contractor Obligations. Upon receipt of notice of termination without cause, Contractor shall, unless the notice directs otherwise, do the following:

.a Immediately discontinue performance to the extent specified in the notice;

.b Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of its obligations as is not discontinued;

.c Provide to City a description, in writing no later than two (2) business days after receipt of the notice of termination, complete copies of all subcontracts, purchase orders and contracts that are outstanding, including any change orders, amendments and modifications thereto, status of payments and balance owing, the status of performance and claims by Trade Contractors, together with such other information as City may determine necessary in order to decide whether to accept assignment of, or request Contractor to terminate the subcontract, purchase order or contract;

.d Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and

.e Thereafter continue only such performance as may be necessary to preserve and protect work already completed or in progress and to protect materials and equipment on the Site or in transit thereto.

11.4.2 Final Billing. Following termination without cause and within thirty (30) days after receipt of a complete and timely billing from Contractor seeking payment of sums authorized by this Paragraph 11.4.2, City shall pay to Contractor as its sole and exclusive compensation for performance under this Agreement the following:

.a The Contract Price earned and payable as of the date of termination, less sums previously paid to Contractor;

.b Plus, reasonable costs of work of Contractor and Trade Contractors for (i) demobilizing, and (ii) administering the close out of its participation in the Project (including, without limitation, all billing and accounting functions) for a period of no longer than thirty (30) days after receipt of the notice of termination;

11.4.3 Trade Contractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with its Trade Contractors permitting termination for convenience by Contractor on terms that are consistent with this Agreement and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor.

11.5 Contractor's Rights and Remedies.

11.5.1 Contractor's Remedies. Contractor may terminate this Agreement for cause only upon the occurrence of one of the following:

.a The work is stopped for one hundred sixty (160) consecutive days, through no act or fault of Contractor, any Trade Contractor, of any tier, or any employee or agent of any of them, due to issuance of an order of a court or other governmental authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

.b City fails to make payment of sums that are not in good faith disputed by City and fails to cure such default within (i) ninety (90) days after receipt of notice from Contractor notifying City of the default; and (ii) an additional thirty (30) days notice to City notifying it of its intention to terminate this Agreement.

11.5.2 Continuous Performance. Provided that Contractor is paid undisputed sums due under this Agreement, Contractor shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with City, including, without limitation, any disputes or disagreements over payments of funds that are disputed in good faith by City.

12.0 MISCELLANEOUS PROVISIONS

12.1 Warranties. Contractor warrants and guarantees all Work under this Contract (which for purposes of this section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one (1) year (or period of time specified elsewhere in this Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) following completion and the date of final acceptance of the Project, Contractor shall, within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year, commencing with the date of acceptance of such corrected Work. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. This obligation shall survive completion or termination of the Contract.

12.2 Non-Liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or

breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Contract.

12.3 Governing Law. This Agreement shall be governed by the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

12.4 Waiver of Jury Trial. Contractor voluntarily waives its right to a jury trial of any cause of action, claim, counter-claim or cross-complaint in any action, proceeding or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between City and Contractor, Contractor's performance on the Project, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect. Contractor shall include this provision for waiver of jury trial right in its contracts with its Trade Contractors who provide work to the Project, waiving the right of a jury trial in any action involving City as a party, whether by joinder, consolidation, counter-claim, cross-complaint or otherwise.

12.5 Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

12.6 Successors and Assigns. This Agreement shall be binding on successors, assigns and legal representatives of and persons in privity of contract with City or Contractor. Contractor shall not assign, sublet or transfer an interest in this Agreement without advance written approval of City. Assignment, subletting or transfer will not release Contractor from any of its obligations to City.

12.7 Interpretation. Contractor and City acknowledge that the terms of this Agreement has been mutually negotiated and that such documents shall not be interpreted against either City or Contractor on the basis that either party was responsible for or in control of the drafting of such documents.

12.8 Survival. All provisions of this Agreement which by their nature continue beyond the termination or completion of performance under this Agreement, including, without limitation, those obligations pertaining indemnification, insurance and confidentiality, shall survive and continue in force after either termination or completion of performance by Contractor.

12.9 Conflict of Interest. The Contractor represents, warrants and agrees that to the best of its knowledge, it does not presently have, nor will it acquire during the term of this Contract, any interest direct or indirect, by Contract, employment or otherwise, or as a partner, joint venturer or shareholder (other than as a shareholder holding a one percent (1%) or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any Contract, subcontract or arrangement with the City. Upon execution of this Contract and during its term, as appropriate, the Contractor shall disclose in writing to the City, any other Contract or employment during the term of this Contract by any other persons, business or corporation in which employment will or may likely develop a conflict of interest between the City interest and the interests of the third parties.

12.10 Copyrights. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. All documents become the property of the City who holds all the rights to said data.

12.11 Confidentiality of Reports. The Contractor shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of the City.

12.12 Employees of Contractor. The City does not and will not condone any act, gestures, comments or conduct from the Contractor's employees, agents or subcontractors which may be construed as sexual harassment or any other type of activity or behavior that might be construed as harassment. The Contractor will properly investigate all charges of harassment by residents, employees, agents or subcontractors and is responsible for taking appropriate action after reports of harassment are received by the Contractor.

12.13 Patent Rights. The City will hold all the patent rights with respect to any discovery or invention which arises or is developed in the course of, or under this Contractor.

12.14 Waivers. A waiver by either party to this Agreement of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

12.15 Federal and State Withholding Taxes. Contractor shall be responsible for paying when due all federal and state income withholding taxes for all earning under this Agreement. Contractor agrees to indemnify City for any claims, costs, losses, fees, penalties, interest, or damages suffered by City resulting from Contractor's failure to comply with this provision.

12.16 Entire Agreement. The Contract Documents represent the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by Change Order. Nothing contained in the Contract Documents shall be for the benefit of, create any contractual relationship with, or give rise to a cause of action in favor of any third party.

12.17 Execution Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

13.0 NOTICES

13.1 Delivery. All notices, demands or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when: (a) delivered personally, or (b) on the fifth (5^{th}) day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided, or (c) one (1) business day after send by facsimile transmission.

13.2 Addresses. All notices, demands, requests or approvals from Contractor to City shall be addressed to the City at:

City of Compton
205 South Willowbrook Avenue
Compton, California 90220
Attn: Director, Public Works Department
(310) 605-5505
(310) 605-6326 – Fax

with copies to:

City of Compton
205 South Willowbrook Avenue
Compton, California 90220
Attn: City Manager

All notices, demands or requests from City to Contractor shall be addressed to:

All American Asphalt
400 East Sixth Street
Corona, California 92879
Attn: Mark Luer, President
(951) 736-7600
(951) 736-7646 - Fax

13.3 Change in Address. In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may amend, supplement and update the notice list to add, delete or replace any listed individuals; however, the amendment must be in writing.

IN WITNESS WHEREOF, Contractor has executed this Agreement and the City, by its City Manager, who is authorized to do so, has executed this Agreement.

ALL AMERICAN ASPHALT
CONTRACTOR

Dated: _____ **By _____**
Mark Luer, President

CITY OF COMPTON

Approved by:

Dated: _____ **By _____**
Thomas Thomas, City Manager

Approved as to form:

By _____ **Dated: _____**
Eric J. Perrodin, City Attorney

ATTEST:

Dated: _____ **By _____**
Alita Godwin, City Clerk

June 14, 2022

TO: **MAYOR AND CITY COUNCIL MEMBERS**

FROM: **CITY MANAGER**

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A 3-YEAR PROFESSIONAL SERVICES AGREEMENT WITH AND ISSUE A PURCHASE ORDER FOR NV5, INC. FOR ON-CALL CIVIL AND TRAFFIC ENGINEERING SERVICES IN THE AMOUNT OF $500,000 ANNUALLY**

SUMMARY

Adoption of this resolution will authorize the City Manager to enter into a 3-year professional services agreements with and issue a purchase order for NV5 Inc. for On-Call Civil and Traffic Engineering Services in the amount of $500,000 annually.

BACKGROUND

Traffic Engineering

The City's Public Works Engineering Department ("Department") is responsible for the Traffic Engineering duties for the City. The purpose is to maintain safe and efficient traffic management and circulation and to make enhancements when necessary. Traffic Engineering includes items related to vehicles, bicycles, pedestrians, traffic signals, signs, colored curb markings, pavement markings and striping as well as on-street parking for all City streets.

Plan Check

The department is also responsible for Plan Check services which includes plan reviews (new development and grading plans) that pertain to Traffic Engineering items such as but not limited to: signing and striping, driveway layouts, ADA compliance including ADA ramps, street lights, traffic signals, and parking lot layouts. Review improvement plans submitted for conformance to Conditions of Approval, for compliance with the Tentative Tract Maps filed and approved, and for compliance with the City engineering standards. Also to provide third-party study reviews as required.

Due to the voluminous nature of the projects and assignments and the insufficient number of personnel for certain services and projects, the yearly number of essential capital improvement projects in both civil and traffic engineering exceeds staff capacity. Therefore, the Department desires to employ the expertise of a qualified engineering firm to perform and complete these tasks in an expeditious manner.

Staff Report - On-Call Civil and Traffic Engineering Services- NV5, Inc.
June 14, 2022

STATEMENT OF THE ISSUE

On February 16, 2022, the City solicited Request for Proposals ("RFP") for On-Call Civil and Traffic Engineering Services from qualified engineering firms to provide various plan check services for the Public Works Engineering Department for three fiscal years from 2022 through 2025, with two-one year extension options.

On March 16, 2022, the City received six proposals and ranked the top three firms follows:

Rank	Firm	Location
1	NV5, Inc	Irvine, CA
2	Transtech	Chino Hills, CA
3	Interwest	Irvine, CA

The criteria for evaluating the proposals include, but were not limited to the followings: completeness of proposal, consultant's demonstrated understanding of the Scope of Services, Firm's and key project team members experience in performing similar work for the public sector with exceptional tracking and record-keeping capability, firm's and key project team member's record in accomplishing work assignments, the resources to meet a compressed time schedule and fee required to perform the requested specific services, and schedule of work.

After careful consideration, it was determined that the proposal submitted by NV5, Inc. was the most qualified and responsive firm to provide On-Call Civil and Traffic Engineering Services.

NV5, Inc. has been providing engineering and consulting services in the public and private sectors for more than 70 years, delivering solutions through six business verticals: Testing, Inspection and Consulting; Infrastructure; Utility Services; Environmental Health Sciences; Buildings and Program Management; and Geospatial Technology.

NV5, Inc. Irvine office specializes in the engineering design, construction management and inspection of capital improvement projects, including streets, traffic systems, water and wastewater systems, drainage and fold control, parks and recreational facilities, vertical construction, and landscaping and grading.

NV5, Inc. team includes licensed civil engineers, license contractors, construction managers, certified inspectors and experienced public works professionals. Their team members have extensive experience working within the structure of municipal government and public construction policy and will seamlessly integrate with the City's team.

The firm has been providing services in Los Angeles County, including the City of Compton for many years. The firm was determined to be the most responsive consultants and demonstrated a high degree of technical proficiency combined with an understanding of the community and project needs. Their staff, many of whom have experience as former public agency staff and management, understand the uniqueness of public agency needs and issues, are experienced and qualified to provide the expertise needed to perform the tasks of the projects in both civil and traffic engineering.

Their fee schedules to provide the needed services are reasonable in regard to the consulting industry. The services will be provided on an "as needed" basis in accordance with the professional services agreement.

Therefore, in order to authorize the City Manager to enter into a 3-year professional services agreements with and issue purchase orders to NV5, Inc. for On-Call Civil and Traffic Engineering Services in the amount of $500,000, City Council's authorization is necessary.

FINANCIAL IMPACT

Funds in the amount of $500,000 will be available in the City's FY 2022-2023 budget in Account No. 1001-710-000-4262. Funds in the amount of $500,000 for the remaining years including the two one-year extension options will be available in future approved City budgets.

ALTERNATIVE

There is no alternative recommended at this time. The City is need of qualified engineering firms to provide On-Call Civil and Traffic Engineering Services.

RECOMMENDATION

Staff recommends that the City Council adopt the attached Resolution.

JOHN D. STRICKLAND, JR., PROJECT MANAGER
PUBLIC WORKS ENGINEERING DEPARTMENT

APPROVED FOR FORWARDING:

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO ENTER INTO A 3-YEAR PROFESSIONAL SERVICES AGREEMENT WITH AND ISSUE A PURCHASE ORDER FOR NV5, INC. FOR ON-CALL CIVIL AND TRAFFIC ENGINEERING SERVICES IN THE AMOUNT OF $500,000 ANNUALLY

WHEREAS, the City's Public Works Engineering Department ("Department") is responsible for the Traffic Engineering duties for the City; and

WHEREAS, the purpose is to maintain safe and efficient traffic management and circulation and to make enhancements when necessary; and

WHEREAS, traffic Engineering includes items related to vehicles, bicycles, pedestrians, traffic signals, signs, colored curb markings, pavement markings and striping as well as on-street parking for all City streets; and

WHEREAS, the department is also responsible for Plan Check services which includes plan reviews (new development and grading plans) that pertain to Traffic Engineering items such as but not limited to: signing and striping, driveway layouts, ADA compliance including ADA ramps, street lights, traffic signals, and parking lot layouts; and

WHEREAS, review improvement plans submitted for conformance to Conditions of Approval, for compliance with the Tentative Tract Maps filed and approved, and for compliance with the City engineering standards and also to provide third-party study reviews as required; and

WHEREAS, due to the voluminous nature of the projects and assignments and the insufficient number of personnel for certain services and projects, the yearly number of essential capital improvement projects in both civil and traffic engineering exceeds staff capacity; and

WHEREAS, the Department desires to employ the expertise of a qualified engineering firm to perform and complete these tasks in an expeditious manner; and

WHEREAS, on February 16, 2022, the City solicited Request for Proposals ("RFP") for On-Call Civil and Traffic Engineering Services from qualified engineering firms to provide various plan check services for the Public Works Engineering Department for three fiscal years from 2022 through 2025, with two-one year extension options; and

WHEREAS, on March 16, 2022, the City received six proposals and ranked the top three firms follows:

Rank	Firm	Location
1	NV5, Inc.	Irvine, CA
2	Transtech	Chino Hills, CA
3	Interwest	Irvine, CA; and

WHEREAS, the criteria for evaluating the proposals include, but were not limited to the followings: completeness of proposal, consultant's demonstrated understanding of the Scope of Services, Firm's and key project team members experience in performing similar work for the public sector with exceptional tracking and record-keeping capability, firm's and key project team member's record in accomplishing work assignments, the resources to meet a compressed time schedule and fee required to perform the requested specific services, and schedule of work; and

WHEREAS, after careful consideration, it was determined that the proposal submitted by NV5, Inc. was the most qualified and responsive firm to provide On-Call Civil and Traffic Engineering Services; and

WHEREAS, NV5, Inc. has been providing engineering and consulting services in the public and private sectors for more than 70 years, delivering solutions through six business verticals: Testing, Inspection and Consulting; Infrastructure; Utility Services; Environmental Health Sciences; Buildings and Program Management; and Geospatial Technology; and

WHEREAS, NV5, Inc. Irvine office specializes in the engineering design, construction management and inspection of capital improvement projects, including streets, traffic systems, water and wastewater systems, drainage and fold control, parks and recreational facilities, vertical construction, and landscaping and grading; and

WHEREAS, NV5, Inc. team includes licensed civil engineers, license contractors, construction managers, certified inspectors and experienced public works professionals. Their team members have extensive experience working within the structure of municipal government and public construction policy and will seamlessly integrate with the City's team; and

WHEREAS, the firm has been providing services in Los Angeles County, including the City of Compton for many years and the firm was determined to be the most responsive consultants and demonstrated a high degree of technical proficiency combined with an understanding of the community and project needs; and

WHEREAS, their staff, many of whom have experience as former public agency staff and management, understand the uniqueness of public agency needs and issues, are experienced and qualified to provide the expertise needed to perform the tasks of the projects in both civil and traffic engineering; and

WHEREAS, their fee schedules to provide the needed services are reasonable in regard to the consulting industry and the services will be provided on an "as needed" basis in accordance with the professional services agreement; and

WHEREAS, funds in the amount of $500,000 will be available in the City's FY 2022-2023 budget in Account No. 1001-710-000-4262; and

WHEREAS, funds in the amount of $500,000 for the remaining years including the two one-year extension options will be available in future approved City budgets; and

WHEREAS, in order to authorize the City Manager to enter into a 3-year professional services agreements with and issue purchase orders to NV5, Inc. for On-Call Civil and Traffic Engineering Services in the amount of $500,000, City Council's authorization is necessary.

NOW, THERFORE, THE CITY COUNCIL OF THE CITY OF COMPTON RESOLVES AS FOLLOWS:

SECTION 1. That the City Manager, upon the advice and approval of the City Attorney is hereby authorized to enter into a 3-Year professional services agreement with two-one year options to renew with NV5, Inc. to provide On-Call Civil and Traffic Engineering Services in the amount of $500,000 annually.

SECTION 2. That funds in the amount of $500,000 annually will be available in the Public Works Engineering Department's Fiscal Year 2022-2023 budget in Account No. 1001-710-000-4262.

SECTION 3. That the City Manager is hereby authorized to issue a purchase order in the amount of $500,000 annually to be established for NV5, Inc.

SECTION 4. That funds for the services for the remaining terms and the two year extensions will be allocated in the City's future approved budgets.

SECTION 5. That copies of this resolution shall be filed in the offices of the City Manager, City Controller, City Clerk, and the Public Works Engineering Department.

SECTION 6. That the Mayor shall sign and the City Clerk shall attest to the adoption of this resolution.

ADOPTED this _____ day of _____, 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on this _____ day of _____, 2022.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF COMPTON
AND
NV5, INC.

This **AGREEMENT** is entered into by and between the **CITY OF COMPTON**, a municipal corporation of the State of California (hereinafter referred to as **"CITY"**) located at 205 South Willowbrook Avenue, Compton, California 90220 and **NV5, INC.** located at 163 Technology Drive, Suite 100, Irvine, CA 92618.

RECITALS:

WHEREAS, the City has determined that there is a need to employ the services of a qualified and experienced civil engineering firm to provide plan review and final mapping services; and

WHEREAS, Consultant NV5, Inc. warrants that it is specifically trained, experienced, competent, and has the resources to provide such services which will be required by this project; and

WHEREAS, by Resolution No. _____, adopted on the____day of _____ the City Council gave approval to award a contract to the Consultant to provide the services required on an "as-needed" basis; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Consultant and City**,** for the consideration, terms and conditions herein described, mutually agree as follows:

NOW, THEREFORE, Consultant and City**,** for the consideration, terms and conditions herein described, mutually agree as follows:

AGREEMENT:

1. <u>Services to be rendered by Consultant.</u> It is the mutual understanding of the parties that the Consultant shall perform and provide civil engineering services, to include but not be limited to: technical plan check for engineering documents and plans, map reviews, conformance with Federal, state and local regulations, particularly the California Subdivision Map Act and general compliance with City standards, ordinances and regulations on an "as-needed" basis as further detailed in Consultant's **"Proposal"** dated March 16th, 2022, which is incorporated herein by this reference.

Consultant acknowledges that in entering into this Agreement the City is relying on Consultant's special skills and experience to do and perform the services in accordance with best standards of professional practice. While performing the Services, Consultant agrees to perform all the said work and furnish all the necessary materials at its own cost and expense necessary to complete said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and to the reasonable satisfaction of the City**.**

Consultant services hereunder shall be performed in good, workmanlike and professional manner. Consultant shall be responsible for correcting and completing all **errors and omissions** related to the services provided by the Consultant for this Agreement at no additional cost to the City**.** "Errors" and "Omissions" for purposes of this paragraph are defined to mean a failure by the Consultant to meet the standards of its profession as set forth in the preceding paragraph. The acceptance of the services by City does not release Consultant from these obligations.

Consultant will be responsible for employing or engaging all persons necessary to perform the services. All of Consultant's staff will be qualified by training and experience to perform their assigned tasks. Consultant will give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and will keep the services under its control. On demand of City, if any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he or she will be discharged immediately from the services.

Tamara O'Neal, PE, Project Manager of Consultant, shall be primarily responsible for representing Consultant in performance of this Agreement.

2. **Duration of Contract.** The term of this Agreement shall start from July 1st, 2022 to June 30, 2025 on an "as-needed" basis with a two one-year extension options, unless this Agreement is terminated as provided herein.

3. **Compensation.** The method of payment for the services will be based on a fee-for-services basis, billable at the rates identified within **CONSULTANT's "Fee Schedule"**, which is attached hereto and incorporated herein. It is understood and agreed between the parties that the total maximum compensation payable for each of the services to be provided by the **CONSULTANT** during the term of this Agreement shall be limited to a not-to-exceed amount of **Five Hundred Thousand Dollars ($500,000.00) Annually.** The total price paid the Consultant will include compensation for all work, including travel, materials, supplies, vendor services, expenses and subcontracted work. No additional compensation will be paid to the Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total compensation will be negotiated between the Consultant and the City. Adjustment in the total compensation will not be effective until authorized and approved in writing by the City**.**

Consultant will generally adhere to the schedule set forth by the City provided, that City will grant reasonable extensions of time for the performance of the services occasioned by unusually lengthy governmental reviews of Consultant's work product or other unavoidable delays occasioned by unforeseen circumstances; provided, further, that such unavoidable delay will not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees.

Consultant acknowledges the importance to City of City's project schedule and agrees to put forth its best professional efforts to perform the services in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound practices. Consultant will work such overtime or engage such personnel and equipment as necessary to maintain the schedule, without additional compensation.

Progress payments may be made in arrears based on the percentage of work and deliverables completed by the Consultant. If Consultant fails to submit the required deliverable items according to schedule or as required by the Agreement, except for those amounts that are due and not reasonably in dispute, the City shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions noted herein.

Consultant shall be reimbursed within thirty (30) days, or as promptly as fiscal procedures may permit, upon receipt by the City of itemized invoices for services completed. Invoices shall be submitted no later than 45 calendar days after the performance of work for which the Consultant is billing. Invoices shall detail the work performed on each task as applicable. Invoices shall be delivered or mailed to the Director of Public Works/Municipal Utilities Department at the following address: **City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.**

In the event of termination, the Consultant shall be entitled to compensation for the undisputed reasonable value of services performed to the effective date of termination, including any noncancellable obligations incurred prior to termination; provided, however, that the City may condition payment of such compensation upon the Consultant's delivery to the City of any and all City property, documents, reports, records, materials and work product associated with the performance of this Agreement.

4. Ownership of Materials. All product produced by Consultant or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of City. In the event this Agreement is terminated, all Work Product produced by Consultant or its agents, employees and subcontractors pursuant to this Agreement will be delivered to City pursuant to the termination clause of this Agreement. Consultant will have the right to make one (1) copy of the Work Product for Consultant's records.

The Work Product may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable, without further employment of or payment of any compensation to Consultant; provided, however,

that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another consultant to use, the Work Product, City agrees to hold Consultant harmless from any and all liability, costs, and expenses relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of Consultant, or anyone for whose acts it is responsible, in preparation of the Work Product.

Consultant will not be responsible for deficiencies solely attributable to modifications of the Work Product performed by others, or that arise from use of the Documents in connection with a project or site other than that shown in the Work Product.

5. Independent Contractor Status. Consultant, its officers, employees, subconsultants, subcontractors, agents and volunteers (collectively hereinafter the "Consultant"), will perform the services in Consultant's own way and pursuant to this Agreement as an independent contractor and in pursuit of Consultant's independent calling, and not as an employee of City. The persons used by Consultant to provide the services under this Agreement will not be considered employees of City for any purposes. Neither the City nor any of its officers, employees, agents or volunteers shall have any control over the conduct of the Consultant, except as expressly set

forth in this Agreement. Consultant expressly warrants that while engaged in carrying out and complying with any terms and conditions of this Agreement that Consultant shall not at any time or in any manner, represent that Consultant is in any manner officers, employees, agents or volunteers of the City. Consultant shall obtain no rights to retirement, health care or any other benefit that accrue to City officials, officers, or employees. Consultant expressly waives any claim to such rights.

The payment made to Consultant pursuant to the Agreement will be the full and complete compensation to which Consultant is entitled. City will not make any federal or state tax withholdings on behalf of Consultant or its agents, employees or subcontractors. City will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Consultant or its employees or subcontractors. Consultant agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Consultant or any agent, employee, or contractor of Consultant for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Consultant.

6. Successors, Assignment and Delegation. City and the Consultant each binds themselves, their partners, successors, assigns and legal representatives to the other hereto and to partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in this Agreement.

The expertise and experience of Consultant are material considerations for this Agreement. Consultant shall not assign or transfer any interest in this Agreement or the performance of any of Consultant's obligations under this Agreement without the prior written consent of the City. Any attempted assignment or transfer of any of Consultant's rights, duties or obligations arising under this Agreement shall be null and void.

7. Nondiscriminatory Employment Practices. During the performance of this Agreement, the Consultant agrees not to discriminate against any employee or applicant for employment because of race, sex, creed, color, religion, age, sexual orientation, marital status, national origin, political affiliation, handicap or belief in accordance with requirements of City, State or Federal laws and regulations. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, creed, color, religion, age, sexual orientation, marital status, national origin, political affiliation, handicap or belief in accordance with requirements of City, State or Federal laws and regulations. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees, applicants and subcontractors for employment, notices setting forth the provisions of this non-discrimination clause.

In the event of the Consultant's non-compliance with the non-discrimination clause of this Agreement, this Agreement may be immediately canceled, terminated or suspended in whole or in part.

8. Subcontracting. Consultant's services are unique and personal. Except as may be specified in Consultant's Proposal and agreed to by the City, Consultant will not subcontract any portion of the services without prior written approval of City Manager or his/her designee. If

Consultant subcontracts any of the services, Consultant will be fully responsible to City for the acts, errors and omissions of Consultant's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Consultant and City. Consultant will be responsible for payment of subcontractors. Consultant will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Consultant's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

9. **Other Consultants.** The City reserves the right to employ other consultants in connection with the services.

10. **Indemnification.** Consultant shall indemnify and save harmless the City, its officials, officers, employees, agents and volunteers (collectively hereinafter the "City"), against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City and shall indemnify and save the City from any and all liability and expense including reimbursement of reasonable defense costs and legal fees, and claims, demands, suits, actions or proceedings of any kind or nature, including Workers' Compensation claims, of or by anyone whomsoever to the extent resulting from or arising out of the negligent, reckless or willful misconduct for the Consultant, its officers, employees, subconsultants, subcontractors or agents in the performance of the duties undertaken by Consultant pursuant to this Agreement.

This indemnification and hold harmless obligation does not extend to claims arising out of the negligence or willful misconduct of the City.

11. **Insurance.** Without limiting the Consultant's indemnification of the City, Consultant shall obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Consultant or Consultant's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. Such evidence shall specifically identify this Agreement and shall contain express conditions that the City is to be given written notice at least thirty (30) days in advance of any termination or implementation of a reduction of limits or material change of insurance coverage as specified herein. ***Failure on the part of the Consultant to procure or maintain insurance shall constitute a material breach upon which the City may immediately terminate this Agreement.*** All insurance required hereunder shall be primary with respect to any insurance maintained by the City**.**

Coverages and Limits. Consultant will maintain the types of coverages and minimum limits indicated below, unless the Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Consultant's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. The coverage will contain no special limitations on the scope of its protection to the below-indicated insureds except for Workers Compensation and errors and omissions insurance. Consultant will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage. If Consultant believes that any

required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage, as Consultant deems adequate, at Consultant's sole expense.

11.1 Commercial General Liability Insurance. $1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

11.2 Automobile Liability. $1,000,000 combined single-limit per accident for bodily injury and property damage.

11.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of $1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Consultant has no employees and provides, to City's satisfaction, a declaration stating this.

11.4 Professional Liability. Errors and omissions liability appropriate to Consultant's profession with limits of not less than $1,000,000 per claim. The coverage shall also provide an extended two (2) year reporting period commencing upon termination or cancellation of this Agreement.

Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Consultant will ensure that the policies are endorsed to name the City of Compton and its respective elected and appointed officers, officials, employees, agents and volunteers as **"additional insureds"** with respect to liability arising out of the activities of the Consultant. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. ***Prior to City's execution of this Agreement, Consultant will furnish certificates of insurance and endorsements to City.***

Waiver of Subrogation. The policies shall contain a waiver of subrogation for the benefit of City.

12. Permits and Licenses. Consultant, at its own expense, during the term of this Agreement, shall obtain and maintain all appropriate business and professional permits, licenses and certificates that may be required in connection with the performance of services by the Consultant. Upon execution of this Agreement, the Consultant shall show evidence of a business license permit in conformance with *Section 9-1.2* of the *Compton Municipal Code*.

13. Maintenance of Records. Consultant will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Consultant will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years, or longer if required by law, from the date of final payment under this Agreement.

14. Warranties. Consultant represents and warrants (i) that Consultant has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Consultant's undertaking this relationship with City, (ii) that the performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or

other right of any third party, (iii) that Consultant will not use in the performance of his responsibilities under this Agreement any confidential information or trade secrets of any other person or entity and (iv) that Consultant has not knowingly entered into or will enter into any agreement (whether oral or written) in conflict with this Agreement.

15. Federal and State Withholding Taxes. Consultant shall be responsible for paying when due all federal and state income withholding taxes for all earning under this Agreement. Consultant agrees to indemnify City for any claims, costs, losses, fees, penalties, interest, or damages suffered by City resulting from Consultant's failure to comply with this provision.

16. General Compliance with Laws. Consultant will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of the services by Consultant. Consultant will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the services with all applicable laws, ordinances and regulations.

17. Termination. In the event of the Consultant's failure to prosecute, deliver, or perform the services, after giving written notice of default and two (2) days to correct the same, then, in addition to any other remedies, City may terminate this Agreement for nonperformance by notifying Consultant in writing. Consultant has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Consultant has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement. In the event City elects to terminate, City will have the right to immediate possession of all Work Product and work in progress prepared by Consultant, whether located at the project site, at Consultant's place of business, or at the offices of a subconsultant.

The City's obligation is payable only from funds appropriated for the purpose of this Agreement. All funds for payments after the end of the current fiscal year are subject to the City's legislative appropriation for this purpose. In the event this Agreement extends into succeeding fiscal year periods and the City Council does not allocate sufficient funds for the next succeeding fiscal year payments, this Agreement shall terminate immediately upon written notice from the City.

Either Party, upon tendering thirty (30) calendar days written notice to the other Party, may terminate this Agreement for convenience. In this event and upon request of City, Consultant will assemble the work product without charge and put it in order for proper filing and closing and deliver it to City. Consultant will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

18. Covenants Against Contingent Fees. Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the

Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

19. Claims And Lawsuits. By signing this Agreement, Consultant agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Consultant acknowledges that if a false claim is submitted to City by Consultant, it may be considered fraud and Consultant may be subject to criminal prosecution. Consultant acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act, applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Consultant acknowledges that the filing of a false claim may subject Consultant to an administrative debarment proceeding as the result of which Consultant may be prevented to act as a Consultant on any public work or improvement for a period of up to five (5) years. Consultant acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

20. Certifications. The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against he/she/it by a court of competent jurisdiction in any matter involving fraud or official misconduct in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property within the past 3 years; and
- are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in the preceding paragraph; and
- have not had one or more public transactions (Federal, State or local) terminated for cause or default within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Supply exceptions on separate page]

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

[Attach separate page]

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction. The above certifications are part of this contract. Signing this agreement on the signature portion thereof shall also constitute signature of the above Certifications.

NV5, Inc. **Date**

21. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Los Angeles, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.

22. Testimony. Consultant will testify at City's request if litigation is brought against City in connection with Consultant's services under this agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City, upon prior written agreement with Consultant will compensate Consultant for time spent in preparation for testimony, testimony, and travel at Consultant's standard hourly rates at the time of actual testimony.

23. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

24. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Agreement.

25. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

26. Amendments. This Agreement may be modified or amended only be written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

27. Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of the Services pursuant to the Agreement are confidential until released by the City to the public, and the Consultant will not make any of these documents or information available to any individual or organization not

employed by the Consultant or the City without the written consent of the City before any such release.

28. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. The City Manager is authorized, in consultation with the City Attorney, to agree to non-material amendments to this Agreement. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

29. Notices. Any notices required or permitted under this Agreement shall be effective when delivered in person; and effective one (1) business day after delivery by facsimile transmission; and effective five (5) days after mailing by U.S. Mail, postage prepaid and properly addressed as follows:

TO CONSULTANT:

NV5, INC.
163 Technology Drive, Suite 100
Irving, CA 92618
Attn: Jeffrey M. Cooper, PE
(949) 585-0477
(949) 409-8182
Jeff.cooper@nv5.com

TO CITY:

CITY OF COMPTON
205 South Willowbrook Avenue
Compton, California 90220
Attn: Director, Public Works Engineering Department
(310) 605-5505
(310) 605-6326 – fax.

Note: A copy of any notice provided to the Director shall also be provided to: City Manager, 205 South Willowbrook Avenue, Compton, California 90220.

30. Miscellaneous. No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision.

Should either party hereto, or any representative, successor or assign of either party hereto, resort to litigation to enforce the provisions of this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorney's fees and costs in such litigation from the party or parties against whom enforcement is sought.

IN WITNESS WHEREOF, CONSULTANT has executed this Agreement, and the **CITY**, by its City Manager, who is authorized to do so, has executed this Agreement.

NV5, INC./CONSULTANT

Dated: _____ **By _____**
JEFFREY M. COOPER, VICE-PRESIDENT

Approved By:

Dated: _____ **By _____**
Thomas Thomas, City Manager

Approved as to form:

By _____ **Dated: _____**
Eric J. Perrodin, City Attorney

ATTEST:

Dated: _____ **By _____**
Alita Godwin, City Clerk



PROPOSAL

Submitted by NV5, Inc.
163 Technology Drive, Suite 100, Irvine, CA 92618

City of Compton

Plan Check and Traffic Engineering Services

March 16, 2022

TABLE OF CONTENTS

A. Company Overview 01

FIRM PROFILE 02

PROJECT EXPERIENCE 03

ORGANIZATION CHART 06

RESUMES 07

B. Engineer-in-Charge 26

C. Approach and Methodology 27

D. Fee ..... Separately Sealed Envelope

E. Standard Form 330 31

A. COMPANY OVERVIEW

PN: P27022-0002111.00

March 16, 2022

City of Compton
Public Works Engineering Department
Attn: John Strickland, Project Manager
205 South Willowbrook Avenue
Compton, CA 90220

SUBJECT: Plan Checking and Traffic Engineering Services

Dear Mr. Strickland,

NV5, Inc. is excited to have the opportunity to provide Plan Check and Traffic Engineering Services to the City of Compton (City). Our team has the technical knowledge and experience to deliver your projects in the most cost-efficient and cost-effective manner. NV5's strengths include the following:

Current Partnership: Our experience and strong existing relationship with the City give us the ability to continue providing professional engineering support services for your capital improvement projects. **We operate with a sound understanding of your organizational structure, administrative processes and the community you serve.** This, in turn, allows us to provide the required engineering services in the most efficient manner. Specifically, our team provided the City with Engineering Design Services for its Annual Residential Streets Rehabilitation (Phases 1 and 2) and Wilmington Avenue Pedestrian and Bicycle Improvements projects and provided Construction Management and Inspection Services for the City's CIP 13-01 Street Improvements and Central Avenue Pavement Rehabilitation projects.

Relevant Experience: We believe that past experience and success are key indicators of future performance. We are committed to providing high-quality service and believe that commitment is one reason why more than 90% of our work comes from repeat clients — an obvious indicator of client satisfaction. Our team has provided On-Call Plan Check Services to various cities throughout Southern California, including:

- City of El Monte
- City of La Habra Heights
- City of Pico Rivera
- City of Beaumont
- City of Dana Point
- City of Santa Ana
- City of Villa Park
- City of Costa Mesa
- City of Laguna Woods
- City of Murrieta
- County of San Bernardino
- City of Imperial Beach

Proposed Team: Our highest priority is exceeding your desires and goals, so we will strive to constantly provide you with top-notch customer service. Our **Project Manager, Tamara O'Neal, PE**, will provide hands-on, customer-oriented, proactive management of your contract. Ms. O'Neal will be joined by a team of professionals who will develop strong working relationships with staff at the City that will allow us to seamlessly interface with you and your stakeholders, maximizing efficiency and quality. Details on our proposed team can be found starting on page 6.

NV5 looks forward to the opportunity to work with the City and help you achieve your goals and objectives. If you need further information, we may be reached by phone at (949) 585-0477, or electronically at tamara.oneal@nv5.com and jeff.cooper@nv5.com. Thank you for your time and consideration.

Sincerely,
NV5

Tamara O'Neal, PE
Project Manager

Jeffrey M. Cooper, PE
Vice President

COMPANY INFORMATION/CONTACT
Name: NV5, Inc.
Address: 163 Technology Drive, Suite 100, Irvine, CA 92618
Telephone Number: (949) 585-0477
Email of Contact: jeff.cooper@nv5.com

A. COMPANY OVERVIEW

FIRM PROFILE

NV5, Inc. has been providing engineering and consulting services to public and private sectors for more than 70 years, delivering solutions through six business verticals: Testing, Inspection and Consulting; Infrastructure; Utility Services; Environmental Health Sciences; Buildings and Program Management; and Geospatial Technology. With more than 100 offices nationwide and abroad, NV5 has access to over 3,000 employees in a variety of fields who help clients plan, design, build, test, certify and operate projects that improve the communities where we live and work.

Our Irvine office specializes in the engineering design, construction management and inspection of capital improvement projects, including streets, traffic systems, water and wastewater systems, drainage and flood control, parks and recreational facilities, vertical construction, and landscaping and grading. Our team includes licensed civil engineers, licensed contractors, construction managers, certified inspectors and experienced public works professionals. All team members have extensive experience working within the structure of municipal government and public construction policy and will seamlessly integrate with the City's team.

KEY SERVICES

The successful delivery of our products and services has resulted in repeat clients for a broad range of municipal projects. Our key services include:



We maintain an extensive history of working with various local agencies. Throughout the course of completing myriad public works capital improvement projects, our team has demonstrated an unparalleled ability to work well with local agency staff, project stakeholders, engineers and contractors. We have successfully delivered projects in a timely and cost-effective manner, and we have acquired a keen understanding of local agency requirements, a critical element in the facilitation and resolution of project issues. We are excited about the opportunity to continue to serve the City and are committed to maintaining effective working relationships with your staff, relevant government agencies and project stakeholders.

With a demonstrated ability to address public concerns, we are experts in a broad range of governmental interface, public outreach and community involvement, and we are genuinely committed to public participation as a way of planning and completing projects. Our team routinely performs these services as part of our delivery of public works projects and regards them as a vital component to project success.

PROJECT EXPERIENCE

Provided below are references of clients for whom similar plan check review services have been performed that are comparable in quality and scope to that specified in this RFP.

ON-CALL PLAN CHECK SERVICES

CITY OF PICO RIVERA | CITY OF PICO RIVERA, CA

Reviews include subdivision maps, parcel maps, boundary adjustments and legal descriptions for conformance with local and state ordinances and laws; grading plans, including preliminary grading, mass grading, rough grading and precise grading plans; street improvement plans, including street widening, rehabilitation and new street plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate for the related items of work for bonding purposes; engineer's reports, including stormwater pollution prevention plans; erosion and sediment control plans; and geotechnical report review.

Upon receipt of a request for plan check, NV5's Project Manager prepares a task order proposal letter outlining the proposed scope, cost and timeline for the plan check. Upon award of the task order, NV5's Project Manager coordinates with the team members and reviews the scope, priorities of the City, plan check expectations, schedule and detailed information regarding deliverable requirements. The plan check review is conducted according to the task order requirements and our proposal. NV5's Project Manager coordinates and collaborates with the client for on-time delivery of the plan review comments.

DATES
September 2019-Current

CONTRACT AMOUNT
Not-to-Exceed $75,000

CONTACT
Kenner Guerrero
562.801.4351
kguerrero@pico-rivera.org

KEY PERSONNEL
Tamara O'Neal (Project Manager), David Niknafs, Stephen Novak, Padma Asam, Thomas Grace, Michael Rocco (Plan Check)

ON-CALL PLAN CHECK, INSPECTION & STORMWATER MANAGEMENT SERVICES

CITY OF BEAUMONT | BEAUMONT, CA

NV5 is providing plan check and inspection services for the City of Beaumont on an as-needed basis. Services include subdivision and parcel map review, grading, public and private street and utility improvements, storm drain, sewer, erosion control, geotechnical, hydrology/hydraulic, structural, water quality/NPDES, landscape reviews, and full-time public works inspection.

Upon award of the first contract to NV5 for these services, the NV5 Project Manager met with City staff to discuss procedures, protocol, communication preferences, items of special or significant interest to the client and areas of particular concern within the service area.

After discussion with the client and evaluation of the immediate needs of the City, NV5 prepared several project review checklists as well as additional materials to support the project intake/application process at the City development counter. In addition to plan review and application processes, NV5 also prepared similar checklists and template documents to support the City's water quality management program, public works inspection and bond release process. All NV5 staff assigned to the City's projects are thoroughly briefed to verify that they understand the scope of City plan review services, schedule and requirements for return delivery of review comments, including protocol for QC reviews. The NV5 project manager and subject matter experts hold regularly scheduled meetings with the client to coordinate project-specifics and discuss items of special significance to the City.

DATES
February 2016-Current

CONTRACT AMOUNT
N/A — Open Limit

CONTACT
Jeff Hart
Public Works Director
951.572.3213
jhart@beaumontca.gov

KEY PERSONNEL
Tamara O'Neal (Project Manager), Jay Fahrion (Survey Manager), Padma Asam, Thomas Grace, Michael Rocco (Plan Check)

ON-CALL PLAN CHECK SERVICES

CITY OF EL MONTE | EL MONTE, CA

NV5 is contracted with the City of El Monte to provide plan check/review services and staff support to oversee the construction of various CIP projects and wireless communications facilities. Reviews include grading, soils report reviews, sewer, water, and storm drain improvements, hydrology reports, SWPPPs, Low Impact Development, street improvement plans, parcel/tract maps, easements and lot line adjustments. Example projects reviewed include:

- 10725 Mildred Street Grading Plan
- 3161 Granada Avenue Grading Plan
- 2015 East Redstone Street Grading Plan
- 3837 Clark Avenue Grading Plan
- 10141 Olney Street Grading, Drainage, and Erosion Control Plan

DATES
July 2019-Current

CONTRACT AMOUNT
Not-to-Exceed $1,500,000

CONTACT
Lee Torres
City Engineer
626.580.2055
ltorres@elmonteca.gov

KEY PERSONNEL
David Niknafs (Project Manager), Stephen Novak (Plan Check)

Upon receipt of a request for plan check, NV5's Project Manager prepares a task order proposal letter outlining the proposed scope, cost and timeline for the plan check. Upon award of the task order, NV5's Project Manager coordinates with the team members and reviews the scope, priorities of the City, plan check expectations, schedule, and detailed information regarding deliverable requirements. The plan check review is conducted according to the task order requirements and our proposal. NV5's Project Manager coordinates and collaborates with the client for on-time delivery of the plan review comments.

ON-CALL PLAN CHECK SERVICES

CITY OF DANA POINT | DANA POINT, CA

NV5 is currently under contract with the City of Dana Point to provide development review services for new projects within the City. NV5 serves as an extension of City staff to review projects involving grading, street and drainage improvements, building foundations and retaining walls, and parcel/tract maps for conformance with City standards, regional, and state regulations, and generally accepted engineering design practices.

Upon award of the first contract to NV5 for these services, the NV5 team leads met with City staff to discuss procedures, protocol, communication preferences, items of special or significant interest to the client and areas of particular concern within the service area.

All NV5 staff assigned to the City's projects are onboarded to verify that they understand the requirements of City plan review, budget and schedule requirements and how project deliverables are to be prepared. The NV5 project manager and subject matter experts communicate with the client to address project-specific considerations and confirm client satisfaction on a regular basis. This regular communication has allowed for increases in staffing and the introduction of new service lines to adjust to our client's changing needs.

DATES
January 2016-Current

CONTRACT AMOUNT
Not-to-Exceed $300,000

CONTACT
Matthew Kunk
949.248.3562
mkunk@danapoint.org

KEY PERSONNEL
Tamara O'Neal (Project Manager), Padma Asam, Thomas Grace, Michael Rocco, Edgar Bautista, Amir Mansour, (Plan Check), Gene Custenborder, Carl Henderson (Geotech)

DATES
October 2014-Current

CONTRACT AMOUNT
Not-to-Exceed $350,000

REFERENCE/CONTACT
Tyler Foltz
619.628.2381
tfoltz@imperialbeachca.gov

KEY PERSONNEL
Tamara O'Neal (Project Manager), Padma Asam, Thomas Grace, Michael Rocco, Edgar Bautista (Plan Check)

ON-CALL PLAN CHECK SERVICES

CITY OF IMPERIAL BEACH | IMPERIAL BEACH, CA

NV5 is currently providing engineer/plan check services for this beachside community. The suite of services consists of three major elements: City Engineer services, plan check/development review and design of capital projects. A sample of the task orders under this contract include:

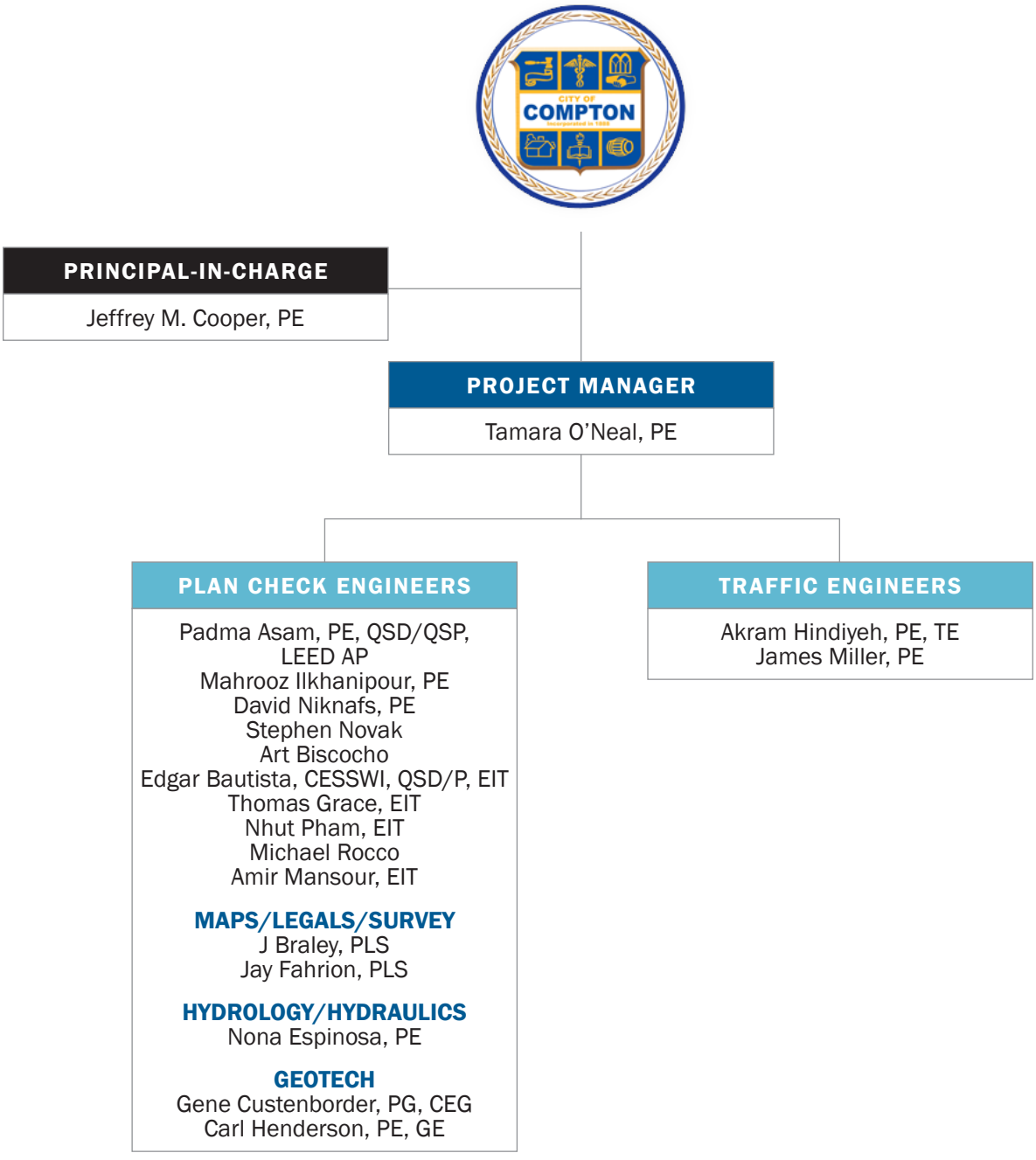
- Breakwater Development Review: plan check of grading, improvement and traffic plans for a 5-acre commercial redevelopment project at Palm Avenue and 9th Street
- MF 1114: review of final Parcel Map for a multi-family project to evaluate conformance to development conditions and requirements of the Subdivision Map Act
- MF 1169 and MF 1170 Development Reviews: review of Tentative Parcel Maps/ preliminary grading plans for multi-family infill projects to establish development conditions prior to final design

Upon award of the first contract to NV5 for these services, NV5 team leads met with City staff to discuss procedures, protocol, communication preferences, topics of significant interest to the client and areas of particular concern within the service area. All NV5 staff assigned to the City's projects are onboarded to verify that they understand the requirements of City plan review, budget and schedule requirements and how project deliverables are to be prepared. Project review staff are equipped with checklists, reference materials and supporting documents as needed to provide thorough, consistent reviews, including QA/QC reviews by senior technical staff with appropriate expertise. The NV5 project manager regularly communicates with the client to address project-specific considerations and client satisfaction.



ORGANIZATION CHART

Our team of experts brings direct, relevant, successful and current experience working on projects of similar scope and complexity. We are equipped with the resources to provide the City with the requested Plan Check and Traffic Engineering services. Shown below are team roles and responsibilities.



CONTACT INFO
tamara.oneal@nv5.com

EXPERIENCE
26 years

EDUCATION
B.S. Civil Engineering

LICENSES/CERTIFICATES
Civil Engineer (CA)
No. 69107

TAMARA O'NEAL

Project Manager

Ms. O'Neal has more than 26 years of experience in municipal and private engineering services, including capital improvement and development review project management, sewer rehabilitation design and planning, stormwater quality regulatory, reporting and review services, asset management, floodplain development services and environmental restoration services. In addition to having direct public agency employment experience, Ms. O'Neal has provided extension of staff services on a consultant basis for numerous cities, as well as water and sanitation districts in San Diego, Orange and Los Angeles counties.

Project Experience

On-Call Plan Check Services

CITY OF LAKE ELSINORE | LAKE ELSINORE, CA

Project Manager. Ms. O'Neal oversaw the review of Water Quality Technical Reports, grading plans, tract improvement plans, parcel mergers and lot line adjustments. Due to the unique nature of Lake Elsinore's water conservation requirements, NV5 developed delineating maps to distinguish "Highest and Best Use" areas for the City to streamline the plan review process.

On-Call Plan Check + Public Works Inspection Services

CITY OF BEAUMONT | BEAUMONT, CA

Project Manager. Ms. O'Neal is providing the City with review of as-needed private development projects and public works inspection services. Reviews include improvement, sewer and storm drain plans, hydrology and hydraulic reports, water quality reports, geotechnical reports, structural calculations and cost estimates. NV5 is assisting the City with the development of checklists, standard notes, unit price lists and other documents to standardize and streamline the review/inspection process.

Hollywood Park Development Review

CITY OF INGLEWOOD | INGLEWOOD, CA

Project Manager. Ms. O'Neal led the development review services contract for the redevelopment of Hollywood Park, Phase A, Phase 1, and a portion of Phase 2 Infrastructure Improvement. Plan reviews were conducted in accordance with city, county, state and federal ordinances and standards and included developing conditions of approval, mitigation monitoring reporting plans, specific plans and general plans, as well as completing grading, drainage and street improvement plan reviews. Ms. O'Neal also supported the creation of the development agreement and presented the project to City Council, recommending approval of the approximately 465-acre site into a mixed use development, anchored by the recently completed Sofi Stadium.

On-Call Plan Check Services

CITY OF PICO RIVERA | PICO RIVERA, CA

Project Manager. Ms. O'Neal oversees this on-call plan check contract for the City of Pico Rivera. Reviews include subdivision maps, parcel maps, boundary adjustments and legal descriptions for conformance with local and state ordinances and laws; grading plans, including preliminary grading, mass grading, rough grading and precise grading plans; street improvement plans, including street widening, rehabilitation and new street plans; utility improvement plans; stormwater quality management plans;

hydrology and hydraulic calculations and reports; engineer's cost estimate for the related items of work for bonding purposes; engineer's reports, including stormwater pollution prevention plans; erosion and sediment control plans; and geotechnical report review.

Engineering and Plan Check Services

CITY OF IMPERIAL BEACH | IMPERIAL BEACH, CA

Project Manager. Ms. O'Neal is providing engineering services for this beachside community. The suite of services consists of three major elements: City Engineer services, plan check/development review and design of capital projects.

Development Review Services

CITIES OF DANA POINT, CARLSBAD, ENCINITAS AND INGLEWOOD | SOUTHERN CALIFORNIA

Project Manager. Ms. O'Neal is serving as point of daily contact for the client as well as developers, working closely with City Planning and Traffic Engineering staff, and directing the efforts of various subconsultants to provide overall project coordination for a variety of projects. These range from single-family lot developments to large, multi-phase subdivisions with significant public infrastructure requirements. Projects also include large-scale habitat mitigation and floodplain development projects during all phases from discretionary review through project construction. Services include preparing conditions of approval, development agreements and staff reports, reviewing final maps, grading plans, public and private improvement drawings, associated calculations, and technical reports.

Civil & Water Quality Management Plan Check Services

COUNTY OF SAN BERNARDINO | SAN BERNARDINO, CA

Ms. O'Neal provided engineering development review services for a variety of projects ranging from single-family development to large, multi-phase subdivisions and commercial projects with significant public infrastructure requirements. NV5 reviewed Hydraulic and Hydrologic Analysis, Water Quality Management Plans (WQMPs), erosion control plans, soils reports, private grading and public improvement plans for conformance with project conditions of approval and compliance with County requirements.

Plan Check of Water Quality Management Plan Hydrology Reports and Plan Check Services

COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT | COUNTY OF RIVERSIDE, CA

Project Manager. Ms. O'Neal served as the Project Manager overseeing plan checking of WQMP (Water Quality Management Plan) and Hydrology Reports associated with new development and significant redevelopment projects, and plan check services for private development projects for compliance with the county's MS4 permits and the Riverside County WQMP for Urban Runoff. Review of P-WQMPs, F-WQMPs, Hydraulic and Hydrology reports, floodplain studies, and grading plans.

San Bernardino Development Review Services

COUNTY OF SAN BERNARDINO | SAN BERNARDINO, CA

Project Manager. Ms. O'Neal served as Project Manager overseeing the review of Water Quality Management Plans, drainage studies and grading plans for private land development applications.

City Engineering Services

CITY OF DEL MAR | DEL MAR, CA

Engineering Development Review Manager. Ms. O'Neal served as an extension of the City's staff in reviewing proposed development projects, preparing conditions of approval and providing project coordination services and plan check reviews for conformance with City standards and project conditions. She was responsible for ensuring compliance with the City's Clean Water Program and performing construction inspections. She assisted with preparation of the City Engineering long- and short-term Capital Improvement Program and preparation of the associated two- and five-year City budgets. She prepared staff reports, resolutions, ordinances, and compliance reporting documents for satisfaction of a variety of State mandates. She also provided technical support at City management and community outreach meetings, and was instrumental in the preparation of the City's Clean Water compliance reporting documents and program implementation.

CONTACT INFO
padma.asam@nv5.com

EXPERIENCE
15 years

EDUCATION
M.S. Structural Engineering

B.S. Civil Engineering

LICENSES/CERTIFICATES
Civil Engineer (CA) No. 83896

Qualified SWPPP Developer/Practitioner (CA) No. 27085

REGISTRATIONS
LEED Accredited Professional

PADMA ASAM, PE, QSD/QSP, LEED AP

Plan Check Engineer

Ms. Asam's experience includes roadway widening and alignments, retaining walls, bridge abutments, pedestrian ramps and utility undergrounding. She routinely utilizes structural building codes, including the IBC and AISC, to perform design work and submittal reviews and frequently uses the Caltrans Bridge Design and Highway Design Manuals, the San Diego Regional Standards, Green Book and the SDG&E Undergrounding Standards. Ms. Asam is proficient in various structural design and modeling tools, such as AutoCAD CIVIL3D and RetainPro.

Project Experience

On-Call Public Works Inspection and Plan Check Services
CITY OF BEAUMONT | BEAUMONT, CA

Project Engineer. Ms. Asam is providing review of private development projects and public works inspection services. NV5 reviews all plans and associated technical reports for clarity, format, completeness and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development.

On-Call Plan Check Services
CITY OF LAKE ELSINORE | LAKE ELSINORE, CA

Plan Check Engineer. Ms. Asam provided review of Water Quality Technical Reports, grading plans, tract improvement plans, parcel mergers and lot line adjustments. Other tasks included reviewing hydrology and hydraulic data output calculations in conjunction with proposed storm drain design and reviewing NPDES documents for conformance to jurisdictional requirements and the City's Standard Urban Stormwater Management Plan as needed and as required by the Regional Water Quality Control board.

Engineering and Plan Check Services
CITY OF IMPERIAL BEACH | IMPERIAL BEACH, CA

Project Engineer. Ms Asam is providing consultant City Engineer services for this beachside community. The suite of services consists of three major elements: City Engineer services, plan check/development review, design of capital improvement projects, and grant administration.

As-Needed Services
CITY OF CARLSBAD | CARLSBAD, CA

Project Engineer. Ms. Asam provided consultant services for the City, including review of grading plans, street improvement plans, geotech reports, hydrology reports and stormwater documents for residential and commercial developments.

Civil & Water Quality Management Plan Check Services
COUNTY OF SAN BERNARDINO | SAN BERNARDINO, CA

Project Engineer. Ms. Asam provided engineering development review services for a variety of projects ranging from single-family developments to large, multiphase subdivisions and commercial projects with significant public infrastructure requirements. NV5 reviewed Hydraulic and Hydrologic Analyses, Water Quality Management Plans (WQMPs), erosion control plans, soils reports, private grading and public improvement plans for conformance with project conditions of approval and compliance with County requirements.

CONTACT INFO
mahrooz.ilkhanipour
@nv5.com

EXPERIENCE
33 years

EDUCATION
M.S. Civil Engineering
(Major emphasis in Water Resources and Structural)

B.S. Civil Engineering

LICENSES/CERTIFICATES
Civil Engineer (CA)
No. 55003

MAHROOZ ILKHANIPOUR, PE

Plan Check Engineer

Ms. Ilkhanipour has more than 33 years in civil engineering and plan check experience at the County of Orange. She has managed departments and led plan check staff for major housing developments, grading, buildings, geotechnical, and plumbing mechanical and electrical, and has good working knowledge of the Orange County Hydrology Manual and Local Drainage Manual. She is well-versed in prioritizing projects, distributing staff workloads, monitoring budgets, client communication, high-level customer service and effective problem-solving.

Project Experience

As-Needed Plan Check Engineering Services

CITY OF LA HABRA HEIGHTS | LA HABRA HEIGHTS, CA

Plan Check Engineer. Ms. Ilkhanipour provides as-needed plan review services for the City of La Habra Heights. Her scope of work includes plan review and checking final maps, parcel maps, street improvement plans, grading plans, hydrologic/hydraulic studies, soils/geologic reports, engineer cost estimates, haul routes, easement documents, lot line adjustments, SUSMP/SWPPP/LID, erosion control plans, BMPs, and encroachment permits.

As-Needed Plan Check Engineering Services/Alternate City Engineer

CITY OF VILLA PARK | VILLA PARK, CA

Plan Check Engineer/Alternate City Engineer. Ms. Ilkhanipour provides as-needed plan review services and as-needed City Engineering services for the City of Villa Park. She is responsible for plan review and checking final maps, parcel maps, street improvement plans, grading plans, hydrologic/hydraulic studies, soils/geologic reports, engineer cost estimates, haul routes, easement documents, lot line adjustments, SUSMP/SWPPP/LID, erosion control plans, BMPs, and encroachment permits.

Public Works/Infrastructure & Development Services

COUNTY OF ORANGE

Plan Check Manager. Ms. Ilkhanipour managed and led staff and consulting teams in reviewing and processing plans for major development, primarily Rancho Mission Viejo. This includes plan review of subdivision maps, survey, drainage plans and reports, grading, traffic improvements, proposed roads, and all aspects of wet and dry utilities. She also reviewed and approved all proposed encroachments within County property and the Flood Control District properties. This involved extensive coordination with public utilities.

Planning and Development Services/Subdivision and Grading Section

COUNTY OF ORANGE

Plan Check Engineer. Ms. Ilkhanipour was responsible for project management; review and plan check of grading plans prepared by consultants for approval and compliance with the Orange County Grading Code and Manual for residential and commercial/industrial developments in the unincorporated County of Orange; review of on-site hydrology and hydraulics calculations for compliance with the Orange County Hydrology Manual and Local Drainage Manual; and review of design and construction coordination of Geosynthetic Reinforced Segmental Retaining walls. For the last two years within this period, she served as the lead grading plan check representative for the software Automated Permitting and Planning System (APPS), which was used for permitting and plan check.

CONTACT INFO
david.niknafs@nv5.com

EXPERIENCE
30 years

EDUCATION
M.S. Civil Engineering

B.S. Civil Engineering

LICENSES
Civil Engineer (CA)
No. 42697

AFFILIATIONS
American Public Works Association (APWA)

American Society of Civil Engineers (ASCE)

Transportation & Development Institute

DAVID NIKNAFS, PE

Plan Check Engineer

Mr. Niknafs has more than 30 years of civil engineering experience in the public and private sectors working on various capital improvement projects and has extensive experience working as a project director and project manager. He has managed numerous public works and development projects, including roadways, bridges, drainage, sewer, water, underground utilities, building facilities and related infrastructure improvement projects.

Project Experience

Plan Check Reviews

CITY OF EL MONTE | EL MONTE, CA

Project Manager. Mr. Niknafs is responsible for reviewing grading and drainage plans for various land development projects for the City. Our team is contracted with the City of El Monte to provide plan check/review services and staff support to oversee the construction of various CIP projects and wireless communications facilities. Reviews include grading, soils report reviews, sewer, water, and storm drain improvements, hydrology reports, SWPPPs, Low Impact Development, street improvement plans, parcel/tract maps, easements and lot line adjustments.

On-Call Plan Check Services

CITY OF PICO RIVERA | PICO RIVERA, CA

Lead Plan Check Engineer. Mr. Niknafs provides on-call plan check services for the City of Pico Rivera. Reviews include subdivision maps, parcel maps, boundary adjustments and legal descriptions for conformance with local and state ordinances and laws; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate for the related items of work for bonding purposes; engineer's reports, including stormwater pollution prevention plans; erosion and sediment control plans; and geotechnical report review.

On-Call Plan Check Services

CITY OF MORENO VALLEY | MORENO VALLEY, CA

Project Manager. Mr. Niknafs was responsible for plan check services for the City. Services included plan review and checking final maps, parcel maps, improvement plans, grading plans, hydrologic/hydraulic studies, soil/geologic reports, Engineer Cost Estimates and easement documents, in addition to providing other support services as needed for the Land Development Division of Public Works.

Beryl Street Drainage and Street Improvements

CITY OF REDONDO BEACH | REDONDO BEACH, CA

Project Manager. Mr. Niknafs is responsible for providing engineering design services for the Beryl Street Drainage and Street Improvements (from Prospect Avenue to Flagler Lane) project, including the preparation of plans, specifications and estimates. The project includes roadway, intersection and drainage improvements, including: green street elements; modifications to catch basins; pedestrian crossing enhancements through curb ramp and pedestrian signal upgrades; incorporation of Living Street Design principles, traffic calming elements to enhance safety, mobility, and access for users to accommodate a variety of transportation modes; and signing and striping.

CONTACT INFO
steve.novak@nv5.com

EXPERIENCE
25 years

EDUCATION
A.S. Building Technology

LICENSES/CERTIFICATES
Certificate, Master Planning Communities

STEPHEN NOVAK

Plan Check Engineer

Mr. Novak has more than 25 years of experience in civil, environmental and geotechnical engineering. His expertise includes the conceptual planning, design and preparation of rough to precise grading plans; land use studies and preliminary engineering; street design; and water, sanitary sewer, street and storm drain plans. His projects encompass residential, wastewater and infrastructure, mountain and hillside, golf and resort, and commercial projects. His strengths as a designer/planner are first built on natural landforms development that integrates the environmental, cultural and economic imperatives of the client and community, providing creative and innovative design solutions. Mr. Novak is proficient with AutoCAD C3D, Word and Excel software applications.

Project Experience

Plan Check Reviews

CITY OF EL MONTE | EL MONTE, CA

Plan Check Engineer. Mr. Novak is reviewing grading and drainage plans for various land development projects for the City. Our team is contracted with the City of El Monte to provide plan check/review services and staff support to oversee the construction of various CIP projects and wireless communications facilities. Reviews include grading, soils report reviews, sewer, water, and storm drain improvements, hydrology reports, SWPPPs, Low Impact Development, street improvement plans, parcel/tract maps, easements and lot line adjustments.

On-Call Plan Check Services

CITY OF PICO RIVERA | PICO RIVERA, CA

Plan Check Engineer. Mr. Novak provides as-needed review of grading and drainage plans for various development projects for the City. Our team is contracted with the City to provide reviews of subdivision maps, parcel maps, boundary adjustments and legal descriptions for conformance with local and state ordinances and laws; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate for the related items of work for bonding purposes; engineer's reports, including stormwater pollution prevention plans; erosion and sediment control plans review.

Beryl Street Drainage and Street Improvements from Prospect Avenue to Flagler Lane Project

CITY OF REDONDO BEACH | REDONDO BEACH, CA

Project Engineer. Mr. Novak is providing engineering design services for the Beryl Street Drainage and Street Improvements project, including the preparation of plans, specifications and estimates. The project includes, but is not limited to, roadway, intersection and drainage improvements, including green street elements; modifications to catch basins; pedestrian crossing enhancements through curb ramp and pedestrian signal upgrades; incorporation of Living Street Design principles, traffic calming elements to enhance safety, mobility, and access for users to accommodate a variety of transportation modes; and signing and striping.

CONTACT INFO
art.biscocho@nv5.com

EXPERIENCE
30 years

EDUCATION
B.S. Civil Engineering

ART BISCOCHO

Plan Check Engineer

Mr. Biscocho has more than 30 years of experience as a Project Designer. He has a demonstrated ability to manage multiple projects from planning to construction close-out. He has a wealth of knowledge of the overall operational experience working with municipal agencies, and his qualifications include the ability to review and prepare construction plans, specifications and cost estimates; provide engineering counter assistance; process permits; and establish, maintain and foster positive working relationships with agency staff.

Project Experience

PCH Arterial Improvements

CITY OF REDONDO BEACH | REDONDO BEACH, CA

Project Engineer. Mr. Biscocho is providing engineering design services for this project. Our team provided comprehensive traffic analysis and the preparation of preliminary design recommendations to reduce congestion and increase safety on Pacific Coast Highway.

Wilmington Avenue Pedestrian and Bicycle Improvements

CITY OF COMPTON | COMPTON, CA

Project Designer. Mr. Biscocho was responsible for providing professional design engineering services, including plans, specifications, cost estimates and related bid documents for the Wilmington Avenue Safe Streets Pedestrian/Bicycle Improvement Project. The project included pavement rehabilitation on Wilmington Avenue from El Segundo Boulevard to Rosecrans Avenue. It also included various pedestrian and bicycle improvements; the installation of wider and colored crosswalks; countdown pedestrian signals; enhanced pedestrian lighting; the installation of Class II bike lanes with wayfinding signage and Class I bike paths; and the installation of four solar-powered speed feedback signs for speed control and attainment.

North La Brea Avenue “Green Street” Improvements

CITY OF INGLEWOOD | INGLEWOOD, CA

Project Designer. Mr. Biscocho prepared plans, specifications and estimates for improvements on north La Brea Avenue. The project included repairing damaged sidewalks, curbs and gutters, cross-gutters, alley gutters and driveway approaches; assessing if curb ramps are ADA-compliant; relocating water meter and other utility boxes away from reconstructed driveways into street parkways; landscaping and root pruning; installing pavement markers and striping to current standards; reconstructing or removing bus stop pads and channelization islands.

Citywide Street Rehabilitation

CITY OF POMONA | POMONA, CA

Project Designer. Mr. Biscocho prepared plans, specifications and estimates for the design of pavement rehabilitation, street improvements, bikeway Improvements, pedestrian/ADA improvements, and landscape/Green Street and irrigation improvements on several City streets identified to increase pedestrian safety and mobility. Bikeway infrastructure improvements included the associated bike facility striping, signing, crossing improvements and signal modifications for bike detection. The project involved the landscaping and irrigation improvements associated with the City Corridor Specific Plan (CSP).

CONTACT INFO
edgar.bautista@nv5.com

EXPERIENCE
3 years

EDUCATION
M.S. Environmental Engineering

B.S. Applied Physics

LICENSES/CERTIFICATES
Engineer-in-Training, No. 165948

Qualified SWPPP Developer/Practitioner No. 27593

Certified Erosion, Sediment and Stormwater Inspector

Certified Professional in Stormwater Quality in training

Hazardous & Universal Waste Awareness

First Aid, CPR, AED

40-Hr. HAZWOPER with current Annual 8-Hr. Refresher

EDGAR BAUTISTA, CESSWI, QSD/P, EIT

Plan Check Engineer

Mr. Bautista is well versed in environmental programs such as stormwater, fat oils and grease, and hazardous materials. His technical background includes stormwater inspections, hazardous materials spill response and safety audits. He has knowledge in ArcGIS and AutoCAD software and various inventory reporting tools. To further expand his stormwater compliance skillset, he is actively pursuing stormwater certifications.

Project Experience

WQMP Plan Review

VARIOUS LOCATIONS, CA

Assistant Engineer. Mr. Bautista is assisting with reviewing Water Quality Management Plans (WQMP) on behalf of the City of Beaumont, Riverside County Transportation Department, County of San Bernardino and City of Dana Point.

San Mateo Substation

SAN CLEMENTE, CA

Assistant Engineer. Mr. Bautista assisted with developing a Water Quality Management Plan (WQMP) for a San Diego Gas & Electric substation rebuilt project. His services included gaining familiarity with the City of San Clemente WQMP template and South Orange County Technical Guidance Document. He performed calculations to Drainage Management Areas (DMA) to generate the Design Capture Volume and design flow rates for the proposed proprietary biofiltration device. He also took part in developing CAD exhibit to demonstrate DMA areas.

As-Needed Stormwater Services

UNIVERSITY OF CALIFORNIA AT SAN DIEGO (UCSD) | SAN DIEGO, CA

Mr. Bautista supported this As-Needed Stormwater Contract in which NV5 is providing Owner's rep services to support UCSD's stormwater program, mainly related to the Construction General Permit (CGP) and the Phase II NPDES Permit. Services included conducting BMP audits for active construction sites, coordination of REAPS and all rain event inspections with contractors, review of SWPPP documents prepared by contractors, support of UCSD staff in filing Annual Reports and any other information needed for upload to SMARTS, providing contractor and owner training as needed on permit requirements, and representation of Owner (UCSD) in the event of any stormwater discharges or violations. Services for Phase II permit include helping UCSD revise design guidance for consultants, preparing worksheets for water quality calculations and documentation of project compliance, training management staff, and review of individual projects for water quality compliance.

Rio Estrella Development

BONSALL, CA

Assistant Engineer. Mr. Bautista assisted with developing a Water Pollution Control Plan for an underground utility project, which was submitted to Caltrans. His services included gaining familiarity with the Caltrans SWPPP/WPCP template and Caltrans BMP Manual. Selected appropriate BMPs for the construction project and outlined where recommended BMPs should be placed on the site map.

CONTACT INFO
thomas.grace@nv5.com

EXPERIENCE
24 years

EDUCATION
B.S. Civil Engineering

REGISTRATIONS
Engineer-in-Training (CA)
No. 103177

THOMAS GRACE, EIT

Plan Check Engineer

Mr. Grace is a registered Engineer-in-Training with over 24 years of experience specializing in hydrologic and hydraulic engineering for urban drainage facilities, flood control improvements, floodplain studies and water quality compliance documentation. His work includes preliminary and final engineering design phases, as well as SWPPP and SUSMP documentation. He is skilled in using HEC- RAS, Auto-CAD, WSPG, HEC-HMS, FlowMaster, CulvertMaster, HY-8, CivilCAD, AES Model, Pond Pack, StormCAD, and SWMM.

Project Experience

On-Call Public Works Inspection and Plan Check Services
CITY OF BEAUMONT | BEAUMONT, CA

Project Engineer. Duties included drainage study reviews, assuring submitted drainage reports adhered to the City's standards and providing review comments to be addressed for approval. Projects reviewed include 1010 West 4th Street WQMP, PA 33 Active Adult Development SWPPP Review, Heartland Development Drainage Study, Four Seasons Development Drainage Study, Olivewood Sewer Plans Review, and Any Size RV, Trailer and Boat Storage WQMP.

Drainage & WQMP Plan Reviews
COUNTY OF RIVERSIDE TRANSPORTATION DEPARTMENT | COUNTY OF RIVERSIDE, CA

Project Engineer. Performed reviews of Water Quality Management Plans and Hydrology Reports associated with new development and significant redevelopment projects, and plan check services for private development projects for compliance with the county's MS4 permits and the Riverside County WQMP for Urban Runoff. Review of P-WQMPs, F-WQMPs, Hydraulic and Hydrology reports, floodplain studies, and grading plans.

Drainage Study Reviews
CITY OF IMPERIAL BEACH | IMPERIAL BEACH, CA

Project Engineer. Duties included drainage study reviews, assuring submitted drainage reports adhered to the City's standards and provided review comments to be addressed for approval. Projects reviewed include Eight Alley Paving Project, 1337 Molly Ave., and 245 Evergreen Ave.

Drainage Study Reviews
CITY OF DANA POINT | DANA POINT, CA

Project Engineer. Duties included drainage study reviews, assuring submitted drainage reports adhered to the City's standards, precise grading and sewer review and providing review comments to be addressed for approval.

Civil & Water Quality Management Plan Check Services
COUNTY OF SAN BERNARDINO |SAN BERNARDINO, CA

Project Engineer. Provided engineering development review services for a variety of projects ranging from single-family development to large, multi-phase subdivisions and commercial projects with significant public infrastructure requirements. NV5 reviewed Hydraulic and Hydrologic Analyses, Water Quality Management Plans (WQMPs), erosion control plans, soils reports, private grading, and public improvement plans for conformance with project conditions of approval and compliance with County requirements.

CONTACT INFO
nhut.pham@nv5.com

EXPERIENCE
5 years

EDUCATION
B.S. Civil Engineering

LICENSES/CERTIFICATES
Engineer-in-Training (CA)
No. 163240

NHUT PHAM, EIT

Plan Check Engineer

Mr. Pham has more than 5 years of experience in engineering design of Public Works projects, including water, wastewater, streets and storm drainage. He is experienced in preparing plans, specifications and estimates for various CIP projects, preparing exhibits to demonstrate design concepts to clients, and performing technical review for WQMP and civil engineering plans for residential and commercial developments. He is skilled in using AutoCAD Civil 3D, Microsoft Office Suite, ArcGIS, MatLab and Bluebeam Revu.

Project Experience

Public Works Plan Check

PUBLIC WORKS DEPARTMENTS OF THE CITIES OF SANTA ANA, FULLERTON AND CHINO | SANTA ANA, FULLERTON, CHINO, CA

Project Engineer. Mr. Pham provided plan checks for private developments within the cities. He performed technical review for Water Quality Management Plans and civil engineering plans (precise grading, streets, water/wastewater, erosion control).

Havenhurst Drive and Fountain Avenue Traffic Signal

CITY OF WEST HOLLYWOOD | WEST HOLLYWOOD, CA

Project Engineer. Mr. Pham provided plans and cost estimates for the street rehabilitation of this intersection improvement project. Improvements included new ADA curb ramps, sidewalk, bulb-out (curb extension), and new AC pavement.

Concrete Street Pavement Reconstruction

CITY OF NEWPORT BEACH | NEWPORT BEACH, CA

Project Engineer. Mr. Pham provided plans, specifications and cost estimates for concrete street rehabilitation. Improvements included construction of new concrete pavement and sidewalk and installation of new storm drain pipes and catch basins.

Citywide Curb Ramp Program

CITY OF LONG BEACH | LONG BEACH, CA

Project Engineer. Mr. Pham provided plans for construction of 50 curb ramps in the City. Improvements included new curb ramp construction and reconstruction of asphalt pavement, landscape, signage and striping.

Sewer Main Along Portuguese Bend

CITY OF ROLLING HILLS | ROLLING HILLS, CA

Project Engineer. Mr. Pham is providing engineering design services for the 8-inch Sewer Main along Portuguese Bend Road/Rolling Hills Road. The City evaluated the feasibility of connecting a portion of the City to a nearby existing wastewater conveyance system. Based on the sewer feasibility study, it was recommended to install a new 8-inch sewer main along Portuguese Bend Road and upgrade the existing sewer main along Rolling Hills Road to a 10-inch and 12-inch sewer main prior to connecting to the Los Angeles County Trunk line.

Horizon Drive Sewer

SANTA YNEZ COMMUNITY SERVICES DISTRICT | SANTA YNEZ, CA

Project Engineer. Mr. Pham provided plans and cost estimates for the construction of 2,000 LF of gravity sewer. Improvements included construction of new 8-inch sewer main, laterals, asphalt pavement reconstruction, driveways and landscape reinstallation.

CONTACT INFO
michael.rocco@nv5.com

EXPERIENCE
22 years

EDUCATION
AutoCAD University

NV5 Project Manager Course

LICENSES/CERTIFICATES
CADD Drafting & Technical Drawing Certificate

AFFILIATIONS
APWA

MICHAEL ROCCO

Plan Check Engineer

Mr. Rocco has more than 22 years of experience working on capital improvement projects in all phases, from concept to construction. He excels in the development of complete plan sets and understands the importance of plan presentation and construction details. He is proficient in Americans with Disabilities Act (ADA) standards and design. He has the technical experience to lead plan development for local roadway geometric layouts, design, grading, retaining walls, signing and striping, and traffic control.

Project Experience

On-Call Plan Check + Public Works Inspection Services

CITY OF BEAUMONT | BEAUMONT, CA

Plan Check Engineer. Mr. Rocco is providing review of as-needed private development projects. Services include subdivision and parcel map review, grading, public and private street and utility improvements, storm drain, sewer, erosion control, geotechnical, hydrology/hydraulic, structural, water quality/NPDES, and landscape reviews.

On-Call Plan Check Services

CITY OF PICO RIVERA | PICO RIVERA, CA

Plan Check Engineer. Our team is contracted with the City to provide reviews of subdivision maps, parcel maps, boundary adjustments and legal descriptions; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate; engineer's reports, including stormwater pollution prevention plans; and erosion and sediment control plans review.

Alley Paving Project

CITY OF IMPERIAL BEACH | IMPERIAL BEACH, CA

Senior Designer. Mr. Rocco was responsible for the preparation of plans, specifications and construction estimates of an award-winning "Green Streets" project. It incorporated Low Impact Development techniques and complied with new stormwater regulations. The project paved 13, 20-foot-wide alleys to provide improved access to residences whose homes front the alleyways. The improved alley design called for a 'V' shaped cross-section with a 2-foot strip of pervious concrete along the center flowline with filtration material and an underdrain connecting to an existing storm drain system. In instances where no outfall was available, the underdrain was connected to a new dry well structure that provided additional water quality benefits. In addition to providing an all-weather driving surface, drainage improvements, and water quality enhancements, the project repaired deteriorating sewer mains and relocated existing overhead utility poles within the City's right-of-way.

Citracado Parkway Extension

CITY OF ESCONDIDO | ESCONDIDO, CA

Senior Transportation Designer. Mr. Rocco prepared geometric design, alignment, profile, and grading for a new roadway connection, including a bridge across Escondido Creek. He prepared design for various alternatives, including earthwork analysis, retaining wall layout, sight distance calculations, intersection details, striping plans, quantity calculations, cost estimates, and right-of-way maps. He developed geometric details for a Class I bike path adjacent to Escondido Creek.

CONTACT INFO
amir.mansour@nv5.com

EXPERIENCE
4 years

EDUCATION
B.S. Civil Engineering

LICENSES/CERTIFICATES
Engineer-in-Training (CA)
No. 166032

AMIR MANSOUR, EIT

Plan Check Engineer

Mr. Mansour has over four years of land development and civil engineering experience, including water and sewer improvements, street improvements, retaining wall, grading and utility projects. He is proficient with AutoCAD C3D, ArcGIS, MATLAB, Bluebeam Revu and Microsoft Word and Excel software applications

Project Experience

Staff Augmentation

CITY OF SAN JUAN CAPISTRANO | SAN JUAN CAPISTRANO, CA

Plan Check Engineer/Associate Engineer. Mr. Mansour provided Staff Augmentation services for the City's Utilities Department. His duties included entering and organizing applications for Domestic Water, Fire Water, and Irrigation Meter Applications; providing as-needed plan review services, including grading plans, street improvements, and encroachment permits to ensure that there are no utility conflicts; reviewing the City's existing sewer and storm drain facilities and prioritizing rehabilitation projects; and assisting on CIP projects. Mr. Mansour also assisted the City with as-needed miscellaneous engineering duties, such as preliminary designs for conversion of septic to public sewer lines, which includes preliminary cost estimates and exhibits. Mr. Mansour conducted field inspections for proper determination of current and proposed conditions of construction. He also responded to various questions and inquiries from the general public regarding possible utility connections, easements and current utility conditions.

Diversion Pipeline

CITY OF CULVER CITY | CULVER CITY, CA

Project Engineer. Mr. Mansour provided engineering support services for this project, which included the construction of diversion sewer pipes to abandon Mesmer and Overland Sewer Pump Stations. The goal of the project is to divert flows from four of the City's sewer pump stations to a new sewage pump station, Bankfield Station.

Sewer Main Along Portuguese Bend

CITY OF ROLLING HILLS | ROLLING HILLS, CA

Project Engineer. Mr. Mansour provided engineering support services for the 8-inch Sewer Main along Portuguese Bend Road/Rolling Hills Road. The City evaluated the feasibility of connecting a portion of the City to a nearby existing wastewater conveyance system. Based on the sewer feasibility study, it was recommended to install a new 8-inch sewer main along Portuguese Bend Road and upgrade the existing sewer main along Rolling Hills Road to a 10-inch and 12-inch sewer main prior to connecting to the Los Angeles County Trunk line. Services include a CEQA process overview; utility research; preparation of plans; and construction support services.

CONTACT INFO
j.braley@nv5.com

EXPERIENCE
41 years

EDUCATION
General Education, Virginia Polytechnic University, VA

All courses Land Survey related, Santa Ana College, CA

Land Surveying Fundamentals, California State University, Fresno, CA

AutoCAD level 1 & level 2, Sacramento State University, CA

Global Positioning Survey Class, Los Rios Community College, CA

GIS class, Sierra College, CA

LICENSES/CERTIFICATES
Professional Land Surveyor
(CA) No. 8446
(NV) No. 19903

J BRALEY, PLS

Plan Check Engineer

Mr. Braley has over 40 years of experience as a Land Surveyor in Southern and Northern California, Oregon, Washington, Nevada and Virginia. Mr. Braley has provided survey services to public works agencies, institutional agencies and private land developers. He has a strong background in right-of-way mapping, boundary- and title-related issues as well as topographic surveys, horizontal and vertical control, final monument and construction staking. Mr. Braley was the survey project manager on several large projects in the Mojave Desert and in Southern and Northern California. These projects included mapping for over 100 sections and resolving the boundaries on over 1,800 parcels within those sections and resolved boundaries for 30 miles of the Los Angeles Aqueduct.

Project Experience

Olivewood Project

TAYLOR MORRISON | BEAUMONT, CA

Olivewood is a 982-lot, 12-phase subdivision project by William Lyon Homes. The scope of work included design surveying, including aerial and ground-specific topographic mapping, on/off-site street dedication easements, and construction staking for all 12 phases.

Various Construction Staking Projects

VARIOUS CLIENTS | SOUTHERN CALIFORNIA, CA

Survey Manager. Clients included KB Homes, Irvine Company, Watson Land Company, William Lyon Homes, Griffin Homes, Beazer Homes, Driver SPG, among others. Mr. Braley was responsible for survey crew coordination, survey calculations, job logistics and quality control on all of the construction sites while maintaining a cordial relationship with clients, consultants and contractors.

Torrance Unified School District

TORRANCE UNIFIED SCHOOL DISTRICT | TORRANCE, CA

Survey Manager. Contracted to provide detailed topographic survey maps for over 20 elementary, middle, and high schools. Mr. Braley was responsible for GPS control, coordination with the aerial mapping consultant, logistics on the ground-specific topography, boundary resolution and managing the drafting of the final products, which were a compilation of the aerial mapping and the ground-specific topography surveys.

Rancho Santiago Community College District

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT | ORANGE COUNTY, CA

Projects within the district included:

- ALTA of Santiago Canyon College
- ADA Compliance Survey Santiago Canyon College
- ALTA Santa Ana College
- Identify and cure title and easement discrepancies on both above college sites.

CONTACT INFO
jay.fahrion@nv5.com

EXPERIENCE
43 years

REGISTRATIONS
Professional Land Surveyor (CA) No. 8207

AQMD PM-10 Certificate

JAY FAHRION, PLS

Plan Check Engineer

Mr. Fahrion has over 42 years of surveying and mapping experience in Northwest New Mexico and Southern California. He worked in the public sector for San Juan County Public Works in Aztec, New Mexico for eight years where his duties included right-of-way surveys and acquisitions, topographic surveys, and construction staking. His experience includes boundary surveys, ALTA surveys, topographic surveys, construction staking, preparing and processing record of surveys, corner records, and parcel maps. His duties also include daily assignment of field and office work, managing field and office personnel, proposal preparation, and client development.

Project Experience

On-Call Public Works Inspection and Map/Plan Check Services

CITY OF BEAUMONT | BEAUMONT, CA

Acting City Surveyor for the City of Beaumont under contract with NV5. Responsibilities include review of all Tract Maps, Parcel Maps, Lot Line Adjustments and Certificate of Corrections prepared in the City of Beaumont. Sign and seal all documents and Maps that are required in the duties of the City Surveyor. NV5 reviews all plans and associated technical reports for clarity, format, completeness, and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development. Reviews include improvement, grading, and erosion control plans, sewer and storm drain plans, hydrology and hydraulic reports, water quality reports, geotechnical reports, structural calculations and cost estimates.

On-Call Surveying Services

CITY OF LA QUINTA | LA QUINTA, CA

Survey manager providing on-call services as requested by the Public Works Department, work requested included:

- Street Cross Sections on Monroe Street at Mountain View Lane
- Topographic Survey of the La Quinta Library
- Construction Staking Services for the West Parking Lot of La Quinta Library
- Topographic Survey of the Art Park of the Desert at Avenida Montezuma
- Construction Staking services for Fritz Burns Park
- Tie out of existing monument at the Intersection of Avenue 52 and Jefferson Street

All services were completed as scheduled and all information was provided to the City.

On-Call Surveying Services

CITY OF INDIO | INDIO, CA

Survey manager for on-call services as requested by the Public Works Department. Services include topographic survey of the Indio Safety Campus, Boundary Survey and preparation of a Parcel Map at Dr. Carreon Blvd. All Services were completed as scheduled and all information was provided to the City.

CONTACT INFO
nona.espinosa@nv5.com

EXPERIENCE
31 years

EDUCATION
B.S. Civil Engineering

LICENSES/CERTIFICATES
Civil Engineer (CA)
No. C-60547
Erosion Control
Compliance with NPDES
Phase II
Erosion Control
Compliance and Rolled
Erosion Control Pro

AFFILIATIONS
APWA

NONA ESPINOSA, PE

Plan Check Engineer

Ms. Espinosa has more than 31 years of experience as a design engineer in numerous water resource projects. She has performed hydrology and hydraulic analysis of storm systems as well as hydraulic calculations to determine pipe size, flow demands, capacities, and other pertinent data for sanitary sewer and water systems. Her designs include erosion control sites, hydraulic structures, sanitary sewer systems, water systems, pump stations, wastewater and drainage systems, and a snow making system. Ms. Espinosa is skilled in a number of modeling and engineering design programs, including AutoCAD, Cybernet, WaterCAD,H2Onet, Flow Master, Culvert Master, StormCAD, XPSWMM, PondPack, HEC-RMS, HEC-RAS, HEC-1, HEC-HMS, HEC-2, FAAST, and Primavera.

Project Experience

Focused Update to City Drainage Master Plan

CITY OF IMPERIAL BEACH | IMPERIAL BEACH, CA

Ms. Espinosa performed hydrologic/hydraulic engineering services to model the surface drainage system for four localized areas of concern that include the area of 8th Street and Calla Avenue, Georgia Street and East Bound Imperial Beach Boulevard, 11th Street and Ebony Avenue, and Holly and Oneonta Avenue south of Grove Avenue. Reviewed previous storm drainage study report and evaluated and performed hydrology calculations for various storm events. Created the hydraulic model to evaluate the feasibility of constructing a local stormwater pump system to alleviate flooding conditions under design storms, as well as possible diversions, potential for capacity increase, and options for attenuating low-flow events. Low-impact development (LID).

Newell Road Bridge Replacement at San Francisquito Creek

CITY OF PALO ALTO | PALO ALTO, CA

Ms. Espinosa performed hydrologic/hydraulic engineering services for the replacement of a structurally and hydraulically deficient bridge at San Francisquito Creek. This bridge replacement is part of an overall project to increase the hydraulic capacity of the San Francisquito Creek channel and provide 100-year flood protection. Funding for this project is coming in part from the federal Highway Bridge Program.

Interstate 80/680/12 Interchange PS&E – ICP

SOLANO COUNTY, CA

Ms. Espinosa performed the hydrology and hydraulic analysis for the initial phase of the project. Provided the biofiltration basin design and calculations to comply with NPDES c.3 regulations for stormwater treatment. The ICP project consists of widening and realigning a mile of the I-80 mainline freeway lanes; constructing a new local interchange at Green Valley Road along with the demolition of the existing substandard interchange, and constructing a new freeway connector ramp from I-80W to SR 12W.

Canyon Road Bridge Replacement Project

CITY OF MORAGA | MORAGA, CA

Ms. Espinosa performed hydrologic/hydraulic engineering services for a bridge replacement project. Prepared technical memorandum hydrologic and hydraulic assessment for the Canyon Road West Branch San Leandro Creek (Moraga Creek) (Bridge No. 28C0137) under the existing conditions. She presented the hydraulic analysis and any unusual aspects of the design that require special attention.

CONTACT INFO
gene.custenborder@nv5.com

EXPERIENCE
38 years

EDUCATION
B.S. Geology

LICENSES
Registered Geologist (CA) No. 3992

Certified Engineering Geologist (CA) No. 1319

GENE CUSTENBORDER, PG, CEG

Plan Check Engineer

Mr. Custenborder's experience includes geotechnical feasibility studies and geotechnical investigations for public works, commercial and residential works projects in many types of terrain. He has performed geotechnical studies for roadways, railways, tunnels, pipelines, water tanks and two rock-fill dams. He has evaluated potential geologic hazards due to landslides, slope instability, coastal processes, surface fault rupture, liquefaction and seismic shaking. Geologic investigative techniques include field mapping, in-hole and up-hole geologic logging and sampling of borings and trenches, cone penetration testing (CPT), seismic refraction surveys, various technical computer applications and aerial photographic analyses of landforms. Mr. Custenborder has performed geotechnical peer reviews for various municipal agencies.

Project Experience

Geotechnical Reviews

VARIOUS MUNICIPALITIES

Mr. Custenborder has provided geotechnical peer review services for the following agencies: City of San Diego, City of Santee, City of Encinitas, City of Poway, City of Menifee, City of San Bernardino, and City of Carlsbad. The peer review services consisted of reviewing the work products (geotechnical reports) of other geotechnical consultants and to provide an opinion as to whether the geotechnical aspects of proposed projects had been appropriately identified, analyzed, addressed and reported. If deficiencies were identified, recommendations were made to the municipalities to request additional analyses from the consultants.

On-Call Plan Check and Engineering Services

CITY OF MENIFEE | MENIFEE, CA

Mr. Custenborder provided geotechnical-related reviews, including soil reports and specialty inspections, as part of the project team on this contract awarded by the City of Menifee to support development review and to provide design of capital projects. NV5 was retained to work with City staff in reviewing development projects for conformance to City codes and other development standards.

On-Call Public Works Inspection and Plan Check Services

CITY OF BEAUMONT | BEAUMONT, CA

Mr. Custenborder provided geotechnical-related reviews of private development projects and public works inspection services. NV5 reviews all plans and associated technical reports for clarity, format, completeness, and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development.

CONTACT INFO
carl.henderson@nv5.com

EXPERIENCE
23 years

EDUCATION
Ph.D. Civil Engineering

M.S. Civil Engineering (Geotechnical)

B.S. Civil Engineering

LICENSES/CERTIFICATES
Geotechnical Engineer (CA) No. 2886

Civil Engineer (CA) No. 71115

AFFILIATIONS
Society of American Military Engineers (SAME)

American Society for Civil Engineers (ASCE)

CARL HENDERSON, PE, GE

Plan Check Engineer

Dr. Henderson has more than 23 years of experience performing geotechnical evaluations for a wide variety of projects, including buildings, bridges, highways, roadways, embankments, levees, land development, and commercial and industrial facilities. He has extensive experience with embankment construction and stability evaluations for many large roadway construction projects in California.

Project Experience

On-Call Public Works Inspection and Plan Check Services

CITY OF BEAUMONT | BEAUMONT, CA

Principle Geotechnical Engineer. Mr. Henderson is serving as Principal Geotechnical Engineer for geotechnical-related reviews of private development projects and public works inspection services. NV5 reviews all plans and associated technical reports for clarity, format, completeness, and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development.

Annual Residential Street Rehabilitation

CITY OF COMPTON | COMPTON, CA

Geotechnical Engineer. Mr. Henderson provided geotechnical engineering services for the project. The scope of work includes review and analysis of the City's existing Pavement Management Study; research of the City's existing street plan information; performing necessary soil investigations and coring samples; utilities notification and coordination; topographic survey; field review; and improvements to street pavement, street drainage, curb and gutter, sidewalk, and ADA curb ramps.

Beryl Street Drainage and Street Improvements from Prospect Avenue to Flagler Lane Project

CITY OF REDONDO BEACH | REDONDO BEACH, CA

Geotechnical Engineer. Mr. Henderson is providing geotechnical engineering services as part of the team that is providing engineering design services for the Beryl Street Drainage and Street Improvements project. The project includes, but is not limited to, roadway, intersection and drainage improvements, including green street elements; modifications to catch basins; pedestrian crossing enhancements through curb ramp and pedestrian signal upgrades; incorporation of Living Street Design principles, traffic calming elements to enhance safety, mobility, and access for users to accommodate a variety of transportation modes; and signing and striping.

Residential Slurry Seal and Arterial Roadway Rehabilitation

CITY OF PLACENTIA | PLACENTIA, CA

Geotechnical Engineer. Mr. Henderson provided geotechnical engineering services for the City's various streets and ADA ramps rehabilitation. The project includes the rehabilitation of existing pavement and sidewalks and traffic signal modifications. NV5's services include obtaining existing as-built plans and available pertinent data; taking pavement core samples; conducting field review and assessing pavement conditions; utility notification and coordination; preliminary and final bid packages; and construction support services.

CONTACT INFO
akram.hindiyeh@nv5.com

EXPERIENCE
40 years

EDUCATION
M.S. Civil Engineering

B.S. Civil Engineering

LICENSES/CERTIFICATES
Civil Engineer (CA)
No. 28510

Traffic Engineer (CA)
No. 1452

OCTA Prequalified
Pavement Inspector

AKRAM HINDIYEH, PE, TE

Traffic Engineer

Mr. Hindiyeh has more than 40 years of civil engineering experience in the public and private sectors. His responsibilities encompass serving as the City Engineer for the City of Villa Park, City Engineer for the City of La Habra Heights, and City Engineer/Traffic Engineer for the City of Laguna Woods. In addition, he is also responsible for administering the design and construction of several major public works, traffic and transportation projects for the City of San Clemente. Mr. Hindiyeh's experience includes developing and implementing Pavement Management System Programs, Sidewalk Inventory Programs, Street Improvement Programs, Major Street Maintenance Programs, and Traffic Signals Operation and Maintenance Programs.

Project Experience

San Fernando/Burbank Boulevard Intersection and Street Improvements

CITY OF BURBANK | BURBANK, CA

Constructability Review. Mr. Hindiyeh performed constructability review of the traffic design to confirm that all traffic control requirements were adequately addressed. The project included analysis of engineers plans, specifications and estimates, confirming compliance of ADA issues, utility challenges, field topography conditions, permits, and traffic control requirements and that bid schedules capture all scope of work.

On-Call City Engineering (Staff Augmentation)

CITY OF LA HABRA HEIGHTS | LA HABRA HEIGHTS, CA

City Engineer. Mr. Hindiyeh provides plan check services for all City plan reviews. Our team is currently providing comprehensive engineering services for assistance with project management, construction management and inspection, civil engineering design, NPDES, reviewing preliminary grading on planning applications, plan check applications, plan check for engineering and grading, review and approval of tentative and final tract maps, and other services typically provided to a municipality.

City Engineering (Staff Augmentation)

CITY OF VILLA PARK | VILLA PARK, CA

City Engineer. Mr. Hindiyeh provided direct city engineering services. Our team plays a role in helping the City Council and City Staff make appropriate decisions regarding City infrastructure. We provide a wide range of general engineering services. Services include plan checking; developing, reviewing, and modifying civil engineering plans, designs and specifications for public works projects; implementing modern methods and techniques used in the design and construction of a wide variety of municipal projects; providing construction management and inspection for a broad range of municipal public works projects; federal funding administration; and technical report writing.

General Engineering (Staff Augmentation)

CITY OF LAGUNA WOODS | LAGUNA WOODS, CA

City/Traffic Engineer. Mr. Hindiyeh and our team provide traffic and general engineering services on an as-needed basis. Services include conducting and reviewing traffic engineering, traffic analysis, and transportation planning studies; providing analysis of existing and projected traffic conditions; providing electronic traffic control device studies and design; performing pedestrian studies; plan check services; and reviewing new development projects involving traffic impact analysis, modeling, and road impact fee analyses.

CONTACT INFO
james.miller@nv5.com

EXPERIENCE
15 years

EDUCATION
B.S. Civil Engineering

LICENSES/CERTIFICATES
Civil Engineer (CA)
No. 82522

AFFILIATIONS
American Society of Civil Engineers (ASCE)

American Public Works Association (APWA) Awards Chair 2013-2019

Adjunct Professor, Civil Engineering, San Diego State University, 2014

Aztec Mentoring Program, San Diego State University, 2013-present

JAMES MILLER, PE

Traffic Engineer

Mr. Miller has over 15 years of experience in the traffic and transportation disciplines, including projects involving roadways, bridges, and other specialty civil projects. He has applied his traffic design expertise to major streetscape and multimodal projects for municipal and state agencies. His experience, combined with his knowledge of current standards and best practices, provides his clients with insightful, effective design solutions.

Project Experience

CityPlace Development – Phase I Plan Check

CITY OF SANTA CLARA | SANTA CLARA, CA

Senior Project Manager. Mr. Miller served as Senior Project Manager responsible for reviewing traffic signals, signing and striping, and street lighting design plans and photometrics prepared by others, on behalf of the City of Santa Clara. Mr. Miller reviewed the plans to assure conformance with the California MUTCD and Caltrans Standard Plans. Mr. Miller worked closely with the City of Santa Clara to understand the City's concerns and design standards and best practices and provided comments to the designers.

Black Forest Road Widening Plan Check

CITY OF COLORADO SPRINGS | COLORADO SPRINGS, CO

Senior Project Manager. Mr. Miller served as Senior Project Manager responsible for reviewing traffic signal design plans prepared by others, on behalf of the City of Colorado Springs. Mr. Miller reviewed the plans to assure conformance with the Colorado MUTCD and Colorado Standards and provided comments to the designers.

In and Out Traffic Study Review

CITY OF NATIONAL CITY | NATIONAL CITY, CA

Senior Project Manager. Mr. Miller served as Senior Project Manager responsible for the review of a traffic impact study prepared by others, on behalf of the City of National City. Mr. Miller reviewed the traffic study per local and state guidelines and requirements. Mr. Miller worked closely with the City to understand the City's concerns and prepared a memorandum.

As-Needed Traffic Control

SAN DIEGO, CA

Senior Transportation Engineer. Mr. Miller served as Senior Transportation Engineer for the design of traffic engineering plans, including new and modified traffic signals, signal interconnect, signing/striping, street and pedestrian lighting, temporary traffic control and detours. He conducted geometric analyses, sight distance evaluations, and site access assessments.

SR-1 Jamboree Road to Santa Ana River Traffic Signals

NEWPORT BEACH, CA

Project Manager/Project Engineer. Mr. Miller was responsible for designing traffic signal modification plans for 13 traffic signals along Pacific Coast Highway (SR-1). Modifications included ADA and pedestrian upgrades, new loop detectors and count stations. Mr. Miller worked closely with Caltrans District 12 staff to expedite approval of the PS&E package.

ENGINEER-IN-CHARGE

Project Manager **Tamara O'Neal, PE**, will be the Engineer-in-Charge for the duration of this contract. Her Civil Engineer License is from the State of California, and her license number is **69107**.

PLAN CHECK APPROACH

Our primary approach is to serve as a direct extension of the City staff. NV5 will take every measure possible to see that the City's timeline is met. It is our intention to consistently beat the plan review turnaround times while assuring continuous quality and reasonable implementation of the state codes and all local amendments. We will put forth a coordinated effort and responsibility to track and coordinate all applications or requests received in the City.

All plan check services will be driven by the accepted architect-engineering and industry professional practices, and will comply with the applicable regulations. Turnaround times of plan checks are crucial, and we intend to return plan checks within the timelines outlined by the City. We continually train existing employees and recruit new talent to exceed the expectations of our clients.

We understand how essential it is for individual departments to work together in order to build a successful project. Our philosophy is to work closely with all departments, divisions and agencies to eliminate redundancy and increase efficiency. We understand the difficulties in interpreting design standards, and we take pride in providing solutions for your constituents.

Outlined below is the general process the NV5 team utilizes to provide plan review services. This is presented as a guideline to be adjusted according to the processing procedures of your jurisdiction. We will work with the City in a seamless manner for review of plans for code compliance and keeping projects moving to the finish line.

PROJECT DELIVERABLES: PLAN CHECK PROJECTS

Deliverables for a typical plan check project include:

- Cost confirmation letter (if required)
- Signed comment letter with checklist (hard copy and PDF)
- Redlined plans (hard copy and PDF)

In compliance with state law, all plan check services will be performed by or under the responsible charge of a California licensed professional eligible to prepare and sign the type of map, plan, or professional study being reviewed. All plan review memos will be signed and sealed by a duly licensed professional.

PLAN CHECK SUBMITTALS SEQUENCE

Each submittal will generally follow the following sequence:

First Plan Check

The initial plan check will be comprehensive and identify all significant issues. It is important to present significant issues to the developer as early in the review process as possible, so that the developer can respond in a timely manner. In addition to the typical scope of services, the first plan check will include the following:



- Plan Review Checklist
- Review of Conditions of Discretionary Approval
- Analysis of Easement Requirements and Right-Of-Way Needs
- Identification of Required Coordination with Inter-Agency Jurisdictional Issues

Subsequent Submittals

Plan check resubmittals are reviewed for completeness and to determine if all previous comments have been fully addressed. If the developer has made significant changes to the submittal, new review comments may be necessary. The NV5 plan checker will identify remaining deficiencies in the documents for subsequent reiterations of the plan check submittals.

Final Review

We anticipate that after no more than three (3) plan checks, NV5 will request that the developer submit final plans and associated documents, as required by the City for final review. NV5 will confirm that plans are complete and that all associated documents have been submitted. NV5 will then provide an approval letter and other required documents and transmittals, depending on the type of review.

Transmittal

NV5 will maintain accurate and comprehensive records related to all plans, calculations and documents received.

We will screen and log every application to assure they are routed to all plan checkers in a timely manner. All

submittals are checked for compliance with relevant state and local requirements. The log serves as a tracking device to assure turnarounds and completeness of review.

Corrections

NV5 will assure that corrections are handled as quickly and as clearly as possible. We will identify all corrections based on compliance with specific standards, codes and regulations. We will either provide notes on the plans as appropriate, or provide a correction sheet detailing which items need to be addressed for plan approval.

Each project will be reviewed with strict adherence to our company policy of independent objectivity as a third party. Projects have ranged from the simple to the complex across all types of construction. Our wide exposure and expertise allow us to provide impartial and comprehensive plan reviews clearly indicating the applicable codes and standards and documenting noted deficiencies. Our reviews are individually prepared for each project and, while we use Agency standard checklists as a basis for our review, we also review each individual project for site-specific impacts and technical merits — including boundary conditions and general construction considerations. Our Plan Review Reports are written to provide the design team with a clear and concise understanding of the issues. Comments from each discipline are grouped together for easy reference, and each comment references a specific item in the plans or specifications as well as a reference.

Approvals

Upon completion of each plan review, plans and supporting documents will be returned to the City recommending approval. Approval will only be given when all compliance issues are resolved to the best of our team's knowledge and all requirements of the City are satisfied.

Accelerated Plan Review

In most cases, we will complete the initial plan review in 10 working days and considerably less time for re-checks. However, some plans may require expedited review. At your request, we will perform plan review services within an accelerated time frame. Accelerated plan review may require an additional fee, agreed upon by the applicant and NV5.

Meetings

We will conduct and coordinate all communications with the City for plan review comments to assure that plan review issues are handled efficiently. During the plan review process, we are prepared to meet with City staff and the applicant at any time. Our goal is to issue approved plans as quickly as possible, but in full compliance with local codes, ordinances and guidelines. Our experience suggests greater involvement early in the design process yields exceptional benefits. We feel it is helpful to be involved in Development Review meetings for projects subject to the Planning Review process.



MANAGEMENT PLAN + QA/QC

Our managerial approach is based on shared expectations and clear and consistent communication with City staff throughout the delivery of projects.

Our plan review process highlights the tools and techniques we will employ to deliver quality, accurate, timely and responsive plan reviews:

Reliable and Responsive Service. Our project manager will provide proactive communication, utilize proven project management tools and best practices, and will anticipate your needs and quickly respond with accurate and detailed information every step of the way. We are available to meet with the City at kickoff and progress meetings to discuss procedures, projects, and to maintain momentum and project schedules.

Efficiently Meet Turnaround Deadlines and Maintain Development Momentum. An emphasis will be placed on our staff's experience with the City and requirements to proactively facilitate communication and processing. We will work to assure proven quality assurance and schedule control measures are implemented.

Maintain Accuracy and Cost Savings Through Proven Processes and Continuity. We can implement integrated, standardized processes, including electronic plan reviews that will be utilized by seasoned staff members who deliver plan review comments that are consistent, thorough, accurate, and done right the first time.

C. APPROACH AND METHODOLOGY

INTEGRATED PLAN REVIEW PROCESS

The step-by-step review process that we follow for every plan check/review assures that review standards are consistently implemented on each project.

We will implement a comprehensive program based on best practices to validate that each and every review is thorough, accurate, consistent and timely. This system's success is based on thousands of hours of practical, real-world experience by our dedicated personnel and their unique ability to interact quickly and efficiently with your staff. The specific action items in our process include:

Coordination and Communication: Our staff will handle the necessary administrative functions, such as project tracking, managing project controls, maintaining and distributing communications, reviewing agendas and ordinance issues, and fielding calls on project status.

Analyzing Submittals: Our team will review and assess initial submittals for completeness, review title sheets and non-technical issues; maintain files; monitor due dates; monitor contract budget and status tracking reports; and coordinate invoicing. Consistency will be maintained by assigning the project to the same reviewer that performed the previous reviews, unless circumstances dictate otherwise.

Facilitating Quality Reviews: Our experienced public works plan reviewers will routinely review agency standards, ordinances, guidelines, and update checklists; write comment letters; coordinate project returns; attend review meetings; and communicate comments to the applicant and designers. Because of our depth of resources and project tools (checklists, comment letters), reassigned projects can be reviewed without missing deadlines or causing unnecessary rechecks.

Providing Expertise: Our experts will provide a quality, comprehensive review of plans, studies, maps and reports in accordance with all accepted engineering practices, the Subdivision Map Act, applicable regulations and City development standards. Our experts are also available to meet with your staff to clarify comments and discuss solutions, as well as provide full and complete reviews for each project that will minimize the number of resubmittals by the customer.

Quality Assurance/Quality Control: We are committed to a Quality Assurance, Quality Control and Constructability Review protocol for all deliverables submitted to a client. Our QC policy requires our project engineer and project manager to sign off on the cover sheet and commit that they have reviewed the submittal and are accepting responsibility for the quality of the documents prior to being submitted for review by peers.

WHY NV5?

☑ PROVIDING RELIABLE, RESPONSIVE AND COST-EFFECTIVE PLAN CHECK SERVICES

☑ USING LOCAL KNOWLEDGE FROM PREVIOUS LOCAL AGENCY PARTNERSHIPS AND EXPERIENCE

☑ MEETING THE CITY'S NEEDS



MOBILIZE QUICKLY
TO PROVIDE SERVICES



CLEAR COMMUNICATION
ONE POINT OF CONTACT



EQUIPPED
WITH RESOURCES



QUICK RESPONSES TO
ISSUES AND CONCERNS

UNDERSTANDING THE NATURE OF ON-CALL CONTRACTS AND THEIR CHALLENGES ALLOWS US TO MEET THE CITY'S NEEDS AND ACHIEVE ITS GOALS

D. FEE

FEE SCHEDULE

Our Fee Schedule is included in a separately sealed envelope.

ARCHITECT-ENGINEER QUALIFICATIONS

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*
Plan Check & Traffic Engineering Services for the City of Compton, CA

2. PUBLIC NOTICE DATE
February 16, 2022

3. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE
Jeffrey M. Cooper, PE, Vice President

5. NAME OF FIRM
NV5, Inc.

6. TELEPHONE NUMBER
949.585.0477

7. FAX NUMBER
949.409.8182

8. E-MAIL ADDRESS
jeff.cooper@nv5.com

C. PROPOSED TEAM

(Complete this section for the prime contractor and all key subcontractors.)

	(Check) PRIME	(Check) J-V PARTNER	(Check) SUBCONTRACTOR	9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
a.	✓			NV5, Inc. ☑ CHECK IF BRANCH OFFICE	Irvine Office: 163 Technology Drive, Suite 100, Irvine, CA 92618	Prime
b.	✓			NV5, Inc. ☑ CHECK IF BRANCH OFFICE	15092 Avenue of Science, Suite 200, San Diego, CA 92128	Prime
c.				☐ CHECK IF BRANCH OFFICE		
d.				☐ CHECK IF BRANCH OFFICE		
e.				☐ CHECK IF BRANCH OFFICE		
f.				☐ CHECK IF BRANCH OFFICE		

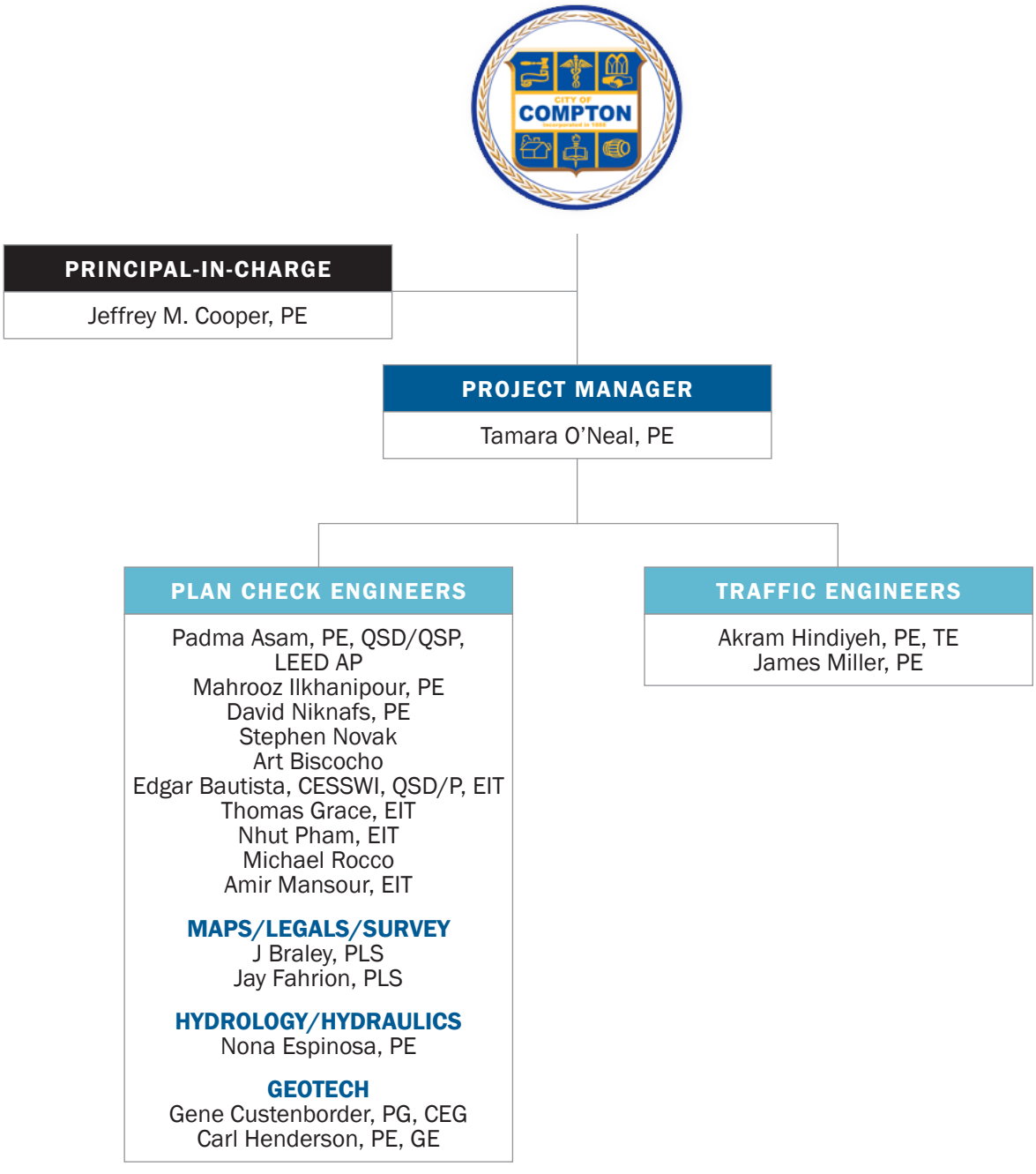
D. ORGANIZATIONAL CHART OF PROPOSED TEAM ☑ *(Attached)*

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 330 (REV. 7/2021)

SECTION D. ORGANIZATIONAL CHART OF PROPOSED TEAM

Below is NV5's proposed team, showing the names and roles of all key personnel listed in Section E.



E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Tamara O'Neal, PE	Project Manager	26 years	7 years

15. FIRM NAME AND LOCATION *(City and State)*

NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	Civil Engineer (CA) No. 69107

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check + Public Works Inspection Services, City of Beaumont, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager. Ms. O'Neal is providing the City with review of as-needed private development projects and public works inspection services. Reviews include improvement, sewer and storm drain plans, hydrology and hydraulic reports, water quality reports, geotechnical reports, structural calculations and cost estimates. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Pico Rivera, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager. Ms. O'Neal oversees this contract, which includes reviews of subdivision maps, parcel maps, boundary adjustments and legal descriptions; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; cost estimate; erosion and sediment control plans; and geotechnical report review. Status: Current

c.

(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Lake Elsinore, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2019 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager. Ms. O'Neal oversaw the review of Water Quality Technical Reports, grading plans, tract improvement plans, parcel mergers and lot line adjustments. Due to the unique nature of Lake Elsinore's water conservation requirements, NV5 developed delineating maps to distinguish "Highest and Best Use" areas for the City to streamline the plan review process.

d.

(1) TITLE AND LOCATION *(City and State)*: Hollywood Park Development Review, City of Inglewood, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2010 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Project Manager. Ms. O'Neal led the development review services contract for the redevelopment of Hollywood Park, Phase A, Phase 1, and a portion of Phase 2 Infrastructure Improvement. Plan reviews included developing conditions of approval, mitigation monitoring reporting plans, specific plans and general plans, as well as completing grading, drainage and street improvement plan reviews.

e.

(1) TITLE AND LOCATION *(City and State)*: Plan Check of Water Quality Management Plan Hydrology Reports and Plan Check Services, County of Riverside, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager. Ms. O'Neal oversaw plan checking of WQMP and Hydrology Reports associated with new development and significant redevelopment projects, and plan check services for private development projects for compliance with the county's MS4 permits and the Riverside County WQMP for Urban Runoff. Status: Current

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Padma Asam, PE, QSD/QSP, LEED AP	Plan Check Engineer	15 years	15 years

15. FIRM NAME AND LOCATION *(City and State)*

NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
M.S. Structural Engineering B.S. Civil Engineering	Civil Engineer (CA) No. 83896 Qualified SWPPP Developer/Practitioner (CA) No. 27085 LEED Accredited Professional

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: On-Call Public Works Inspection and Plan Check Services, City of Beaumont, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Engineer. Ms. Asam is providing review of private development projects and public works inspection services. NV5 reviews all plans and associated technical reports for clarity, format, completeness and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Lake Elsinore, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2019 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Plan Check Engineer. Ms. Asam provided review of Water Quality Technical Reports, grading plans, tract improvement plans, parcel mergers and lot line adjustments. Other tasks included reviewing hydrology and hydraulic data output calculations in conjunction with proposed storm drain design and reviewing NPDES documents for conformance to jurisdictional requirements and the City's Standard Urban Stormwater Management Plan.

c.

(1) TITLE AND LOCATION *(City and State)*: Engineering and Plan Check Services, City of Imperial Beach, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Engineer. Ms Asam is providing consultant City Engineer services for this beachside community. The suite of services consists of three major elements: City Engineer services, plan check/development review, design of capital improvement projects, and grant administration. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*: As-Needed Services, City of Carlsbad, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2021 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Engineer. Ms. Asam provided consultant services for the City, including review of grading plans, street improvement plans, geotech reports, hydrology reports and stormwater documents for residential and commercial developments.

e.

(1) TITLE AND LOCATION *(City and State)*: Civil & Water Quality Management Plan Check Services, County of San Bernardino, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Engineer. Ms. Asam provided engineering development review services for a variety of projects ranging from single-family developments to large, multiphase subdivisions and commercial projects. NV5 reviewed Hydraulic and Hydrologic Analyses, WQMPs, erosion control plans, soils reports, private grading and public improvement plans. Status: Current

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Mahrooz Ilkhanipour, PE	Plan Check Engineer	33 years	3 years

15. FIRM NAME AND LOCATION *(City and State)*

NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
M.S. Civil Engineering (Major emphasis in Water Resources and Structural) B.S. Civil Engineering	Civil Engineer (CA) No. 55003

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: As-Needed Plan Check Engineering Services, City of La Habra Heights, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Plan Check Engineer. Ms. Ilkhanipour provides as-needed plan review services for the City of La Habra Heights. Her scope of work includes plan review and checking final maps, parcel maps, street improvement plans, grading plans, hydrologic/hydraulic studies, soils/geologic reports, engineer cost estimates, haul routes, easement documents, lot line adjustments, SUSMP/SWPPP/LID, erosion control plans, BMPs, and encroachment permits. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*: As-Needed Plan Check Engineering Services/Alternate City Engineer, City of Villa Park, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Plan Check Engineer/Alternate City Engineer. Ms. Ilkhanipour provides as-needed plan review services and as-needed City Engineering services. She is responsible for plan review and checking final maps, parcel maps, street improvement plans, grading plans, hydrologic/hydraulic studies, soils/geologic reports, engineer cost estimates, haul routes, easement documents, lot line adjustments, SUSMP/SWPPP/LID, erosion control plans, BMPs, and encroachment permits. Status: Current

c.

(1) TITLE AND LOCATION *(City and State)*: Public Works/Infrastructure & Development Services, County of Orange, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2018 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Plan Check Manager. Ms. Ilkhanipour managed and led staff and consulting teams in reviewing and processing plans for major development. This includes plan review of subdivision maps, survey, drainage plans and reports, grading, traffic improvements, proposed roads, and all aspects of wet and dry utilities. She also reviewed and approved all proposed encroachments within County property and the Flood Control District properties.

d.

(1) TITLE AND LOCATION *(City and State)*: Public Works/Development Services/Permitting, County of Orange, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2017 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Ms. Ilkhanipour managed day-to-day review of building, grading, drainage plans and reports, and permit applications for both public and private improvement works plans. This involved extensive interaction with engineers, architects, contractors, developers, property owners and utilities. She was in charge of two teams, a total of 18 staff.

e.

(1) TITLE AND LOCATION *(City and State)*:

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
David Niknafs, PE	Plan Check Engineer	30 years	7 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
M.S. Civil Engineering B.S. Civil Engineering	Civil Engineer (CA) No. 42697

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*
American Public Works Association (APWA); American Society of Civil Engineers (ASCE); Transportation & Development Institute

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: Plan Check Reviews, City of El Monte, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Manager. Mr. Niknafs is responsible for reviewing grading and drainage plans for various land development projects for the City. Reviews include grading, soils report reviews, sewer, water, and storm drain improvements, hydrology reports, SWPPPs, Low Impact Development, street improvement plans, parcel/tract maps, easements and lot line adjustments. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Pico Rivera, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Manager. Reviews include subdivision maps, parcel maps, boundary adjustments and legal descriptions; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate; engineer's reports, including stormwater pollution prevention plans; erosion and sediment control plans; and geotechnical report review. Status: Current

c.
(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Moreno Valley, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2019 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Manager. Services included plan review and checking final maps, parcel maps, improvement plans, grading plans, hydrologic/hydraulic studies, soil/geologic reports, Engineer Cost Estimates and easement documents, in addition to providing other support services as needed for the Land Development Division of Public Works.

d.
(1) TITLE AND LOCATION *(City and State)*: Beryl Street Drainage and Street Improvements, City of Redondo Beach, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Manager. The project includes roadway, intersection and drainage improvements, including: green street elements; modifications to catch basins; pedestrian crossing enhancements through curb ramp and pedestrian signal upgrades; incorporation of Living Street Design principles, traffic calming elements; and signing and striping. Status: Current

e.
(1) TITLE AND LOCATION *(City and State)*: Wilmington Avenue Pedestrian and Bicycle Improvements, City of Compton, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2016 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Mr. Niknafs was responsible for providing professional design engineering services, including plans, specifications, cost estimates and related bid documents for the project. Scope of work consisted of pedestrian and bicycle improvements; installation of wider and colored crosswalks; countdown pedestrian signals; enhanced pedestrian lighting; installation of Class II bike lanes with wayfinding signage and Class I bike paths; and the installation of four solar-powered speed feedback signs.

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Stephen Novak	Plan Check Engineer	25 years	2 1/2 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
A.S. Building Technology	

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

Certificate, Master Planning Communities

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: Plan Check Reviews, City of El Monte, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Plan Check Engineer. Mr. Novak is reviewing grading and drainage plans for various land development projects for the City. Our team is providing reviews include grading, soils report reviews, sewer, water, and storm drain improvements, hydrology reports, SWPPPs, Low Impact Development, street improvement plans, parcel/tract maps, easements and lot line adjustments. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Pico Rivera, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Plan Check Engineer. Mr. Novak provides as-needed review of grading and drainage plans for development projects. Our team is providing reviews of subdivision maps, parcel maps, boundary adjustments and legal descriptions; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate; stormwater pollution prevention plans; erosion and sediment control plans review. Status: Current

c.

(1) TITLE AND LOCATION *(City and State)*: Beryl Street Drainage and Street Improvements, City of Redondo Beach, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Engineer. Mr. Novak is providing engineering design services for the project, including the preparation of plans, specifications and estimates. The project includes roadway, intersection and drainage improvements, including green street elements; modifications to catch basins; pedestrian crossing enhancements through curb ramp and pedestrian signal upgrades; incorporation of Living Street Design principles, traffic calming elements; and signing and striping. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*: El Monte Avenue and Baldwin Avenue Street Improvements, City of El Monte, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Designer. Mr. Novak is providing civil engineering design services for the project. Services include topographical survey; reviewing existing pavement conditions and treatment recommendations; potholing existing pavement sections and subgrade; preparing plans, specifications, and estimates; implementing City's Bike Master Plan recommended bike route; and preparing final bid documents. Status: Current

e.

(1) TITLE AND LOCATION *(City and State)*:

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Art Biscocho	Plan Check Engineer	30 years	11 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: PCH Arterial Improvements, City of Redondo Beach, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Engineer. Mr. Biscocho is providing engineering design services for this project. Our team provided comprehensive traffic analysis and the preparation of preliminary design recommendations to reduce congestion and increase safety on Pacific Coast Highway. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: Wilmington Avenue Pedestrian and Bicycle Improvements, City of Compton, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2016 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Designer. Mr. Biscocho was responsible for providing professional design engineering services for the project, which included pavement rehabilitation, various pedestrian and bicycle improvements; the installation of wider and colored crosswalks; countdown pedestrian signals; enhanced pedestrian lighting; the installation of Class II bike lanes with wayfinding signage and Class I bike paths; and the installation of four solar-powered speed feedback signs.

c.
(1) TITLE AND LOCATION *(City and State)*: North La Brea Avenue "Green Street" Improvements, City of Inglewood, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2018 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☒ Check if project performed with current firm
Project Designer. Mr. Biscocho prepared plans, specifications and estimates for improvements on north La Brea Avenue. The project included repairing damaged sidewalks, curbs and gutters, cross-gutters, alley gutters and driveway approaches; assessing if curb ramps are ADA-compliant; landscaping and root pruning; installing pavement markers and striping to current standards; and reconstructing or removing bus stop pads and channelization islands.

d.
(1) TITLE AND LOCATION *(City and State)*: Citywide Street Rehabilitation, City of Pomona, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2016 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Designer. Mr. Biscocho prepared plans, specifications and estimates for the design of pavement rehabilitation, street improvements, bikeway improvements, pedestrian/ADA improvements, and landscape/Green Street and irrigation improvements on several City streets. Bikeway infrastructure improvements included the associated bike facility striping, signing, crossing improvements and signal modifications for bike detection.

e.
(1) TITLE AND LOCATION *(City and State)*: El Monte Avenue and Baldwin Avenue Street Improvements, City of El Monte, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Designer. Mr. Biscocho is providing engineering design services for the project. Services include topographical survey; reviewing existing pavement conditions and treatment recommendations; potholing existing pavement sections and subgrade t; preparing plans, specifications, and estimates; implementing City's Bike Master Plan recommended bike route; and preparing final bid documents. Status: Current

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Edgar Bautista, CESSWI, QSD/P, EIT	Plan Check Engineer	3 years	3 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
M.S. Environmental Engineering B.S. Applied Physics	Engineer-in-Training (CA) No. 165948 Qualified SWPPP Developer/Practitioner (CA) No. 27593

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*
Certified Erosion, Sediment and Stormwater Inspector; Certified Professional in Stormwater Quality in training; Hazardous & Universal Waste Awareness; First Aid, CPR, AED; 40-Hr. HAZWOPER with current Annual 8-Hr. Refresher

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
WQMP Plan Review, Southern California		

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Assistant Engineer. Mr. Bautista is assisting with reviewing Water Quality Management Plans (WQMP) on behalf of the City of Beaumont, Riverside County Transportation Department, County of San Bernardino and City of Dana Point. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
San Mateo Substation, City of San Clemente, CA	2021	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Assistant Engineer. Mr. Bautista assisted with developing a Water Quality Management Plan (WQMP) for a San Diego Gas & Electric substation rebuilt project. He performed calculations to Drainage Management Areas (DMA) to generate the Design Capture Volume and design flow rates for the proposed proprietary biofiltration device. He also took part in developing CAD exhibit to demonstrate DMA areas.

c.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
As-Needed Stormwater Services, UC San Diego (UCSD), San Diego, CA		

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Mr. Bautista supported this As-Needed Stormwater Contract in which NV5 is providing Owner's rep services to support UCSD's stormwater program, mainly related to the Construction General Permit (CGP) and the Phase II NPDES Permit. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Rio Estrella Development, Bonsall, CA	2018	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Assistant Engineer. Mr. Bautista assisted with developing a Water Pollution Control Plan for an underground utility project, which was submitted to Caltrans. His services included gaining familiarity with the Caltrans SWPPP/WPCP template and Caltrans BMP Manual. Selected appropriate BMPs and outlined where recommended BMPs should be placed on the site map.

e.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Water Quality Management Plan, City of Santa Ana, CA	2021	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Assistant Engineer. Mr. Bautista assisted with developing a Water Quality Management Plan (WQMP) for the City of Santa Ana. The site improvements were categorized as a redevelopment project to make improvements to a pedestrian and bike walkway along the City's right-of-way.

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Thomas Grace, EIT	Plan Check Engineer	24 years	6 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	Engineer-in-Training (CA) No. 103177

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: On-Call Public Works Inspection and Plan Check Services, City of Beaumont, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Engineer. Duties included drainage study reviews, assuring submitted drainage reports adhered to the City's standards and providing review comments to be addressed for approval. Projects reviewed include 1010 West 4th Street WQMP, PA 33 Active Adult Development SWPPP Review, Heartland Development Drainage Study, Four Seasons Development Drainage Study, Olivewood Sewer Plans Review, and Any Size RV, Trailer and Boat Storage WQMP. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: Drainage & WQMP Plan Reviews, County of Riverside, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Engineer. Performed reviews of Water Quality Management Plans and Hydrology Reports associated with new development and significant redevelopment projects, and plan check services for private development projects for compliance with the county's MS4 permits and the Riverside County WQMP for Urban Runoff. Review of P-WQMPs, F-WQMPs, Hydraulic and Hydrology reports, floodplain studies, and grading plans. Status: Current

c.
(1) TITLE AND LOCATION *(City and State)*: Drainage Study Reviews, City of Imperial Beach, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Engineer. Duties included drainage study reviews, assuring submitted drainage reports adhered to the City's standards and provided review comments to be addressed for approval. Projects reviewed include Eight Alley Paving Project, 1337 Molly Ave., and 245 Evergreen Ave. Status: Current

d.
(1) TITLE AND LOCATION *(City and State)*: Drainage Study Reviews, City of Dana Point, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Engineer. Duties included drainage study reviews, assuring submitted drainage reports adhered to the City's standards, precise grading and sewer review and providing review comments to be addressed for approval. Status: Current

e.
(1) TITLE AND LOCATION *(City and State)*: Civil & Water Quality Management Plan Check Services, County of San Bernardino, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Project Engineer. Provided engineering development review services for a variety of projects ranging from single-family development to large, multiphase subdivisions and commercial projects with significant public infrastructure requirements. NV5 reviewed Hydraulic and Hydrologic Analyses, Water Quality Management Plans (WQMPs), erosion control plans, soils reports, private grading, and public improvement plans. Status: Current

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Nhut Pham, EIT	Plan Check Engineer	5 years	6 months

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	Engineer-in-Training (CA) No. 163240

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Public Works Plan Check, Cities of Santa Ana, Fullerton and Chino, CA	2021	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Project Engineer. Mr. Pham provided plan checks for private developments within the cities. He performed technical review for Water Quality Management Plans and civil engineering plans (precise grading, streets, water/wastewater, erosion control).

b.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Havenhurst Drive and Fountain Avenue Traffic Signal, City of West Hollywood, CA	2021	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Project Engineer. Mr. Pham provided plans and cost estimates for the street rehabilitation of this intersection improvement project. Improvements included new ADA curb ramps, sidewalk, bulb-out (curb extension), and new AC pavement.

c.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Concrete Street Pavement Reconstruction, City of Newport Beach, CA	2020	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Project Engineer. Mr. Pham provided plans, specifications and cost estimates for concrete street rehabilitation. Improvements included construction of new concrete pavement and sidewalk and installation of new storm drain pipes and catch basins.

d.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Citywide Curb Ramp Program, City of Long Beach, CA	2020	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Project Engineer. Mr. Pham provided plans for construction of 50 curb ramps in the City. Improvements included new curb ramp construction and reconstruction of asphalt pavement, landscape, signage and striping.

e.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Sewer Main Along Portuguese Bend, City of Rolling Hills, CA		

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Engineer. Mr. Pham is providing engineering design services for the project. The City evaluated the feasibility of connecting a portion of the City to a nearby existing wastewater conveyance system. Based on the sewer feasibility study, it was recommended to install a new 8-inch sewer main along Portuguese Bend Road and upgrade the existing sewer main along Rolling Hills Road to a 10-inch and 12-inch sewer main prior to connecting to the Los Angeles County Trunk line. Status: Current

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Michael Rocco	Plan Check Engineer	22 years	6 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
AutoCAD University NV5 Project Manager Course	

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*
CADD Drafting & Technical Drawing Certificate; American Public Works Association

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check + Public Works Inspection Services, City of Beaumont, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Plan Check Engineer. Mr. Rocco is providing review of as-needed private development projects. Services include subdivision and parcel map review, grading, public and private street and utility improvements, storm drain, sewer, erosion control, geotechnical, hydrology/hydraulic, structural, water quality/NPDES, and landscape reviews. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Pico Rivera, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Plan Check Engineer. Our team is contracted with the City to provide reviews of subdivision maps, parcel maps, boundary adjustments and legal descriptions; grading plans; street improvement plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate; engineer's reports, including stormwater pollution prevention plans; and erosion and sediment control plans review. Status: Current

c.
(1) TITLE AND LOCATION *(City and State)*: Alley Paving Project, City of Imperial Beach, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2017 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm
Senior Designer. Mr. Rocco was responsible for the preparation of plans, specifications and construction estimates of an award-winning "Green Streets" project. It incorporated Low Impact Development techniques and complied with new stormwater regulations. The improved alley design called for a 'V' shaped cross-section with a 2-foot strip of pervious concrete along the center flowline with filtration material and an underdrain connecting to an existing storm drain system.

d.
(1) TITLE AND LOCATION *(City and State)*: Citracado Parkway Extension, City of Escondido, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2012 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm
Senior Transportation Designer. Mr. Rocco prepared geometric design, alignment, profile, and grading for a new roadway connection, including a bridge across Escondido Creek. He prepared design for various alternatives, including earthwork analysis, retaining wall layout, sight distance calculations, intersection details, striping plans, quantity calculations, cost estimates, and right-of-way maps. He developed geometric details for a Class I bike path adjacent to Escondido Creek.

e.
(1) TITLE AND LOCATION *(City and State)*: Encinitas Boulevard Safe Routes To Schools, City of Encinitas, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2014 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm
Senior Transportation Designer. Mr. Rocco was responsible the preparation of Plans, Specifications, and Cost Estimate (PS&E) for improvements on the north side of Encinitas Boulevard. The project included design of curb, gutter, sidewalk, and retaining wall improvements to allow safer access to the nearby Oak Crest Middle School and the City of Encinitas Community & Senior Center.

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Amir Mansour, EIT	Plan Check Engineer	4 years	1 year

15. FIRM NAME AND LOCATION *(City and State)*

NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	Engineer-in-Training (CA) No. 166032

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: Staff Augmentation, City of San Juan Capistrano, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2021 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☑ Check if project performed with current firm

Plan Check Engineer/Associate Engineer. Mr. Mansour's duties included providing as-needed plan review services, including grading plans, street improvements, and encroachment permits; reviewing the City's existing sewer and storm drain facilities and prioritizing rehabilitation projects; and assisting on CIP projects. Mr. Mansour also assisted the City with as-needed miscellaneous engineering duties, such as preliminary designs for conversion of septic to public sewer lines.

b.

(1) TITLE AND LOCATION *(City and State)*: Diversion Pipeline, City of Culver City, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2021 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☑ Check if project performed with current firm

Project Engineer. Mr. Mansour provided engineering support services for this project, which included the construction of diversion sewer pipes to abandon Mesmer and Overland Sewer Pump Stations. The goal of the project is to divert flows from four of the City's sewer pump stations to a new sewage pump station, Bankfield Station.

c.

(1) TITLE AND LOCATION *(City and State)*: Sewer Main Along Portuguese Bend, City of Rolling Hills, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☑ Check if project performed with current firm

Project Engineer. The City evaluated the feasibility of connecting a portion of the City to a nearby existing wastewater conveyance system. Based on the study, it was recommended to install a new 8-inch sewer main along Portuguese Bend Road and upgrade the existing sewer main along Rolling Hills Road to a 10-inch and 12-inch sewer main prior to connecting to the Los Angeles County Trunk line. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*: Engineering Technician, County of Riverside, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2021 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☐ Check if project performed with current firm

Designed water improvement, sewer improvement, and fire service plans for residential and commercial developments in the County of Riverside. Utilized Civil 3D to create pipe networks, profile views, and set up plan sheets. Contacted the plan checkers and addressed comments until final approval. Designed and prepared street light plans, and signing and striping plans. In addition, he prepared street improvement plans and collaborated on street profile designs.

e.

(1) TITLE AND LOCATION *(City and State)*:

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☐ Check if project performed with current firm

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
J Braley, PLS	Plan Check Engineer	41 years	3 months

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
General Education, Virginia Polytechnic University, VA; All courses Land Survey-related, Santa Ana College, CA; Land Surveying Fundamentals, CSU Fresno, CA; AutoCAD level 1 & level 2, Sacramento State University, CA; Global Positioning Survey Class, Los Rios Community College, CA; GIS class, Sierra College, CA	Professional Land Surveyor (CA) No. 8446 (NV) No. 19903

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: Olivewood Project, City of Beaumont, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2020 — CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Olivewood is a 982-lot, 12-phase subdivision project by William Lyon Homes. The scope of work included design surveying, including aerial and ground-specific topographic mapping, on/off-site street dedication easements, and construction staking for all 12 phases.

b.

(1) TITLE AND LOCATION *(City and State)*: Various Construction Staking Projects, Southern California

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2021 — CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Survey Manager. Clients included KB Homes, Irvine Company, Watson Land Company, William Lyon Homes, Griffin Homes, Beazer Homes, Driver SPG, among others. Mr. Braley was responsible for survey crew coordination, survey calculations, job logistics and quality control on all of the construction sites while maintaining a cordial relationship with clients, consultants and contractors.

c.

(1) TITLE AND LOCATION *(City and State)*: Torrance Unified School District, City of Torrance, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2020 — CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Survey Manager. Contracted to provide detailed topographic survey maps for over 20 elementary, middle, and high schools. Mr. Braley was responsible for GPS control, coordination with the aerial mapping consultant, logistics on the ground-specific topography, boundary resolution and managing the drafting of the final products, which were a compilation of the aerial mapping and the ground-specific topography surveys.

d.

(1) TITLE AND LOCATION *(City and State)*: Rancho Santiago Community College District, Orange County, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2021 — CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

Projects within the district included ALTA of Santiago Canyon College, ADA Compliance Survey Santiago Canyon College, ALTA Santa Ana College, identifying and curing title and easement discrepancies on both college sites.

e.

(1) TITLE AND LOCATION *(City and State)*:

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: — CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Jay Fahrion, PLS	Plan Check Engineer	43 years	31 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
	Professional Land Surveyor (CA) No. 8207

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*
AQMD PM-10 Certificate

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: On-Call Public Works Inspection and Map/Plan Check Services, City of Beaumont, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Acting City Surveyor for the City of Beaumont under contract with NV5. Responsibilities include review of all Tract Maps, Parcel Maps, Lot Line Adjustments and Certificate of Corrections prepared in the City of Beaumont. Sign and seal all documents and Maps that are required in the duties of the City Surveyor. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: On-Call Surveying Services, City of La Quinta, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Survey Manager providing on-call services. Work included Street Cross Sections on Monroe Street at Mountain View Lane; Topographic Survey of the La Quinta Library; Construction Staking Services for the West Parking Lot of La Quinta Library; Topographic Survey of the Art Park of the Desert at Avenida Montezuma; Construction Staking services for Fritz Burns Park; Tie out of existing monument at the Intersection of Avenue 52 and Jefferson Street. Status: Current

c.
(1) TITLE AND LOCATION *(City and State)*: On-Call Surveying Services, City of Indio, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Survey Manager for on-call services as requested by the Public Works Department. Services include topographic survey of the Indio Safety Campus and Boundary Survey and preparation of a Parcel Map at Dr. Carreon Boulevard. All Services were completed as scheduled and all information was provided to the City. Status: Current

d.
(1) TITLE AND LOCATION *(City and State)*:
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

e.
(1) TITLE AND LOCATION *(City and State)*:
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Nona Espinosa, PE	Plan Check Engineer	31 years	25 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	Civil Engineer (CA) No. C-60547

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*
Erosion Control Compliance with NPDES Phase II; Erosion Control Compliance and Rolled Erosion Control Pro; American Public Works Association

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: Focused Update to City Drainage Master Plan, City of Imperial Beach, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Ms. Espinosa performed hydrologic/hydraulic engineering services to model the surface drainage system for four areas. Reviewed previous storm drainage study report and evaluated and performed hydrology calculations for storm events. Created the hydraulic model to evaluate the feasibility of constructing a local stormwater pump system to alleviate flooding conditions under design storms, as well as possible diversions and options for attenuating low-flow events. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: Canyon Road Bridge Replacement Project, City of Moraga, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Ms. Espinosa performed hydrologic/hydraulic engineering services for a bridge replacement project. Prepared technical memorandum hydrologic and hydraulic assessment for the Canyon Road West Branch San Leandro Creek (Moraga Creek) (Bridge No. 28C0137) under the existing conditions. She presented the hydraulic analysis and any unusual aspects of the design that require special attention, and clarify the procedures, methodology, and criteria used in the analysis. Status: Current

c.
(1) TITLE AND LOCATION *(City and State)*: Newell Road Bridge Replacement at San Francisquito Creek, City of Palo Alto, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Ms. Espinosa performed hydrologic/hydraulic engineering services for the replacement of a structurally and hydraulically deficient bridge at San Francisquito Creek. This bridge replacement is part of an overall project to increase the hydraulic capacity of the San Francisquito Creek channel and provide 100-year flood protection. Funding for this project is coming in part from the federal Highway Bridge Program. Status: Current

d.
(1) TITLE AND LOCATION *(City and State)*: Interstate 80/680/12 Interchange PS&E – ICP, Solano County, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2003 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
Ms. Espinosa performed the hydrology and hydraulic analysis for the initial phase of the project. Provided the biofiltration basin design and calculations to comply with NPDES c.3 regulations for stormwater treatment. The ICP project consisted of widening and realigning a mile of the I-80 mainline freeway lanes; constructing a new local interchange at Green Valley Road along with the demolition of the existing substandard interchange, and constructing a new freeway connector ramp from I-80W to SR 12W.

e.
(1) TITLE AND LOCATION *(City and State)*:
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Gene Custenborder, PG, CEG	Plan Check Engineer	38 years	15 years

15. FIRM NAME AND LOCATION *(City and State)*

NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Geology	Registered Geologist (CA) No. 3992 Certified Engineering Geologist (CA) No. 1319

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: Geotechnical Reviews, Southern California

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☑ Check if project performed with current firm

Mr. Custenborder has provided peer review services for the following agencies: City of San Diego, City of Santee, City of Encinitas, City of Poway, City of Menifee, City of San Bernardino, and City of Carlsbad. The services consisted of reviewing geotechnical reports and to provide an opinion as to whether the geotechnical aspects of proposed projects had been appropriately identified, analyzed, addressed and reported. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*: On-Call Plan Check and Engineering Services, City of Menifee, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☑ Check if project performed with current firm

Mr. Custenborder provided geotechnical-related reviews, including soil reports and specialty inspections, as part of the project team on this contract awarded by the City of Menifee to support development review and to provide design of capital projects. NV5 was retained to work with City staff in reviewing development projects for conformance to City codes and other development standards. Status: Current

c.

(1) TITLE AND LOCATION *(City and State)*: On-Call Public Works Inspection and Plan Check Services, City of Beaumont, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☑ Check if project performed with current firm

Mr. Custenborder provided geotechnical-related reviews of private development projects and public works inspection services. NV5 reviews all plans and associated technical reports for clarity, format, completeness, and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*:

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☐ Check if project performed with current firm

e.

(1) TITLE AND LOCATION *(City and State)*:

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE

☐ Check if project performed with current firm

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Carl Henderson, PE, GE	Plan Check Engineer	23 years	3 1/2 years

15. FIRM NAME AND LOCATION *(City and State)*

NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
Ph.D. Civil Engineering M.S. Civil Engineering (Geotechnical) B.S. Civil Engineering	Geotechnical Engineer (CA) No. 2886 Civil Engineer (CA) No. 71115

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

Society of American Military Engineers (SAME); American Society for Civil Engineers (ASCE)

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*: On-Call Public Works Inspection and Plan Check Services, City of Beaumont, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Principle Geotechnical Engineer. Mr. Henderson is serving as Principal Geotechnical Engineer for geotechnical-related reviews of private development projects and public works inspection services. NV5 reviews all plans and associated technical reports for clarity, format, completeness, and conformance to the City's grading and roadway criteria, industry-standard design procedures, permit requirements, and conditions of development. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*: Annual Residential Street Rehabilitation, City of Compton, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2019 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Geotechnical Engineer. Mr. Henderson provided geotechnical engineering services for the project. The scope of work includes review and analysis of the City's existing Pavement Management Study; research of the City's existing street plan information; performing necessary soil investigations and coring samples; utilities notification and coordination; topographic survey; field review; and improvements to street pavement, street drainage, curb and gutter, sidewalk, and ADA curb ramps.

c.

(1) TITLE AND LOCATION *(City and State)*: Beryl Street Drainage and Street Improvements, City of Redondo Beach, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Geotechnical Engineer. The project includes roadway, intersection and drainage improvements, including green street elements; modifications to catch basins; pedestrian crossing enhancements through curb ramp and pedestrian signal upgrades; incorporation of Living Street Design principles, traffic calming elements; and signing and striping. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*: Residential Slurry Seal and Arterial Roadway Rehabilitation, City of Placentia, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2019 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Geotechnical Engineer. Mr. Henderson provided geotechnical engineering services for the City's various streets and ADA ramps rehabilitation. The project includes the rehabilitation of existing pavement and sidewalks and traffic signal modifications.

e.

(1) TITLE AND LOCATION *(City and State)*: Mitigation of Paseo de Colinas Seepage, City of Laguna Niguel, CA

(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2020 | CONSTRUCTION *(If applicable)*:

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager. NV5's geotechnical and engineering geology services included the review of available literature on subsurface conditions, drilling and associated documentation of seven (7) borings, appropriate laboratory testing for assessment of subsurface characteristics, and engineering evaluation of the data collected to develop geotechnical recommendations for the proposed mitigation of seepage conditions.

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
Akram Hindiyeh, PE, TE	Traffic Engineer	40 years	5 years

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 163 Technology Drive, Suite 100, Irvine, CA 92618

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
M.S. Civil Engineering B.S. Civil Engineering	Civil Engineer (CA) No. 28510 Traffic Engineer (CA) No. 1452

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*
OCTA Prequalified Pavement Inspector

19. RELEVANT PROJECTS

a.
(1) TITLE AND LOCATION *(City and State)*: On-Call City Engineering (Staff Augmentation), City of La Habra Heights, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
City Engineer. Mr. Hindiyeh provides plan check services for all City plan reviews. Our team is providing comprehensive engineering services for assistance with project management, construction management and inspection, civil engineering design, NPDES, reviewing preliminary grading on planning applications, plan check applications, plan check for engineering and grading, and review and approval of tentative and final tract maps. Status: Current

b.
(1) TITLE AND LOCATION *(City and State)*: City Engineering (Staff Augmentation), City of Villa Park, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: 2022 | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
City Engineer. Mr. Hindiyeh provided direct city engineering services. Our team provides services including plan checking; developing, reviewing, and modifying civil engineering plans, designs and specifications for public works projects; implementing modern methods and techniques used in the design and construction of municipal projects; providing construction management and inspection for public works projects; federal funding administration; and technical report writing.

c.
(1) TITLE AND LOCATION *(City and State)*: General Engineering (Staff Augmentation), City of Laguna Woods, CA
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm
City/Traffic Engineer. Mr. Hindiyeh and our team provide traffic and general engineering services. Services include conducting and reviewing traffic engineering, traffic analysis, and transportation planning studies; providing analysis of existing and projected traffic conditions; providing electronic traffic control device studies and design; performing pedestrian studies; plan check services; and reviewing new development projects involving traffic impact analysis, modeling, and road impact fee analyses. Status: Current

d.
(1) TITLE AND LOCATION *(City and State)*:
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

e.
(1) TITLE AND LOCATION *(City and State)*:
(2) YEAR COMPLETED — PROFESSIONAL SERVICES: | CONSTRUCTION *(If applicable)*:
(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☐ Check if project performed with current firm

STANDARD FORM 330 (REV. 7/2021) **PAGE 2**

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
James Miller, PE	Traffic Engineer	15 years	1 year

15. FIRM NAME AND LOCATION *(City and State)*
NV5, Inc., 15092 Avenue of Science, Suite 200, San Diego, CA 92128

16. EDUCATION *(Degree and Specialization)*	17. CURRENT PROFESSIONAL REGISTRATION *(State and Discipline)*
B.S. Civil Engineering	Civil Engineer (CA) No. 82522

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

American Society of Civil Engineers (ASCE); American Public Works Association (APWA) Awards Chair 2013-2019; Adjunct Professor, Civil Engineering, San Diego State University, 2014; Aztec Mentoring Program, San Diego State University, 2013-present

19. RELEVANT PROJECTS

a.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
CityPlace Development – Phase I Plan Check, City of Santa Clara, CA		

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Senior Project Manager. Mr. Miller was responsible for reviewing traffic signals, signing and striping, and street lighting design plans and photometrics prepared by others, on behalf of the City of Santa Clara. He reviewed the plans to assure conformance with the California MUTCD and Caltrans Standard Plans and provided comments to the designers. Status: Current

b.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
Black Forest Road Widening Plan Check, City of Colorado Springs, CO	2021	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Senior Project Manager. Mr. Miller served as Senior Project Manager responsible for reviewing traffic signal design plans prepared by others, on behalf of the City of Colorado Springs. Mr. Miller reviewed the plans to assure conformance with the Colorado MUTCD and Colorado Standards and provided comments to the designers.

c.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
In and Out Traffic Study Review, City of National City, CA		

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Senior Project Manager. Mr. Miller was responsible for the review of a traffic impact study prepared by others, on behalf of the City of National City. Mr. Miller reviewed the traffic study per local and state guidelines and requirements. Mr. Miller worked closely with the City to understand the City's concerns and prepared a memorandum. Status: Current

d.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
SR-1 Jamboree Road to Santa Ana River Traffic Signals, City of Newport Beach, CA	2020	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager/Project Engineer. Mr. Miller was responsible for designing traffic signal modification plans for 13 traffic signals along Pacific Coast Highway (SR-1). Modifications included ADA and pedestrian upgrades, new loop detectors and count stations. Mr. Miller worked closely with Caltrans District 12 staff to expedite approval of the PS&E package.

e.

(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
PCH Ruby Street to Ledroit Street Traffic Signals, City of Laguna Beach, CA	2020	

(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE — ☑ Check if project performed with current firm

Project Manager/Project Engineer. Mr. Miller managed the design of traffic signal modification plans for 18 intersections along PCH (SR-1). Modifications included ADA and pedestrian upgrades and new loop detectors. He worked closely with Caltrans District 12 to expedite the project.

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT
(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)

20. EXAMPLE PROJECT KEY NUMBER: 1

21. TITLE AND LOCATION *(City and State)*: On-Call Plan Check Services, City of Pico Rivera, CA

22. YEAR COMPLETED

PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
City of Pico Rivera	Kenner Guerrero	562.801.4351

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

Reviews include subdivision maps, parcel maps, boundary adjustments and legal descriptions for conformance with local and state ordinances and laws; grading plans, including preliminary grading, mass grading, rough grading and precise grading plans; street improvement plans, including street widening, rehabilitation and new street plans; utility improvement plans; stormwater quality management plans; hydrology and hydraulic calculations and reports; engineer's cost estimate for the related items of work for bonding purposes; engineer's reports, including stormwater pollution prevention plans; erosion and sediment control plans; and geotechnical report review.
Upon receipt of a request for plan check, NV5's Project Manager prepares a task order proposal letter outlining the proposed scope, cost and timeline for the plan check. Upon award of the task order, NV5's Project Manager coordinates with the team members and reviews the scope, priorities of the City, plan check expectations, schedule and detailed information regarding deliverable requirements. The plan check review is conducted according to the task order requirements and our proposal. NV5's Project Manager coordinates and collaborates with the client for on-time delivery of the plan review comments.

Contract Status: Current
Contract Amount: Not-to-Exceed $75,000

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.	NV5, Inc.	163 Technology Drive, Suite 100, Irvine, CA 92618	Prime
b.	NV5, Inc.	15092 Avenue of Science, Suite 200, San Diego, CA 92128	Prime
c.			
d.			
e.			
f.			

STANDARD FORM 330 (REV. 7/2021) **PAGE 3**

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT
(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)

20. EXAMPLE PROJECT KEY NUMBER: 2

21. TITLE AND LOCATION *(City and State)*: On-Call Plan Check, Inspection, & Stormwater Management Services, City of Beaumont, CA

22. YEAR COMPLETED

PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
City of Beaumont	Jeff Hart	951.572.3213

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

NV5 is providing plan check and inspection services for the City of Beaumont on an as-needed basis. Services include subdivision and parcel map review, grading, public and private street and utility improvements, storm drain, sewer, erosion control, geotechnical, hydrology/hydraulic, structural, water quality/NPDES, landscape reviews, and full-time public works inspection.

Upon award of the first contract to NV5 for these services, the NV5 Project Manager met with City staff to discuss procedures, protocol, communication preferences, items of special or significant interest to the client and areas of particular concern within the service area. After discussion with the client and evaluation of the immediate needs of the City, NV5 prepared several project review checklists as well as additional materials to support the project intake/application process at the City development counter. In addition to plan review and application processes, NV5 also prepared similar checklists and template documents to support the City's water quality management program, public works inspection and bond release process. All NV5 staff assigned to the City's projects are thoroughly briefed to verify that they understand the scope of City plan review services, schedule and requirements for return delivery of review comments, including protocol for QC reviews. The NV5 project manager and subject matter experts hold regularly scheduled meetings with the client to coordinate project-specifics and discuss items of special significance to the City.

Contract Status: Current
Contract Amount: Open Limit

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.	NV5, Inc.	163 Technology Drive, Suite 100, Irvine, CA 92618	Prime
b.	NV5, Inc.	15092 Avenue of Science, Suite 200, San Diego, CA 92128	Prime
c.			
d.			
e.			
f.			

STANDARD FORM 330 (REV. 7/2021) **PAGE 3**

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT *(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)*	20. EXAMPLE PROJECT KEY NUMBER 3

21. TITLE AND LOCATION *(City and State)*	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
On-Call Plan Check Services, City of El Monte, CA		

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
City of El Monte	Lee Torres	626.580.2055

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

NV5 is contracted with the City of El Monte to provide plan check/review services and staff support to oversee the construction of various CIP projects and wireless communications facilities. Reviews include grading, soils report reviews, sewer, water, and storm drain improvements, hydrology reports, SWPPPs, Low Impact Development, street improvement plans, parcel/ tract maps, easements and lot line adjustments. Example projects reviewed include:

- 10725 Mildred Street Grading Plan
- 3161 Granada Avenue Grading Plan
- 2015 East Redstone Street Grading Plan
- 3837 Clark Avenue Grading Plan
- 10141 Olney Street Grading, Drainage, and Erosion Control Plan

Upon receipt of a request for plan check, NV5's Project Manager prepares a task order proposal letter outlining the proposed scope, cost and timeline for the plan check. Upon award of the task order, NV5's Project Manager coordinates with the team members and reviews the scope, priorities of the City, plan check expectations, schedule, and detailed information regarding deliverable requirements. The plan check review is conducted according to the task order requirements and our proposal. NV5's Project Manager coordinates and collaborates with the client for on-time delivery of the plan review comments.

Contract Status: Current
Contract Amount: Not-to-Exceed $1,500,000

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.	NV5, Inc.	163 Technology Drive, Suite 100, Irvine, CA 92618	Prime
b.			
c.			
d.			
e.			
f.			

STANDARD FORM 330 (REV. 7/2021) **PAGE 3**

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT *(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)*	20. EXAMPLE PROJECT KEY NUMBER 4

21. TITLE AND LOCATION *(City and State)*	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
On-Call Plan Check Services, City of Dana Point, CA		

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
City of Dana Point	Matthew Kunk	949.248.3562

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

NV5 is currently under contract with the City of Dana Point to provide development review services for new projects within the City. NV5 serves as an extension of City staff to review projects involving grading, street and drainage improvements, building foundations and retaining walls, and parcel/tract maps for conformance with City standards, regional, and state regulations, and generally accepted engineering design practices.

Upon award of the first contract to NV5 for these services, the NV5 team leads met with City staff to discuss procedures, protocol, communication preferences, items of special or significant interest to the client and areas of particular concern within the service area. All NV5 staff assigned to the City's projects are onboarded to verify that they understand the requirements of City plan review, budget and schedule requirements and how project deliverables are to be prepared. The NV5 project manager and subject matter experts communicate with the client to address project-specific considerations and confirm client satisfaction on a regular basis. This regular communication has allowed for increases in staffing and the introduction of new service lines to adjust to our client's changing needs.

Contract Status: Current
Contract Amount: Not-to-Exceed $300,000

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.	NV5, Inc.	163 Technology Drive, Suite 100, Irvine, CA 92618	Prime
b.	NV5, Inc.	15092 Avenue of Science, Suite 200, San Diego, CA 92128	Prime
c.			
d.			
e.			
f.			

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT *(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)*	20. EXAMPLE PROJECT KEY NUMBER
	5

21. TITLE AND LOCATION *(City and State)*	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
On-Call Plan Check Services, City of Imperial Beach, CA		

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
City of Imperial Beach	Tyler Foltz	619.628.2381

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

NV5 is currently providing engineer/plan check services for this beachside community. The suite of services consists of three major elements: City Engineer services, plan check/development review and design of capital projects. A sample of the task orders under this contract include:

- Breakwater Development Review: plan check of grading, improvement and traffic plans for a 5-acre commercial redevelopment project at Palm Avenue and 9th Street
- MF 1114: review of final Parcel Map for a multi-family project to evaluate conformance to development conditions and requirements of the Subdivision Map Act
- MF 1169 and MF 1170 Development Reviews: review of Tentative Parcel Maps/preliminary grading plans for multi-family infill projects to establish development conditions prior to final design

Upon award of the first contract to NV5 for these services, NV5 team leads met with City staff to discuss procedures, protocol, communication preferences, topics of significant interest to the client and areas of particular concern within the service area. All NV5 staff assigned to the City's projects are onboarded to verify that they understand the requirements of City plan review, budget and schedule requirements and how project deliverables are to be prepared. Project review staff are equipped with checklists, reference materials and supporting documents as needed to provide thorough, consistent reviews, including QA/QC reviews by senior technical staff with appropriate expertise. The NV5 project manager regularly communicates with the client to address project-specific considerations and client satisfaction.

Contract Status: Current
Contract Amount: Not-to-Exceed $350,000

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.	NV5, Inc.	163 Technology Drive, Suite 100, Irvine, CA 92618	Prime
b.	NV5, Inc.	15092 Avenue of Science, Suite 200, San Diego, CA 92128	Prime
c.			
d.			
e.			
f.			

STANDARD FORM 330 (REV. 7/2021) **PAGE 3**

G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

26. NAMES OF KEY PERSONNEL *(From Section E, Block 12)*	27. ROLE IN THIS CONTRACT *(From Section E, Block 13)*	28. EXAMPLE PROJECTS LISTED IN SECTION F *(Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)*									
		1	2	3	4	5	6	7	8	9	10
Tamara O'Neal, PE	Project Manager	X	X		X	X					
Padma Asam, PE, QSD/QSP, LEED AP	Plan Check Engineer	X	X		X	X					
Mahrooz Ilkhanipour, PE	Plan Check Engineer										
David Niknafs, PE	Plan Check Engineer	X		X							
Stephen Novak	Plan Check Engineer	X		X							
Art Biscocho	Plan Check Engineer										
Edgar Bautista, CESSWI, QSD/P, EIT	Plan Check Engineer				X	X					
Thomas Grace, EIT	Plan Check Engineer	X	X		X	X					
Nhut Pham, EIT	Plan Check Engineer										
Michael Rocco	Plan Check Engineer	X	X		X	X					
Amir Mansour, EIT	Plan Check Engineer				X						
J Braley, PLS	Plan Check Engineer										
Jay Fahrion, PLS	Plan Check Engineer		X								
Nona Espinosa, PE	Plan Check Engineer										
Gene Custenborder, PG, CEG	Plan Check Engineer				X						
Carl Henderson, PE, GE	Plan Check Engineer				X						
Akram Hindiyeh, PE, TE	Traffic Engineer										
James Miller, PE	Traffic Engineer										

29. EXAMPLE PROJECTS KEY

NUMBER	TITLE OF EXAMPLE PROJECT *(From Section F)*	NUMBER	TITLE OF EXAMPLE PROJECT *(From Section F)*
1	On-Call Plan Check Services, City of Pico Rivera, CA	6	
2	On-Call Plan Check, Inspection & Stormwater Management Services, City of Beaumont, CA	7	
3	On-Call Plan Check Services, City of El Monte, CA	8	
4	On-Call Plan Check Services, City of Dana Point, CA	9	
5	On-Call Plan Check Services, City of Imperial Beach, CA	10	

STANDARD FORM 330 (REV. 7/2021) **PAGE 4**

H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

31. SIGNATURE	32. DATE
	3/16/22

33. NAME AND TITLE

Jeffrey M. Cooper, PE, Vice President

STANDARD FORM 330 (REV. 7/2021) **PAGE 5**

ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER *(If any)*:

PART II - GENERAL QUALIFICATIONS

(If a firm has branch offices, complete for each specific branch office seeking work.)

2a. FIRM (*or Branch Office*) NAME: NV5, Inc.

3. YEAR ESTABLISHED: 2016

4. UNIQUE ENTITY IDENTIFIER: XYBFFC85YEK9

2b. STREET: 163 Technology Drive, Suite 100

5. OWNERSHIP

a. TYPE: California Corporation

2c. CITY: Irvine

2d. STATE: CA

2e. ZIP CODE: 92618

b. SMALL BUSINESS STATUS: No

6a. POINT OF CONTACT NAME AND TITLE: Jeffrey M. Cooper, Vice President

7. NAME OF FIRM *(If Block 2a is a Branch Office)*: NV5 Global

6b. TELEPHONE NUMBER: 949.585.0477

6c. EMAIL ADDRESS: jeff.cooper@nv5.com

8a. FORMER FIRM NAME(S) *(If any)*	8b. YEAR ESTABLISHED	8c. UNIQUE ENTITY IDENTIFIER
CivilSource	2006	603864807

9. EMPLOYEES BY DISCIPLINE

a. Function Code	b. Discipline	c. Number of Employees (1) FIRM	c. Number of Employees (2) BRANCH
01	Acoustical Engineer	43	
02	Administrative	767	6
03	Aerial Photographer	20	
06	Architect	25	
08	CADD Technician	246	2
12	Civil Engineer	269	5
14	Computer Programmer	37	
15	Construction Inspector	158	23
21	Electrical Engineer	88	2
23	Environmental Engineer	44	
24	Environmental Scientist	55	
27	Geotechnical Engineer	18	
29	GIS Specialist	46	
30	Geologist	52	
38	Land Surveyor	116	
42	Mechanical Engineer	122	
48	Project Manager	285	8
49	Remote Sensing Specialist	59	
58	Technician/Analyst	541	4
60	Transportation Engineer	23	
	Other Employees	256	11
	Total	3270	61

10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS

a. Profile Code	b. Experience	c. Revenue Index Number *(see below)*
A06	Airports; Terminals & Hangars; Freight	8
C15	Construction Management	10
E02	Educational Facilities; Classrooms	8
E09	Environmental Impact Studies, Assessmnt	8
F05	Forensic Engineering	6
G02	Gas Systems (Propane, Natural, Etc.)	9
G05	Geospatial Data Conversion	10
H03	Hazardous, Toxic, Radioactive Waste Rem	6
H07	Highways; Streets; Airfield Paving; Parking	8
H09	Hospital & Medical Facilities	8
H10	Hotels; Motels	7
L02	Land Surveying	9
O01	Office Buildings; Industrial Parks	6
P07	Plumbing & Piping Design	7
P12	Power Generation, Transmission, Distrib.	10
S04	Sewage Collection, Treatment, & Disp.	7
S05	Soils & Geologic Studies; Foundations	9
S09	Structural Design; Special Structures	6
T02	Testing & Inspection Services	9
T03	Traffic & Transportation Engineering	8
U03	Utilities (Gas & Steam)	9
W03	Water Supply; Treatment and Distribution	8

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS

(Insert revenue index number shown at right)

a. Federal Work	9
b. Non-Federal Work	10
c. Total Work	10

PROFESSIONAL SERVICES REVENUE INDEX NUMBER

1. Less than $100,000
2. $100,000 to less than $250,000
3. $250,000 to less than $500,000
4. $500,000 to less than $1 million
5. $1 million to less than $2 million
6. $2 million to less than $5 million
7. $5 million to less than $10 million
8. $10 million to less than $25 million
9. $25 million to less than $50 million
10. $50 million or greater

12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

a. SIGNATURE

b. DATE: 3/16/2022

c. NAME AND TITLE: Jeffrey M. Cooper, Vice President

STANDARD FORM 330 (REV. 7/2021) **PAGE 6**

ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER *(If any)*:

PART II - GENERAL QUALIFICATIONS

(If a firm has branch offices, complete for each specific branch office seeking work.)

2a. FIRM (*or Branch Office*) NAME: NV5, Inc.

2b. STREET: 15092 Avenue of Science, Suite 200

2c. CITY: San Diego | 2d. STATE: CA | 2e. ZIP CODE: 92128

3. YEAR ESTABLISHED: 1949

4. UNIQUE ENTITY IDENTIFIER: XYBFFC85YEK9

5. OWNERSHIP

a. TYPE: California Corporation

b. SMALL BUSINESS STATUS: No

6a. POINT OF CONTACT NAME AND TITLE: Carmen Kasner, PE, Senior Vice President

6b. TELEPHONE NUMBER: 858.385.0500

6c. EMAIL ADDRESS: carmen.kasner@nv5.com

7. NAME OF FIRM *(If Block 2a is a Branch Office)*: NV5 Global

8a. FORMER FIRM NAME(S) *(If any)*	8b. YEAR ESTABLISHED	8c. UNIQUE ENTITY IDENTIFIER

9. EMPLOYEES BY DISCIPLINE

a. Function Code	b. Discipline	c. Number of Employees (1) FIRM	c. Number of Employees (2) BRANCH
02	Administrative	767	31
06	Architect	25	
08	CADD Technician	246	70
12	Civil Engineer	269	54
14	Computer Programmer	37	
15	Construction Inspector	158	9
16	Construction Manager	48	3
21	Electrical Engineer	88	
23	Environmental Engineer	44	
24	Environmental Scientist	55	1
25	Fire Protection Engineer	15	
30	Geologist	52	2
38	Land Surveyor	116	27
42	Mechanical Engineer	122	
47	Planner: Urban/Regional	18	1
48	Project Manager	285	64
50	Risk Assessor	4	
51	Safety/Occupational Health Eng.	7	
57	Structural Engineer	18	3
58	Technician/Analyst	541	22
	Other Employees	355	20
	Total	3270	307

10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS

a. Profile Code	b. Experience	c. Revenue Index Number *(see below)*
A06	Airports; Terminals & Hangars; Freight	8
C15	Construction Management	10
E02	Educational Facilities; Classrooms	8
E09	Environmental Impact Studies, Assessmnt	8
F05	Forensic Engineering	6
G02	Gas Systems (Propane, Natural, Etc.)	9
G05	Geospatial Data Conversion	10
H03	Hazardous, Toxic, Radioactive Waste Rem	6
H07	Highways; Streets; Airfield Paving; Parking	8
H09	Hospital & Medical Facilities	8
H10	Hotels; Motels	7
L02	Land Surveying	9
O01	Office Buildings; Industrial Parks	6
P07	Plumbing & Piping Design	7
P12	Power Generation, Transmission, Distrib.	10
S04	Sewage Collection, Treatment, & Disp.	7
S05	Soils & Geologic Studies; Foundations	9
S09	Structural Design; Special Structures	6
T02	Testing & Inspection Services	9
T03	Traffic & Transportation Engineering	8
U03	Utilities (Gas & Steam)	9
W03	Water Supply; Treatment and Distribution	8

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS

(Insert revenue index number shown at right)

a. Federal Work	9
b. Non-Federal Work	10
c. Total Work	10

PROFESSIONAL SERVICES REVENUE INDEX NUMBER

1. Less than $100,000
2. $100,000 to less than $250,000
3. $250,000 to less than $500,000
4. $500,000 to less than $1 million
5. $1 million to less than $2 million
6. $2 million to less than $5 million
7. $5 million to less than $10 million
8. $10 million to less than $25 million
9. $25 million to less than $50 million
10. $50 million or greater

12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

a. SIGNATURE: Carmen C Kasner P.E.

b. DATE: 3/16/2022

c. NAME AND TITLE: Carmen C. Kasner, Senior Vice President

STANDARD FORM 330 (REV. 7/2021) **PAGE 6**

On-Call Traffic and Engineering Scoring Sheet

	IEG		4	INTERWEST		3	LADAYU		5
Rating Criteria	Rater #1	Rater #2	Total	Rater #1	Rater #32	Total	Rater #1	Rater #2	Total
Completeness of Proposal	19	14	**33**	18	17	**35**	18	15	**33**
Demonstrated Understanding of the Scope of Services	19	14	**33**	19	17	**36**	17	15	**32**
Firm's and key project team member's experience in performing similar work for the public sector with exceptional tracking and record-keeping capability	19	14	**33**	19	16	**35**	17	15	**32**
Firm's key project team member's record in accomplishing work assignments	14	13	**27**	14	13	**27**	14	13	**27**
The resources to meet a compressed time schedule and fee required to perform the requested specific services	13	13	**26**	14	13	**27**	13	13	**26**
Schedule of Work	4	2	**6**	4	3	**7**	4	3	**7**
Location of Office	3	3	**6**	3	3	**6**	4	3	**7**
TOTAL	**91**	**73**	**164**	**91**	**82**	**173**	**87**	**77**	**164**
Ranking Order									

On-Call Traffic and Engineering Scoring Sheet

	NV5		1	GTS		6	TRANSTECH		2
Rating Criteria	Rater #2	Rater #3	Total	Rater #2	Rater #3	Total	Rater #2	Rater #3	Total
Completeness of Proposal	18	18	**36**	18	14	**32**	19	17	**36**
Demonstrated Understanding of the Scope of Services	19	18	**37**	19	13	**32**	19	17	**36**
Quality of Work Previously Performed by Firm	18	18	**36**	18	14	**32**	18	18	**36**
Depth of Resources to Perform Work	14	14	**28**	14	13	**27**	14	14	**28**
Proposed Schedule of Work	14	15	**29**	13	13	**26**	14	14	**28**
Quality of Staff For Work to be Performed	4	4	**8**	4	3	**7**	4	4	**8**
Location of Office	3	4	**7**	4	3	**7**	4	3	**7**
TOTAL	**90**	**91**	**181**	**90**	**73**	**163**	**92**	**87**	**179**
Ranking Order									

On-Call Traffic and Engineering Scoring Sheet

Rating Criteria									
	Rater #2	Rater #3	Total	Rater #2	Rater #3	Total	Rater #2	Rater #3	Total
Completeness of Proposal									
Demonstrated Understanding of the Scope of Services									
Quality of Work Previously Performed by Firm									
Depth of Resources to Perform Work									
Proposed Schedule of Work									
Quality of Staff For Work to be Performed									
Location of Office									
TOTAL									
Ranking Order									

CENTRAL AVENUE PAVEMENT REHABILITATION PROJECT (CIP# 15-03) - CONSTRUCTION MGT.

FIRM	RANK #	RATER #1	RATER #2	RATER #3	RATER #4	RATER #5	Total
AMC	1	94	94	96	87	96	467
LAE	2	78	91	92	81	96	438
INTERWEST	3	90	84	84	98	80	436
CIVIL SOURCE	4	92	89	86	84	83	434
KOA	5	81	84	99	86	80	430
ENGINEERING RSC	6	76	91	92	76	84	419
RTEA	7	79	83	92	74	81	409
SOUTHSTAR	8	75	85	92	79	76	407
AIM	9	75	84	90	73	76	398
FCG	10	73	84	87	72	80	396

June 14, 2022

TO: **MAYOR AND CITY COUNCIL**

FROM: **CITY MANAGER**

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO AMEND THE PROFESSIONAL SERVICES AGREEMENT TO EXTEND THE TERMS WITH AND ESTABLISH A PURCHASE ORDER FOR JMC2 ENGINEERING + SURVEYING TO PROVIDE ENGINEERING DESIGN AND CONSTRUCTION SUPPORT SERVICES PURSUANT TO THE ALAMEDA-STATE ROUTE 91 URBAN GREENING/FORESTRY AND WATER RECLAMATION GRANT PROJECT ($91,481.80)**

SUMMARY

This resolution will authorize the City Manager to amend the professional services agreement to extend the terms with and establish a purchase order in the amount of Ninety One Thousand Four Hundred Eighty One Dollars and Eighty Cents ($91,481.80) for JMC2 Engineering + Surveying to provide engineering design and construction support services pursuant to the Urban Greening/Forestry and Water Reclamation Grant Project.

BACKGROUND

In 2018, the City was the recipient of two (2) Urban Greening/Forestry and Water Reclamation Grants from separate State of California agencies: the Natural Resources Agency (“NRA”) and the Department of Forestry and Fire Protection (“Cal Fire”).

Natural Resources Agency Grant

The NRA Grant, titled the “Alameda-SR91 Urban Greening and Water Reclamation Project Greening Compton’s State Route 91 (Agreement No. U29107-0)”, involves the planting of trees and shrubs, installing irrigation and bioswales, creating water retention and filtration system and installing interpretive signage at the locations of Alameda Street and Artesia Boulevard – State Route 91 Interchange. The project location (i.e. interchange at State Route 91 at South Alameda Street and South Santa Fe Avenue) has eight (8) sites between ramps, Compton Creek, frontage roads, freeway, streets and properties which currently has few trees. The project proposes installation of over 100 carbon sequestering, low water, low drought trees and 200 low water, drought tolerant shrubs to green approximately 8.34 acres of blighted land in and around State Route 91, in addition

to permeable surfacing allowing for storm water infiltration and retention (e.g. bioswales), signage, installation of 1,811 linear feet of fencing, park seating, trash receptacles and solar lights. The Grant amount was for $1,207,921.00.

Cal Fire Grant

The Cal Fire Grant, titled the "Greening Compton's State Route 91 (Agreement No. 8GG16423)" involves planting of trees and shrubs, installing irrigation and bioswales, creating storm water filtration systems and installing Cal Fire and Compton signage at the locations of State Route 91 Highway and Artesia Boulevard between Central Avenue and Harbor Avenue. This project location (i.e. north side of State Route 91, from the Compton Creek to South Central Avenue) has eight (8) sites bounded by the freeway, frontage roads and freeway ramps which currently has no trees and limited landscaping. The project proposed the installation of 600 trees to decrease greenhouse gas emissions, landscaping, construct 4,150 linear feet of bioswales to reduce soil erosion and provide educational materials about the project to the surrounding communities and schools. The Grant amount was for $580,952.00. Unfortunately, due to the project delay, the City is no longer the recipient of the Cal Fire Grant funding.

On January 16, 2019, the Public Works staff solicited proposals for consulting services to provide the necessary engineering review, design, and recommended services to achieve the goals and requirements outlined in the grants and the preparation of construction documents. The selected firm shall act as the Engineer for the project and shall be responsible for all elements of implementing, design and execution of the project.

On February 13, 2019, proposals were due in the City Clerk's office; however, no proposals were received. Subsequently, City staff contacted qualified engineering firms to obtain proposals. This effort garnered receipt of two (2) proposals from the following firms:

Firm	Location	Amount	Responsive
JMC2	San Pedro, CA	$381,270.40	Yes
CA Urban Foresters, Inc.	Long Beach, CA	Rate Sheet Only	No

The City's Request for Proposals selection criteria indicated that the firm must be licensed to practice civil engineering in the State of California and that the firm provide the cost to provide the necessary engineering review, design and recommended services.

Review of the proposal submitted by California Urban Foresters, Inc. revealed that this firm did not have a licensed civil engineer on staff, failed to provide examples of projects that were representative of the type of projects that the firm had designed in the past five years, did not identify experience with site improvements

including owner contact information, final project costs and time frame of projects, did not identify the Lead Engineer that will be responsible for the project, did not identify the individual(s) that will be responsible for information gathering on the project and did not demonstrate and provide specific examples of projects where the identified individual had provided site improvement information, did not describe the project team approach to developing the project from design to completion, and did not demonstrate and provide examples of its ability to complete the design of project of this size and nature within a predetermined schedule.

After careful considerations, City staff determined that the proposal submitted by JMC2 Engineering + Surveying ("JMC2") demonstrated their possession of the requisite experience, training, expertise and personnel to provide the engineering services needed pursuant to the Alameda-State Route 91 Urban Greenling/Forestry and Water Reclamation Grant Projects, at the fee amount of $381,270.40.

On May 21, 2019, pursuant to Resolution No. 25,027, City Council authorized the City Manager to enter into professional services agreement with JMC2 in an amount not to exceed $381,270.40.

JMC2 is a Los Angeles based, project management and design firm providing public works solutions for a wide variety of projects throughout Southern California. JMC2 services include: Project Management, Civil Engineering, Structural Engineering, Land Surveying, Permit Processing, and Construction Support. JMC has a twenty one person (21) staff with four licensed professional engineers, one professional land surveyor, one licensed structural engineer, and five (5) engineers in training.

For the projects JMC2 was to provide the following scope of work:

Task 1 – Research

- JMC2 team to work with the City of Compton to gather up all available record drawings, hydrology/Hydraulic reports, and technical data related to both project sites.
- JMC2 to reach out to utility purveyors for as-builts and future system upgrade plans

Task 2 - Survey and Base Map

- JMC2 survey team to research centerline ties and benchmarks through the City. JMC2 to gather and prepare limited topographic and boundary surveys required for plan preparation
- JMC2 civil engineers to prepare survey base map for preliminary and final design

Task 3 - Preliminary Design

- JMC2 team to meet with the City's team to get their project vision and to put those ideas onto the survey base map to start the preliminary design process. JMC2 uses a proven process to develop construction documents that includes all team members
- Lynn Capouya, Inc. (LCI) will prepare site plans (landscaping, benches, signage, etc.) to send to JMC2 to develop grading and drainage concepts. Coordinate for crossovers, SMART controllers, State AB 1881 water conservation standards and low impact development (LID) drainage
- The conceptual plans will be shared and discussed with the City to get their approval before starting the PS&E
- JMC2 has full, in-house design capabilities and will develop/compile the 30% plan set with alternatives

Task 4 - Design Documents

- The JMC2 team has full, in-house design capabilities and will develop/compile the 90% and final PS&E submissions
- JMC2 will develop the following civil engineering plans per Caltrans standards: Title Sheet, Key Map and Line Index, Demolition Plans, Construction Details, Contour Grading and Paving Plans, Drainage Plans, Drainage Details, Utility Plans and Details, Temporary Traffic Control Plans, Construction Area Signs, Summary of Quantities, and Sign Plan and Quantities
- LCI will prepare Planting and Irrigation Plans and Details per Caltrans and California AB 1881 standards
- LCI understands a big part of their work is water use allocations and calculation. They will coordinate for crossovers, SMART controllers, and LID drainage

Task 5 - Meetings and Coordination

- John Cruikshank is the designated Project Manager for the City's Urban Greening/Forestry and Water Reclamation Project.
- The JMC2 team will prepare colorful and easy to understand presentation materials, agendas, minutes, and schedules, as warranted
- The goal of the project meetings is to ensure the project is meeting the public's goals while complying with all necessary design standards and staying within the City's budget

Task 6 - Bidding and Construction Support Services

- JMC2 team to attend job walk to answer all questions
- JMC2 team to be responsive to critical RFIs, RFCs, and to contractor submittals

- JMC2 team to walk the completed project providing written, corrective actions as warranted.
- JMC2 team to closeout by providing Record Drawings and critical project correspondence to the City for their records

STATEMENT OF ISSUE

On October 31, 2019, City staff directed JMC2 to stop work on the project due to a lack of funding to complete the project. In June 2021, City staff identified additional funding and requested that the consultant resume design work on the project. However, City staff was informed that the agreement between the City and JMC2 had expired and that a purchase order be prepared allocating the remaining balance due in the amount of 91,481.80.

In order to complete the design work, JMC would need to revise and update the following design documents:

Revised Design Document (Task 4)
Permits and encroachment agreements
Title Sheets
Hydrology study
Demolition Plans
Construction details
Contour grading and paving plans
Utility plans and details
Temporary traffic control plans
Planting plans
Irrigation plans
Erosion control plans
SWPPP
Specifications
Cost estimates

Additional meetings and coordination (Task 5)
JMC2 will conduct a “kick off” meeting along with additional design coordination meetings.

Therefore, in order for the City Manager to amend the professional services agreement to extend the professional service agreement time and issue a purchase order in the amount of $91,481.80 to JMC2 Engineering + Surveying to provide engineering design services and construction support services pursuant to the Urban Greening/Forestry and Water Reclamation Grant Project, City Council’s authorization is necessary.

ALTERNATIVE

There are no other alternatives being recommended at this time. The City desires to complete the design portion of the project pursuant to the Urban Greening Grant.

FISCAL IMPACT

Funds in the amount of $91,481.80 are available in the Public Works Engineering Department 2021-2022 fiscal year budget in Account No. 1001-710-000-4262.

RECOMMENDATION

Staff recommends the City Council adopt the attached Resolution.

JOHN D. STRICKLAND, JR., PROJECT MANAGER
PUBLIC WORKS ENGINEERING DEPARTMENT

APPROVED FOR FORWARDING:

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AUTHORIZING THE CITY MANAGER TO AMEND THE PROFESSIONAL SERVICES AGREEMENT TO EXTEND THE TERM WITH AND ESTABLISH A PURCHASE ORDER FOR JMC2 ENGINEERING + SURVEYING TO PROVIDE ENGINEERING DESIGN AND CONSTRUCTION SERVICES PURSUANT TO THE ALAMEDA-STATE ROUTE 91 URBAN GREENING/FORESTRY AND WATER RECLAMATION GRANT PROJECT ($91,481.80)

WHEREAS, in 2018, the City is a recipient of two (2) Urban Greening/Forestry and Water Reclamation Grants from separate State of California agencies: the Natural Resources Agency ("NRA") and the Department of Forestry and Fire Protection ("Cal Fire"); and

WHEREAS, the NRA Grant, titled the "Alameda-SR91 Urban Greening and Water Reclamation Project Greening Compton's State Route 91 (Agreement No. U29107-0)", involves the planting of trees and shrubs, installing irrigation and bioswales, creating water retention and filtration system and installing interpretive signage at the locations of Alameda Street and Artesia Boulevard – State Route 91 Interchange; and

WHEREAS, the project location (i.e. interchange at State Route 91 at South Alameda Street and South Santa Fe Avenue) has eight (8) sites between ramps, Compton Creek, frontage roads, freeway, streets and properties which currently has few trees; and

WHEREAS, the project proposes installation of over 100 carbon sequestering, low water, low drought trees and 200 low water, drought tolerant shrubs to green approximately 8.34 acres of blighted land in and around State Route 91, in addition to permeable surfacing allowing for storm water infiltration and retention (e.g. bioswales), signage, installation of 1,811 linear feet of fencing, park seating, trash receptacles and solar lights and the Grant amount was for $1,207,921.00; and

WHEREAS, the Cal Fire Grant, titled the "Greening Compton's State Route 91 (Agreement No. 8GG16423)" involves planting of trees and shrubs, installing irrigation and bioswales, creating storm water filtration systems and installing Cal Fire and Compton signage at the locations of State Route 91 Highway and Artesia Boulevard between Central Avenue and Harbor Avenue; and

WHEREAS, this project location (i.e. north side of State Route 91, from the Compton Creek to South Central Avenue) has eight (8) sites bounded by the freeway, frontage roads and freeway ramps which currently has no trees and limited landscaping; and

WHEREAS, the project proposed the installation of 600 trees to decrease greenhouse gas emissions, landscaping, construct 4,150 linear feet of bioswales to reduce soil erosion and provide educational materials about the project to the surrounding communities and schools; and

WHEREAS, the Grant amount was for $580,952.00 and unfortunately, due to the project delay, the City is no longer the recipient of the Cal Fire Grant funding; and

WHEREAS, on January 16, 2019, the Public Works staff solicited proposals for consulting services to provide the necessary engineering review, design, and recommended services to achieve the goals and requirements outlined in the grants and the preparation of construction documents and the selected firm shall act as the Engineer for the project and shall be responsible for all elements of implementing, design and execution of the project; and

WHEREAS, on February 13, 2019, proposals were due in the City Clerk's office; however, no proposals were received. Subsequently, City staff contacted qualified engineering firms to obtain proposals. This effort garnered receipt of two (2) proposals from the following firms:

Firm	Location	Amount	Responsive
JMC2	San Pedro, CA	$381,270.40	Yes
CA Urban Foresters, Inc.	Long Beach, CA	Rate Sheet Only	No; and

WHEREAS, the City's Request for Proposals selection criteria indicated that the firm must be licensed to practice civil engineering in the State of California and that the firm provide the cost to provide the necessary engineering review, design and recommended services; and

WHEREAS, review of the proposal submitted by California Urban Foresters, Inc. revealed that this firm did not have a licensed civil engineer on staff, failed to provide examples of projects that were representative of the type of projects that the firm had designed in the past five years, did not identify experience with site improvements including owner contact information, final project costs and time frame of projects, did not identify the Lead Engineer that will be responsible for the project, did not identify the individual(s) that would be responsible for information gathering on the project and did not demonstrate and provide specific examples of projects where the identified individual had provided site improvement information, did not describe the project team approach to developing the project from design to completion, and did not demonstrate and provide examples of its ability to complete the design of project of this size and nature within a predetermined schedule; and

WHEREAS, after careful considerations, City staff determined that the proposal submitted by JMC2 Engineering + Surveying ("JMC2") demonstrated their possession of the requisite experience, training, expertise and personnel to provide the engineering services needed pursuant to the Alameda-State Route 91 Urban Greenling/Forestry and Water Reclamation Grant Projects, at the fee amount of $381,270.40; and

WHEREAS, on May 21, 2019, pursuant to Resolution No. 25,027, City Council authorized the City Manager to enter into professional services agreement with JMC2 in an amount not to exceed $381,270.40; and

WHEREAS, JMC2 is a Los Angeles based, project management and design firm providing public works solutions for a wide variety of projects throughout Southern California. JMC2 services include: Project Management, Civil Engineering, Structural Engineering, Land Surveying, Permit Processing, and Construction Support. JMC has a twenty one person (21) staff with four licensed professional engineers, one professional land surveyor, one licensed structural engineer, and five (5) engineers in training; and

JMC2 is to provide the following scope of work:

Task 1 – Research

- JMC2 team to work with the City of Compton to gather up all available record drawings, hydrology/Hydraulic reports, and technical data related to both project sites
- JMC2 to reach out to utility purveyors for as-builts and future system upgrade plans

Task 2 - Survey and Base Map

- JMC2 survey team to research centerline ties and benchmarks through the City. JMC2 to gather and prepare limited topographic and boundary surveys required for plan preparation
- JMC2 civil engineers to prepare survey base map for preliminary and final design

Task 3 - Preliminary Design

- JMC2 team to meet with the City's team to get their project vision and to put those ideas onto the survey base map to start the preliminary design process. JMC2 uses a proven process to develop construction documents that includes all team members
- Lynn Capouya, Inc. (LCI) will prepare site plans (landscaping, benches, signage, etc.) to send to JMC2 to develop grading and drainage concepts. Coordinate for crossovers, SMART controllers, State AB 1881 water conservation standards and low impact development (LID) drainage
- The conceptual plans will be shared and discussed with the City to get their approval before starting the PS&E
- JMC2 has full, in-house design capabilities and will develop/compile the 30% plan set with alternatives

Task 4 - Design Documents

- The JMC2 team has full, in-house design capabilities and will develop/compile the 90% and final PS&E submissions
- JMC2 will develop the following civil engineering plans per Caltrans standards: Title Sheet, Key Map and Line Index, Demolition Plans, Construction Details, Contour Grading and Paving Plans, Drainage Plans, Drainage Details, Utility Plans and Details, Temporary Traffic Control Plans, Construction Area Signs, Summary of Quantities, and Sign Plan and Quantities
- LCI will prepare Planting and Irrigation Plans and Details per Caltrans and California AB 1881 standards
- LCI understands a big part of their work is water use allocations and calculation. They will coordinate for crossovers, SMART controllers, and LID drainage

Task 5 - Meetings and Coordination

- John Cruikshank is the designated Project Manager for the City's Urban Greening/Forestry and Water Reclamation Project.
- The JMC2 team will prepare colorful and easy to understand presentation materials, agendas, minutes, and schedules, as warranted
- The goal of the project meetings is to ensure the project is meeting the public's goals while complying with all necessary design standards and staying within the City's budget

Task 6 - Bidding and Construction Support Services

- JMC2 team to attend job walk to answer all questions
- JMC2 team to be responsive to critical RFIs, RFCs, and to contractor submittals
- JMC2 team to walk the completed project providing written, corrective actions as warranted.
- JMC2 team to closeout by providing Record Drawings and critical project correspondence to the City for their records; and

WHEREAS, on October 31, 2019, City staff directed JMC2 to stop work on the project due to a lack of funding to complete the project and in June 2021, City staff identified additional funding and requested that the consultant resume design work on the project; and

WHEREAS, city staff was informed that the agreement between the City and JMC2 had expired and that a supplemental purchase order be prepared allocating the remaining balance owed in the amount of $91,481.80; and

WHEREAS, in order to complete the design work, JMC would need to revise and update the following design documents:

Revised Design Document (Task 4)
Permits and encroachment agreements
Title Sheets
Hydrology study
Demolition Plans
Construction details
Contour grading and paving plans
Utility plans and details
Temporary traffic control plans
Planting plans
Irrigation plans
Erosion control plans
SWPPP
Specifications
Cost estimates

Additional meetings and coordination (Task 5)
JMC2 will conduct a “kick off” meeting along with additional design coordination meetings; and

WHEREAS, funds in the amount of $91,481.80 are available in the Public Works Engineering Department 2021-2022 fiscal year budget in Account No. 1001-710-000-4262; and

WHEREAS, in order for the City Manager to amend the professional services agreement to extend the professional service agreement time and issue a supplemental purchase order in the amount of $91,481.80 to JMC2 Engineering + Surveying to provide engineering design services and construction support services pursuant to the Urban Greening/Forestry and Water Reclamation Grant Project, City Council’s authorization is necessary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City Manager, upon the advice and approval of the City Attorney is hereby authorized to amend the professional services agreement to extend the terms with and establish a purchase order in the amount of Ninety One Thousand Four Hundred Eighty One Dollars and Eighty Cents ($91,481.80) for JMC2 Engineering + Surveying to provide engineering design and construction support services pursuant to the Urban Greening/Forestry and Water Reclamation Grant Project.

SECTION 2. That funds in the amount of $91,481.80 are available in the Public Works 2021-2022 Fiscal Year’s budget in Account No. 1001-710-000-4262.

SECTION 3. That a purchase order in the amount of Ninety One Thousand Four Hundred Eighty One Dollars and Eighty Cents ($91,481.80) shall be established for JMC2 for services rendered.

SECTION 4. That copies of this Resolution shall be filed in the offices of the City Manager, City Controller, City Clerk, City Attorney and the Public Works Engineering Department.

SECTION 5. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this _____ day of _____, 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Compton, signed by the Mayor and attested by the City Clerk, at a regular meeting thereof held on the _____ day of _____, 2022.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

FIRST AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF COMPTON
AND
JMC2 ENGINEERING + SURVEYING

This **FIRST AMENDMENT** to the Professional Services Agreement is made by and between the **CITY OF COMPTON**, a municipal corporation of the State of California (hereinafter referred to as **"CITY"**) and **JMC2 ENGINEERING + SURVEYING** (hereinafter referred to as **"CONSULTANT"**).

RECITALS:

WHEREAS, the City is a recipient of two (2) Urban Greening/Forestry and Water Reclamation Grants from separate State of California agencies: the Natural Resources Agency ("NRA") and the Department of Forestry and Fire Protection ("Cal Fire"); and

WHEREAS, the NRA Grant ("Project 1"), titled the "Alameda-SR91 Urban Greening and Water Reclamation Project Greening Compton's State Route 91 (Agreement No. U29107-0)", involves the planting of trees and shrubs, installing irrigation and bioswales, creating water retention and filtration system and installing interpretive signage at the locations of Alameda Street and Artesia Boulevard – State Route 91 Interchange (the Grant amount is $1,207,921.00); and

WHEREAS, the Cal Fire Grant ("Project 2"), titled the "Greening Compton's State Route 91 (Agreement No. 8GG16423)" involves planting of trees and shrubs, installing irrigation and bioswales, creating storm water filtration systems and installing Cal Fire and Compton signage at the locations of State Route 91 Highway and Artesia Boulevard between Central Avenue and Harbor Avenue (the Grant amount is $580,952.00); and

WHEREAS, the City has determined that it will be prudent to engage the services of a professional and experienced engineering firm to act as the City's Engineer for this project and be responsible to provide design and engineering services for Urban Greening/Forestry and Water Reclamation Grant Projects; and

WHEREAS, by Resolution No. **25,027**, adopted on the **21st** of **2019,** the City Council authorized the City Manager to accept the proposal of the Consultant (JMC2 Engineering + Surveying) and enter into a contract to provide the necessary services; and

WHEREAS, by Resolution No. _____, adopted on the ___ day of _____ 2022, the City Council authorized the City Manager to enter into a first (1ST) amendment to the professional services agreement with the Consultant; and

WHEREAS, Consultant warrants that it is specifically trained, experienced, competent, and has the resources to provide such services which will be required by this Project; and

WHEREAS, Consultant is willing to render such professional services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Consultant and City**,** for the consideration, terms and conditions herein described, do hereby mutually agree to amend the original Agreement as follows:

AMENDMENTS:

1. The parties agree to amend **Section 1 – <u>Services to be rendered by Consultant</u>** of the original Agreement to authorize the continued performance of the services specified within the original Agreement and expand the scope of services to include performance of the following services:

Task 1 – Research

- JMC2 team to work with the City of Compton to gather up all available record drawings, hydrology/Hydraulic reports, and technical data related to both project sites.
- JMC2 to reach out to utility purveyors for as-builts and future system upgrade plans

Task 2 - Survey and Base Map

- JMC2 survey team to research centerline ties and benchmarks through the City. JMC2 to gather and prepare limited topographic and boundary surveys required for plan preparation
- JMC2 civil engineers to prepare survey base map for preliminary and final design

Task 3 - Preliminary Design

- JMC2 team to meet with the City's team to get their project vision and to put those ideas onto the survey base map to start the preliminary design process. JMC2 uses a proven process to develop construction documents that includes all team members
- Lynn Capouya, Inc. (LCI) will prepare site plans (landscaping, benches, signage, etc.) to send to JMC2 to develop grading and drainage concepts. Coordinate for crossovers, SMART controllers, State AB 1881 water conservation standards and low impact development (LID) drainage
- The conceptual plans will be shared and discussed with the City to get their approval before starting the PS&E
- JMC2 has full, in-house design capabilities and will develop/compile the 30% plan set with alternatives

Task 4 - Design Documents

- The JMC2 team has full, in-house design capabilities and will develop/compile the 90% and final PS&E submissions
- JMC2 will develop the following civil engineering plans per Caltrans standards: Title Sheet, Key Map and Line Index, Demolition Plans, Construction Details, Contour Grading and Paving Plans, Drainage Plans, Drainage Details, Utility Plans and Details, Temporary Traffic Control Plans, Construction Area Signs, Summary of Quantities, and Sign Plan and Quantities
- LCI will prepare Planting and Irrigation Plans and Details per Caltrans and California AB 1881 standards
- LCI understands a big part of their work is water use allocations and calculation. They will coordinate for crossovers, SMART controllers, and LID drainage

Task 5 - Meetings and Coordination

- John Cruikshank is the designated Project Manager for the City's Urban Greening/Forestry and Water Reclamation Project.
- The JMC2 team will prepare colorful and easy to understand presentation materials, agendas, minutes, and schedules, as warranted
- The goal of the project meetings is to ensure the project is meeting the public's goals while complying with all necessary design standards and staying within the City's budget

Task 6 - Bidding and Construction Support Services

- JMC2 team to attend job walk to answer all questions
- JMC2 team to be responsive to critical RFIs, RFCs, and to contractor submittals
- JMC2 team to walk the completed project providing written, corrective actions as warranted.
- JMC2 team to closeout by providing Record Drawings and critical project correspondence to the City for their records

2. The parties agree to amend **Section 2 – <u>Duration of Contract</u>** of the original Agreement to extend the term of the Agreement to provide that the Agreement shall terminate upon the completion of the project and/or on exhaustion of the authorized maximum compensation of **Ninety One Thousand Four Hundred Eighty One Dollars and Eighty Cents ($91,481.80)**, unless otherwise extended or terminated.

3. The parties agree to amend **Section 3 – <u>Compensation</u>** of the original Agreement to provide additional compensation to Consultant for services rendered during the extended term of the original Agreement, as specified above, in the not-to-exceed amount of **Ninety One Thousand Four Hundred Eighty One Dollars and Eighty Cents ($91,481.80).**

4. Except as provided for above, all other terms and conditions of the original Agreement and any amendments thereto between the City and the Contractor all remain in effect.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this **FIRST AMENDMENT** to the above-identified **PROFESSIONAL SERVICES AGREEMENT.**

JMC2/CONSULTANT

Dated: _____ **By _____**
John M. Cruikshank, P.E., President/CEO

Approved by:

Dated: _____ **By _____**
Thomas Thomas, City Manager

Approved as to form:

By _____ **Dated: _____**
Eric J. Perrodin, City Attorney

ATTEST:

Dated: _____ **By _____**
Alita Godwin, City Clerk

June 14, 2022

TO: **HONORABLE MAYOR AND COUNCIL MEMBERS**

FROM: **CITY OF COMPTON FIRE CHIEF**

SUBJECT: **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING THE 2021-2022 FISCAL YEAR BUDGET TO TRANSFER FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SOUTH COAST FIRE EQUIPMENT INC. (PIERCE MANUFACTURING) FOR THE PURCHASE OF FOUR (4) PIERCE ARROW XT FIRE ENGINES AND ONE (1) PIERCE ARROW XT 107' QUINT CAPABLE TRUCK ($4,998,817.35)**

SUMMARY

Adoption of this resolution will amend the 2021-2022 Fiscal Year budget to transfer funds from the American Rescue Plan Act in the amount of Four Million Nine Hundred Ninety-Eight Thousand Eight Hundred Seventeen Dollars and Thirty-Five Cents ($4,998,817.35) and authorize the City Manager to enter into an agreement with and issue a purchase order in the amount of Four Million Nine Hundred Ninety-Eight Thousand Eight Hundred Seventeen Dollars and Thirty-Five Cents ($4,998,817.35) to South Coast Fire Equipment Inc. (Pierce Manufacturing) for the purchase of four (4) Pierce Arrow XT fire engines and One (1) Pierce Arrow XT 107' Quint capable truck.

BACKGROUND

The City's fire engines are over sixteen (16) years old or older and due to the high volume of emergency responses, the costs of repair to an aging fleet are continuing to increase.

STATEMENT OF ISSUE

In March 2021, as these crises continued, the American Rescue Plan Act (ARPA) of 2021 established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery; this allows for the acquisition of emergency services equipment per the SLFRF final rule published on May 17, 2021, with amendments.

The City of Compton expects to receive approximately $34 million in aid because of ARPA. On June 10, 2021, the City received ARPA funds from the U.S. Department of the Treasury for $17 million dollars for the first half of the allocation.

The U.S. Department of the Treasury has adopted guidance regarding the use of ARPA funds. According to the guidance, recipients may use ARPA funds to invest in necessary improvements to respond to the public health emergency or its negative economic impacts.

Please see ARP Final Rule Attached:

According to: Federal Register / Vol. 87, No. 18 / Thursday, January 27, 2022 / Rules and Regulations DEPARTMENT OF THE TREASURY 31 CFR Part 35 RIN 1505–AC77 Coronavirus State and Local Fiscal Recovery Funds AGENCY: Department of the Treasury. ACTION:

Final rule: **PAGE 4354 SECTION: FIRE TRUCK AND AMBULANCE EQUIPMENT:**

"For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID–19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID–19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID–19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID–19 treatment and mitigation (*e.g.,* emergency rooms, intensive care units, telemedicine capabilities for COVID–19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs;
- **Acquisition of equipment for COVID–19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;**
- **Improvements to or construction of emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems);**
- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID–19 in the facility); and

  Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)"

An RFP (#113021) was published on October 12, 2021, closed on November 30, 2021, and administered by Sourcewell/72 Hour LLC dba: National Auto Fleet Group (Sourcewell). Sourcewell is a State of Minnesota local government unit and service cooperative created a competitive public solicitation and contract award process for the benefit of its 50,000+ participating entities across the United States and Canada.

After reviewing the submittal proposals, Sourcewell and staff recommends that, the City purchases four (4) Fire Engines and one (1) Quint capable truck from South Coast Fire Equipment Inc. (Pierce Manufacturing).

City Council approval is needed because the expenditures exceed $25,000 Dollars.

FISCAL IMPACT

The Fire Department request that a Purchase Order be issued in the name of South Coast Fire Equipment Inc. (Pierce Manufacturing) in the amount of $4,998.817.35 (including sales tax, radio allowance, discounts, and fees). The budget shall be amended to receive Funds from ARPA. The funds for this expenditure will be available in the fire departments 2021-2022 Fiscal Year budget in the following Account No.

From:

Increase Revenue	Description	Amount
2810-690-000-3565	Other Federal Grants	$4,998,817.35

To:

Increase Expenditure	Description	Amount
2810-690-000-4333	Automotive Equipment	$4,998,817.35

The funds for this expenditure, in the amount of $4,998,817.35, will be available in the Department's 2021-2022 Fiscal Year budget in Account No. 2810-690-000-4333.

RECOMMENDATION

Staff recommends that Council adopt attached Resolution.

RONERICK SIMPSON
FIRE CHIEF

APPROVED FOR FORWARDING:

THOMAS THOMAS
CITY MANAGER

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMPTON AMENDING THE 2021-2022 FISCAL YEAR BUDGET TO TRANSFER FUNDS FROM THE AMERICAN RESCUE PLAN ACT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SOUTH COAST FIRE EQUIPMENT INC. (PIERCE MANUFACTURING) FOR THE PURCHASE OF FOUR (4) PIERCE ARROW XT FIRE ENGINES AND ONE (1) PIERCE ARROW XT 107' QUINT CAPABLE TRUCK ($4,998,817.35)

WHEREAS, the Fire Department ("Department") Fire Engines are essential for safe and efficient emergency response and operation; furthermore, all vehicles are required to meet the Department of Transportation and California Highway Patrol regulatory statues concerning emergency vehicles; and

WHEREAS, the Departments fire engines are over sixteen (16) years old or older and due to the high volume of emergency responses, the costs of repair to an aging fleet are continuing to increase; and

WHEREAS, an RFP (#113021) was published by Sourcewell on October 12, 2021 and closed on November 30, 2021 to receive quotes for Firefighting Apparatus and Fire Service Vehicles; and

WHEREAS, based upon bids received and reviewed, it has been determined that South Coast Fire Equipment Inc. (Pierce Manufacturing) submitted the most responsive, complete and responsible bid (including taxes and fees); and

WHEREAS, in selecting South Coast Fire Equipment Inc. (Pierce Manufacturing), which is our current Fire Engine fleet manufacturer and the preferred Fire Engine Manufacturer for Other Area E Cities; and

WHEREAS, Staff is requesting to amend the Departments' 2021-2022 Fiscal Year budget to transfer funds between accounts as follows:

From:

Increase Revenue	**Description**	**Amount**
2810-690-000-3565	Other Federal Grants	$4,998,817.35

To:

Increase Expenditure	**Description**	**Amount**
2810-690-000-4333	Automotive Equipment	$4,998,817.35

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMPTON DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the bid/proposal of South Coast Fire Equipment Inc. (Pierce Manufacturing) for $4,998,817.35 is hereby accepted.

SECTION 2. That the City Manager, on the advice and approval of the City Attorney, is authorized to enter into an agreement with South Coast Fire Equipment Inc. (Pierce Manufacturing) for the purchase of four (4) Fire engines and one (1) Quint capable truck.

SECTION 3. That the Fire Departments 2021-2022 Fiscal Year budget shall be amended to transfer funds between accounts as follows:

From:

Increase Revenue	**Description**	**Amount**
2810-690-000-3565	Other Federal Grants	$4,998,817.35

To:

Increase Expenditure	**Description**	**Amount**
2810-690-000-4333	Automotive Equipment	$4,998,817.35

SECTION 4. That a purchase order in the amount of $4,998,817.35 is authorized to be issued for South Coast Fire Equipment Inc. (Pierce Manufacturing)

SECTION 5. That funds for this expenditure are available in the Fire Department's 2021-2022 Fiscal Year budget in Account No. 2810-690-000-4333.

SECTION 6. That a copy of this Resolution shall be forwarded to the offices of the City Clerk, City Manager, City Attorney, City Controller and the Fire Department.

SECTION 7. That the Mayor shall sign and the City Clerk shall attest to the adoption of this Resolution.

ADOPTED this ____ day of _____ 2022.

_____
MAYOR OF THE CITY OF COMPTON

ATTEST:

_____
CITY CLERK OF THE CITY OF COMPTON

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF COMPTON: ss

I, Alita Godwin, City Clerk of the City of Compton, hereby certify that the foregoing Resolution was adopted by the City Council, signed by the Mayor and attested by the City Clerk at a regular meeting thereof held on the _____ day of _____, 2022.

That said Resolution was adopted by the following vote, to wit:

AYES: COUNCIL MEMBERS-
NOES: COUNCIL MEMBERS-
ABSENT: COUNCIL MEMBERS-
ABSTAIN: COUNCIL MEMBERS-

_____
CITY CLERK OF THE CITY OF COMPTON

May 27, 2022

City of Compton Fire Department
201 S. Acacia Ave.
Compton, CA 90220

The undersigned is prepared to manufacture for you, upon an order being placed by you, for final acceptance by Pierce Manufacturing at its corporate office in Appleton, Wisconsin, the apparatus and equipment herein name for the following prices per Sourcewell Contract #113021-PMI

	Each	Extended
4) Pierce Arrow XT 1500 GPM Triple Combination Pumper Sourcewell Base Model ID# 789	**$806,555.00**	**$3,226,220.00**
1) Pierce Arrow XT 107' Rearmount Quint Sourcewell Base Model ID# 772	**$1,363,161.00**	**$1,363,161.00**
1) Radio Allowance	**$120,000.00**	**$120,000.00**
Total Cost for Apparatus		**$4,709,381.00**
Discounts		
100% Prepayment Discount for 4 Pumpers	**($33,730.00)**	**($134,920.00)**
100% Prepayment Discount for 1 Rearmount Quint	**($52,372.00)**	**($52,372.00)**
Total Discounts		**($187,292.00)**
Cost of Vehicles after Discounts		**$4,522,089.00**
10.25% Sales Tax		**$463,514.12**
4) Pumper Performance Bond	**$1,958.91**	**$7,835.64**
1) Rearmount Performance Bond	**$3,322.59**	**$3,322.59**
4) CA Tire Fee Pumper	**$10.50**	**$42.00**
1) CA Tire Fee Tractor Drawn Aerial	**$14.00**	**$14.00**
1) Sourcewell Consortium Fee	**$2,000.00**	**$2000.00**
Total Pre-Pay Purchase Price		**$4,998,817.35**
Balance Due at Delivery		**$0.00**

Said apparatus and equipment are to be built and shipped in accordance with the specifications here to attached, delays due to strikes, war or international conflict, failures to obtain chassis, materials, or other causes beyond our control not preventing, within about **16-18 months for the Engines, and 13-15 months for the Quint** after receipt of this order and the acceptance thereof at our office in Appleton, Wisconsin and delivered to you at Compton,CA.

The specifications herein contained shall form a part of the final contract, and are subject to changes desired by the purchaser, provided such altercations are interlined prior to the acceptance by the company or the order to purchase, and provided such alternations do not materially affect the cost of the construction of the apparatus.

The proposal for the apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations in effect at the time of initial purchase. Any increased costs incurred by the first party because of future changes in or additions to said DOT standards will be passed along to the customers as an addition to the price set forth above.

Unless accepted within thirty (30) days from date, the right is reserved to withdraw this proposition.

South Coast Fire Equipment



Adrian Beyer
Sales Representative

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is adopting as final the interim final rule published on May 17, 2021, with amendments. This rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: The provisions in this final rule are effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Director, Coronavirus State and Local Fiscal Recovery Funds, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA) [1] established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments [2] with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021 [3] and has since disbursed over $240 billion to state, local, and Tribal governments and received over 1,500 public comments on the interim final rule. Treasury is now issuing this final rule which responds to public comments, implements the ARPA statutory provisions on eligible and ineligible uses of SLFRF funds, and makes several changes to the provisions of the interim final rule, summarized below in the section Executive Summary of Major Changes.

Since Treasury issued the interim final rule in May 2021, both the public health and economic situations facing the country have evolved. On the public health front, the United States has made tremendous progress in the fight against COVID–19, including a historic vaccination campaign that has reached over 80 percent of adults with at least one dose and is reaching millions of children as well.[4] However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID–19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.[5] Even as the nation recovers, new and emerging COVID–19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.[6] The economy has gradually added back jobs, with growth accelerating in the first half of 2021.[7] However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had exceeded its pre-pandemic size [8] and unemployment had fallen below 5 percent,[9] but despite this progress, too many Americans remain unemployed, out of the labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.[10] As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds [11] may be used:

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

(b) To respond to workers performing essential work during the COVID–19

[1] Public Law 117–2. *https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf.*

[2] Throughout this Supplementary Information, Treasury uses ''state, local, and Tribal governments'' or ''recipients'' to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

[3] 86 FR 26786 (May 17, 2021).

[4] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited December 31, 2021).

[5] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 7, 2021).

[6] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE* (last visited December 7, 2021).

[7] *Id.*

[8] U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPC1* (last visited December 7, 2021).

[9] U.S. Bureau of Labor Statistics, *supra* note 6.

[10] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited December 7, 2021).

[11] The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress specified two types of ineligible uses of funds: funds may not be used for deposit into any pension fund or, for states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.

Issued May 10, 2021, Treasury's interim final rule provided further detail on eligible uses of funds within the four statutory categories, ineligible uses of funds, and administration of the program. The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program to meet the needs of their communities. The interim final rule aimed to facilitate swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of eligible uses of funds that state, local, and Tribal governments may consider.

State, local, and Tribal governments are already deploying SLFRF funds to make an impact in their communities. The SLFRF program ensures that state, local, and Tribal governments have the resources needed to fight the pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity. Treasury looks forward to supporting and engaging with state, local, and Tribal governments as they use these funds to make transformative investments in their communities. Finally, with so many pressing and effective ways to use SLFRF funds, there is no excuse for waste, fraud, or abuse of these funds.

Treasury received over 1,500 comments spanning nearly all aspects of the interim final rule. The final rule considers and responds to comments, provides clarification to many aspects of the interim final rule, and makes several changes to eligible uses under the program, summarized immediately below.

Executive Summary of Major Changes and Clarifications

The final rule provides broader flexibility and greater simplicity in the program, in response to public comments. Among other clarifications and changes, the final rule provides for the following:

- *Public Health and Negative Economic Impacts:* In addition to programs and services, the final rule clarifies that recipients may use funds for capital expenditures that support an eligible COVID–19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are ''impacted'' or ''disproportionately impacted'' by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID–19 public health and economic response, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

- *Premium Pay:* The final rule offers more streamlined options to provide premium pay, by broadening the share of essential workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline essential workers.
- *Revenue Loss:* The final rule offers a standard allowance for revenue loss of up to $10 million, not to exceed a recipient's SLFRF award amount, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.
- *Water, Sewer, and Broadband Infrastructure:* The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: (1) Eligible Uses, (2) Restrictions on Use, (3) Program Administration Provisions, and (4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

(1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)

(2) Providing premium pay to essential workers

(3) Providing government services to the extent of revenue loss due to the pandemic, and

(4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (*i.e.,* public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called ''enumerated eligible uses''; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this

final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions. These restrictions apply to all eligible use categories; however, some restrictions apply only to certain types of recipient governments, and recipients are advised to review the final rule to determine which restrictions apply to their type of government (*e.g.,* state, territory, Tribal government, county, metropolitan city, or nonentitlement unit of government). To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or indirectly a reduction in net tax revenue resulting from a change in state or territory law.
- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID–19. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as relates to the following: Distribution of funds, timeline for using funds, transfer of funds from a recipient to different organizations, use of funds for program administration, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024 and all funds spent by December 31, 2026. Recipients are advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms ''should'' or ''must'' refer to requirements, except when used in summarizing opinions expressed in public comments. Statements using the term ''encourage'' refer to recommendations, not requirements.

II. Eligible Uses

A. Public Health and Negative Economic Impacts

Background

Since the first case of COVID–19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.[12] The disease—and necessary measures to respond—have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.[13] Long-standing disparities in health and economic outcomes in

[12] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 31, 2021).

[13] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS] *https://fred.stlouisfed.org/series/PAYEMS* (last visited December 7, 2021).

underserved [14] communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.[15] In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.[16]

1. General Provisions: Structure and Standards

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds ''to respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.'' The interim final rule established three categories within this eligible use: (1) Public health responses for those impacted by the pandemic, including the general public; (2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and (3) additional services, either as a public health response or a response to the negative economic impacts of the pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, ''the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . . .] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.'' The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, ''[t]o assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.''

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that ''[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.[17] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency.'' The interim final rule went on to say that: ''In addition, the eligible use must 'respond to' the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.''

Throughout this final rule, Treasury refers to households, communities, small businesses, nonprofits, and industries that experienced public health or negative economic impacts of the pandemic as ''impacted.'' The first section in the interim final rule under this eligible use category included public health responses for these impacted classes. The second category in the interim final rule under this eligible use category included responses to the negative economic impacts that were experienced by these impacted classes as a result of the pandemic.

The interim final rule further recognized that certain populations have experienced disproportionate health or negative economic impacts during the pandemic, as pre-existing disparities in these communities amplified the impacts of the pandemic. For example, the interim final rule recognized that the negative economic effects of the pandemic were particularly pronounced among lower-income families, who were more likely to experience income loss and more likely to have a job that required in-person work. The interim final rule recognized the role of pre-existing social vulnerabilities and disparities in driving the disparate health and economic outcomes and presumed that programs designed to address these health or economic disparities are responsive to the public health or negative economic impacts of the COVID–19 public health emergency, when provided in disproportionately impacted communities. In addition to identifying certain populations and communities

[14] Treasury uses ''underserved'' to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term ''disadvantaged'' to refer to these same populations and communities.

[15] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited December 7, 2021).

[16] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[17] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as ''disproportionately impacted.'' The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. The interim final rule also permitted recipients to presume that certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as ''enumerated eligible uses.''

To summarize, the interim final rule identified certain populations that are presumed to be *impacted* by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be *disproportionately impacted* by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: (1) How to identify the correct public health or negative economic impact category for a particular response, (2) how to identify whether a particular use is eligible, (3) how to identify an impacted or disproportionately impacted class, and (4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced by individuals, households, small businesses, nonprofits, or impacted industries (together ''beneficiaries'').[18] This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed

[18] Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

as changes within the section on that enumerated use.

The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: (1) Assistance to households, (2) assistance to small businesses, and (3) assistance to nonprofits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries. The first three categories, assistance to households, small businesses, and nonprofits, include enumerated eligible uses for impacted and disproportionately impacted beneficiaries. This change in structure is intended to provide a framework that clearly identifies the intended beneficiaries of uses of funds and provides clarity about what types of assistance are ''responsive to the pandemic or its negative economic impacts'' for these beneficiaries.

a. Standards for Identifying a Public Health or Negative Economic Impact

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID–19 public health emergency, the Department will consider the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a ''class,'' and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of some impacts, for example impacts of COVID–19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.[19]

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic's negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in

[19] In designing an intervention to mitigate COVID–19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID–19 mitigation and prevention strategies (*see* Centers for Disease Control and Prevention, COVID–19, *https://www.cdc.gov/coronavirus/2019-ncov/index.html*). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds.

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID–19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID–19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to ''respond to the public health emergency with respect to . . . its negative economic impacts.''

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule's approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a ''class,'' and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households' ability to participate in healthcare, work, and educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of ''households with children'' and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to ''respond to'' the ''negative economic impacts'' of the public health emergency ''including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.'' The list of potential responses (''assistance'' or ''aid'') suggests that responses should address the ''negative economic impacts'' of particular types of beneficiaries (*e.g.,* households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.[20]

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.[21] Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact response, should be responsive to and designed to benefit individuals, households, small businesses, nonprofits, or impacted industries that did experience a public health or negative economic impact.

Determining the Appropriate Eligible Use Category

Public Comment: Some commenters expressed uncertainty about how to analyze negative economic impacts to different entities (*e.g.,* households, small businesses, nonprofits). For example, commenters asked whether a nonprofit, which did not experience a negative economic impact itself, could be granted funds to provide services to individuals experiencing homelessness, who did experience negative economic impacts. Other commenters proposed providing assistance to support the expansion of small businesses, under the theory that this would create more job opportunities for unemployed workers who experienced negative economic impacts.

Treasury Response: In the final rule, Treasury is clarifying that recipients should assess a potential use of funds based on which beneficiary experienced the negative economic impact, in other words, the households, small businesses, nonprofits, or impacted industries that experienced the negative economic impact.

Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient.

[20] For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

[21] For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds.

When a recipient provides funds to another entity to carry out eligible uses of funds and serve beneficiaries the entity becomes a subrecipient (see section Distinguishing a Subrecipient versus a Beneficiary). For example, a recipient may grant funds to a nonprofit organization to provide food assistance (an eligible use) to low-income households (the beneficiaries). Recipients only need to assess whether the beneficiaries experienced a negative economic impact and whether the eligible use responds to that impact, consistent with the two-part framework described above; the organization carrying out the eligible use does not need to have experienced a negative economic impact if it is serving as the vehicle for reaching the beneficiaries. When making determinations about how to implement a program, recipients should consider whether that method of program implementation is an effective and efficient method to implement the program and do so in accordance with the Uniform Guidance provisions that govern procurements and sub-granting of federal funds, as applicable.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance or the entity that experienced a negative economic impact. Assistance to a small business or to an impacted industry must respond to a negative economic impact experienced by that small business or industry. Recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact, although recipients can identify negative economic impacts for classes, rather than individual businesses, and may also presume that small businesses in certain areas experienced impacts; see section General Provisions: Structure and Standards and section Assistance to Small Businesses for details.

Several examples illustrate the application of these concepts. For example, a recipient could provide assistance to households via a contract with a business to create subsidized jobs for the long-term unemployed; in this case the business is a subrecipient and need not have experienced a negative economic impact, but the recipient would need to identify a specific connection between the assistance provided and addressing the negative economic impact experienced by the unemployed households. The recipient could, for instance, document the subsidized jobs created under the contract and their reservation for long-term unemployed individuals. Similarly, a recipient might provide assistance to a small business that experienced a pandemic-related loss of revenue. This small business is a beneficiary and may use those funds in many ways, potentially including hiring or retaining staff. However, general assistance to a business that did not experience a negative economic impact under the theory that this assistance generally grows the economy and therefore enhances opportunities for unemployed workers would not be an eligible use, because such assistance is not reasonably designed to impact the individuals or classes that experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

b. Populations Presumed Eligible

Presumed Eligibility: Impacted and Disproportionately Impacted Households and Communities

Background: As noted above, the interim final rule allowed recipients to presume that certain households were impacted or disproportionately impacted by the pandemic and thus eligible for responsive programs or services. Specifically, under the interim final rule, recipients could presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic, and recipients may provide services that respond to these impacts.

The interim final rule also recognized that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and allowed for a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities. Under the interim final rule, recipients were allowed to presume that families residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic.

Definition of Low- and Moderate-Income

Public Comment: As noted earlier, many commenters sought a definition for ''low- and moderate-income'' to provide recipients greater clarity on which specific households could be presumed to be impacted by the pandemic.

Treasury Response: The final rule maintains the presumptions identified in the interim final rule and defines low- and moderate-income for the purposes of determining which households and populations recipients may presume to have been impacted. To simplify the administration of this presumption, the final rule adopts a definition of low- and moderate-income based on thresholds established and used in other federal programs.

Definitions. The final rule defines a household as *low income* if it has (i) income at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).[22]

The final rule defines a household as *moderate income* if it has (i) income at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS or (ii) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD.[23]

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. For example, recipients developing a program that serves specific households (*e.g.,* a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (*e.g.,* a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (*e.g.,* when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing

[22] AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

[23] For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services that reach a general geographic area or if doing so would simplify administration of the program to be provided (*e.g.,* when developing a park, recipients should use the income threshold for a household size of three and compare it to median income of the geographic area to be served).

Note that recipients can also identify and serve other classes of households that experienced negative economic impacts or disproportionate impacts from the pandemic; recipients can identify these classes based on their income levels, including above the levels defined as low- and moderate-income in the final rule. For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau's poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty Guidelines for this information, which is updated annually and available on the HHS website.[24] For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.[25] Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.[26]

2021 Federal Poverty Guidelines

Household size	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$12,880	$16,090	$14,820
2	17,420	21,770	20,040
3	21,960	27,450	25,260
4	26,500	33,130	30,480
5	31,040	38,810	35,700
6	35,580	44,490	40.920
7	40,120	50,170	46,140
8	44,660	55,850	51,360

For families/households with more than 8 persons, add the following amounts for each additional person:
48 Contiguous States and the District of Columbia: $4,540.
Alaska: $5,680.
Hawaii: $5,220.
Source: "HHS Poverty Guidelines for 2021," available at *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1–A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission's e-Rate program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19.[27] This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.[28] Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit

[24] U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, *available at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

[25] U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, *available at https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx.* Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by State and Metropolitan Area, *available at https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf.*

[26] The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, *available at https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACSST5Y2019.S1901&cid=S1901_C01_012E&vintage=2019.* The U.S. Census Bureau also provides an interactive table: U.S. Census Bureau, Median Household Income In The Past 12 Months (In 2019 Inflation-Adjusted Dollars), *available at https://data.census.gov/cedsci/table?q=b19013&tid=ACSDT5Y2019.B19013&hidePreview=true.*

[27] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm* (last visited December 7, 2021).

[28] U.S. Census Bureau, Poverty Status by State, *https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html* (last visited December 7, 2021).

used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.[29] Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.[30] Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.[31] Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as Opportunity Zones, Difficult Development Areas (DDAs), areas with a certain amount of Real Estate Advantage Program (REAP) recipients, or use of eligibility criteria from the Community Reinvestment Act. One commenter generally recommended that a clearer definition of ''disproportionately impacted'' should be provided and that any definition should include communities of color and people of limited means. Another recommended specific eligibility for people that had recently interacted with the criminal justice system. Many commenters representing Tribal governments and groups recommended a presumption of eligibility for all Tribal uses of funds, clarification that off reservation members remained eligible, and broad flexibility on use of funds.

Additionally, commenters noted that some areas are technically eligible to be QCTs but fall short because of the aggregate population of eligible tracts. One commenter noted that these areas should be considered the same as QCTs for the purpose of SLFRF funds. Some commenters argued that rural counties typically have few QCTs despite high levels of poverty and disruption caused by the COVID–19 pandemic. Other rural commenters recommended that the designation be by county rather than at a more granular level, arguing that the QCT designation is biased towards urban areas and understates the harm done to rural America. Many commenters representing Tribal governments supported the presumption that services provided by Tribal governments respond to disproportionate impacts.

Treasury Response

Summary: While households residing in QCTs or served by Tribal governments were presumed to be disproportionately impacted, Treasury emphasizes that under the interim final rule recipients could also identify other households, populations, or geographic areas that were disproportionately impacted by the pandemic and provide services to respond.

The final rule maintains the presumptions identified in the interim final rule, as well as recipients' ability to identify other impacted or disproportionately impacted classes. The final rule also allows recipients to presume that low-income households were disproportionately impacted, and as discussed above, defines low- and moderate-income. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Households presumed to be impacted: Impacted households are those that experienced a public health or negative economic impact from the pandemic.

With regard to public health impacts, recipients may presume that the general public experienced public health impacts from the pandemic for the purposes of providing services for COVID–19 mitigation and behavioral health. In other words, recipients may provide a wide range of enumerated eligible uses in these categories to the general public without further analysis. As discussed in the introduction, COVID–19 as a disease has directly affected the health of tens of millions of Americans, and efforts to prevent and mitigate the spread of the disease are needed and in use across the country. Further, the stress of the pandemic and resulting recession have affected nearly all Americans. Accordingly, the final rule presumes that the general public are impacted by and eligible for services to respond to COVID–19 mitigation and prevention needs, as well as behavioral health needs.

With regard to negative economic impacts, as with the interim final rule, under the final rule recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. The final rule's definition of low- and moderate-income, by providing standard metrics based on widely available data, is intended to simplify administration for recipients.

Households presumed to be disproportionately impacted: Disproportionately impacted households are those that experienced a

[29] For instance, Melissa Kearney et al. (2013) cap the ''struggling lower middle-income class'' at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the ''middle class'' as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., ''A Dozen Facts about America's Struggling Lower-Middle Class,'' The Hamilton Project (December 2013), *https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf;* Isabel Sawhill and Edward Rodrigue, ''An Agenda for Reducing Poverty and Improving Opportunity,'' Brookings Institution, *https://www.brookings.edu/wp-content/uploads/2016/07/Sawhill_FINAL.pdf.*

[30] Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm* (last visited December 7, 2021).

[31] For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), *https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.*

disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID–19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities. Data on household incomes is also readily available at varying levels of geographic granularity (*e.g.,* Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts. Given a lack of regularly published data on household incomes in most territories,[32] as well as a lack of poverty guidelines developed for these jurisdictions,[33] it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.[34] Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.[35]

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID–19 public health emergency (*i.e.,* categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

- *Impacted households.* Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:
  - Children's Health Insurance Program (CHIP)
  - Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
  - Medicaid
  - National Housing Trust Fund (HTF), for affordable housing programs only
  - Home Investment Partnerships Program (HOME), for affordable housing programs only
- *Disproportionately impacted households.* Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:
  - Temporary Assistance for Needy Families (TANF)
  - Supplemental Nutrition Assistance Program (SNAP)
  - Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
  - Medicare Part D Low-income Subsidies
  - Supplemental Security Income (SSI)
  - Head Start and/or Early Head Start
  - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
  - Section 8 Vouchers
  - Low-Income Home Energy Assistance Program (LIHEAP)
  - Pell Grants
  - For services to address educational disparities, Treasury will recognize Title

[32] For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, *https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html* (last visited November 9, 2021).

[33] U.S. Department of Health and Human Services, *supra* note 24.

[34] For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, *https://www.census.gov/Tribal/Tribal_glossary.php.*

[35] Lina Stoylar et. al., Challenges in the U.S. Territories: COVID–19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), *https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/.*

I eligible schools [36] as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

c. Standards for Identifying Other Eligible Populations

Standards: Designating Other Impacted Classes

Public Comment: Treasury received multiple comments requesting additional clarification about how classes of impacted individuals may be designated, as well as questions asking whether recipients must demonstrate a specific public health or negative economic impact to each entity served (*e.g.,* each household receiving assistance under a program). There were several comments requesting that specific geographic designations, like a county or Impact Zone, be eligible to use as a determining boundary.

Treasury Response: The interim final rule allowed, and the final rule maintains, the ability for recipients to demonstrate a public health or negative economic impact on a class and to provide assistance to beneficiaries that fall within that class. Consistent with the scope of beneficiaries included in sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act, Treasury is clarifying that a recipient may identify such impacts for a class of households, small businesses, or nonprofits. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the relevant class. For example, a recipient could determine that restaurants in the downtown area had generally experienced a negative economic impact and provide assistance to those small businesses to respond. When providing this assistance, the recipient would only need to demonstrate that the small businesses receiving assistance were restaurants in the downtown area. The recipient would not need to demonstrate that each restaurant served experienced its own negative economic impact.

In identifying an impacted class and responsive program, service, or capital expenditure, recipients should consider the relationship between the definition of the class and proposed response. Larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Standard: Designating Other Disproportionately Impacted Classes

Summary of Interim Final Rule: As noted above, the interim final rule provided a broad set of enumerated eligible uses of funds in disproportionately impacted communities, including to address pre-existing disparities that contributed to more severe pandemic impacts in these communities. The interim final rule presumed that these services are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to ''other populations, households, or geographic areas disproportionately impacted by the pandemic'' and, in identifying these disproportionately impacted communities, should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the group identified.

Public Comment: A significant number of commenters expressed uncertainty regarding the process for determining eligibility for disproportionately impacted communities beyond QCTs. A commenter noted that a clearer definition of ''disproportionately impacted'' should be delineated and that any definition should include communities of color and people of limited means. Some commenters suggested a template or checklist to see if an area meets the standard for disproportionately impacted communities outside of QCTs. Some commenters stated that QCT and non-QCT beneficiaries should be treated the same.

Treasury Response: Under the interim final rule, presuming eligibility for services in QCTs, for populations living in QCTs, and for Tribal governments was intended to ease administrative burden, providing a simple path for recipients to offer services in underserved communities, and is not an exhaustive list of disproportionately impacted communities. To further clarify, the final rule codifies the interpretive framework discussed above, including presumptions of groups disproportionately impacted, as well as the ability to identify other disproportionately impacted populations, households, or geographies (referred to here as disproportionately impacted classes).

As discussed in the interim final rule, in identifying other disproportionately impacted classes, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. For example, the interim final rule considered data regarding the rate of COVID–19 infections and deaths in low-income and socially vulnerable communities, noting that these communities have experienced the most severe health impacts, compared to national averages. Similarly, the interim final rule considered the high concentration of low-income workers performing essential work, the reduced ability to socially distance, and other pre-existing public health challenges, all of which correlate with more severe COVID–19 outcomes. The interim final rule also considered the disproportionate economic impacts of the pandemic, citing, for example, the rate of job losses among low-income persons as compared to the general population. The interim final rule then identified QCTs, a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents, as presumed to be disproportionately impacted by the pandemic.

In other words, the interim final rule identified disproportionately impacted populations by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. Similarly, to identify disproportionately impacted classes, recipients should compare the impacts experienced by that class to the typical or average impacts of the pandemic in their local area, state, or nationally.

Recipients may identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources. To augment their analysis, or when quantitative data is not readily available, recipients may also consider qualitative research and sources like resident interviews or

[36] *Title I eligible schools* means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public health or negative economic impact. An assessment of the effects of a response (*e.g.,* survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. Public Health

Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[37] Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID–19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020 impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID–19.[38]

In December 2020, the Food and Drug Administration (FDA) authorized COVID–19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID–19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmittable variant of the SARS–CoV–2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.[39]

As of December 2021, COVID–19 in total has infected over 50 million and killed over 800,000 Americans.[40] Preventing and mitigating the spread of COVID–19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.[41] Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.[42] Vaccines for younger children, ages 5 through 11, have been approved and are reaching communities and families across the country. As new variants continue to emerge globally, the national effort to administer vaccinations and other COVID–19 mitigation strategies will be a critical component of the public health response.

In early reporting on uses of SLFRF funds, recipients have indicated that they plan to put funds to immediate use to support continued vaccination campaigns. For example, one recipient has indicated that it plans to use SLFRF funds to support a vaccine incentive program, providing $100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.[43] Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID–19 vaccinations to homebound residents in assisted living facilities.[44]

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID–19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID–19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.[45] For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID–19 in schools. Those investments include the increasing school nurses and social

[37] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[38] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited December 7, 2021).

[39] *Id.*

[40] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 31, 2021).

[41] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited December 7, 2021).

[42] *Id.*

[43] Columbus, Ohio Recovery Plan, *https://www.columbus.gov/recovery/.*

[44] Luzerne County, Pennsylvania Recovery Plan, *https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121.*

[45] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID–19 Prevention in K–12 Schools (November 5, 2021), *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html.*

workers, improved ventilation systems, and other health and safety measures.

The need for public health measures to respond to COVID–19 will continue moving forward. This includes the continuation of vaccination campaigns for the general public, booster doses, and children. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants, developing approaches to respond, and monitoring global COVID–19 trends. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with ''long COVID,'' and research to understand how COVID–19 impacts future health needs and raises risks for the tens of millions of Americans who have been infected.

The COVID–19 pandemic also negatively impacted other areas of public health, particularly mental health and substance use. In January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[46] The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.[47] The proportion of children's emergency department visits related to mental health has also risen noticeably.[48] Similarly, rates of substance use and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.[49] The CDC also found that 13 percent of adults started or increased substance use to cope with stress related to COVID–19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.[50]

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.[51] According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to 2019 data.[52] In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.[53] The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.[54] Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.[55] Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.[56]

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a ''community responder'' model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers, libraries, and other public spaces.[57] Similarly, Los Angeles County will further invest in its ''Care First, Jails Last'' program which seeks to replace ''arrest and incarceration'' responses with health interventions.[58]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[59] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[60]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.[61] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.[62] Over the course of the

[46] 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%20 more, prior%20to%20the%20current%20crisis;* Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic—United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[47] *Id.*

[48] Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1–October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.*

[49] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8 December 6, 2021).

[50] Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

[51] The White House, FACT SHEET: More Details on the Biden-Harris Administration's Investments in Community Violence Interventions (April 7, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/.*

[52] Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021) *https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics.*

[53] *Id.*

[54] *Id.*

[55] The Educational Fund to Stop Gun Violence, Community Gun Violence, *https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/* (last visited November 9, 2021).

[56] Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), *https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf.*

[57] St. Louis, MO Recovery Plan, *https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/.*

[58] Los Angeles County, CA Recovery Plan, *http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf.*

[59] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[60] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[61] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited December 7, 2021).

[62] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by Social

Continued

pandemic, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[63] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[64] In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.[65]

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[66] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[67]

Summary of the Interim Final Rule Approach to Public Health

Summary: As discussed above, the interim final rule provided flexibility for recipients to pursue a wide range of eligible uses to ''respond to'' the COVID–19 public health emergency. Uses of funds to ''respond to'' the public health emergency address the SARS-CoV–2 virus itself, support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID–19 (''enumerated eligible uses''), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.[68] The interim final rule also recognized that the nature of the COVID–19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, (4) public health and safety staff, (5) expenses to improve the design and execution of health and public health programs, and (6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury's responses, as well as comments received proposing additional enumerated eligible uses.

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID–19 may be provided to any type of entity.

a. COVID–19 Mitigation and Prevention

COVID–19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID–19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID–19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.,* monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.,* nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of

Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited December 7, 2021).

[63] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited December 7, 2021).

[64] *See, e.g.,* Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited December 7, 2021).

[65] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[66] *See, e.g.,* Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[67] *See, e.g.,* Centers *for Disease Control and Prevention, supra note 62;* Benfer & Wiley, *supra* note 66; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[68] Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID–19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID–19, given the wide-ranging activities that governments may take to further these goals, including ''other public health responses.'' Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID–19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID–19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID–19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

This approach gives recipient governments an extensive set of eligible uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID–19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID–19 cases were at relatively low levels and declining;[69] as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID–19 safety requirements, including vaccination requirements, testing programs, or other required practices.

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID–19. The interim final rule and final rule help support recipients in stopping the spread of COVID–19 through these recommendations and guidelines.[70] The final rule reflects changing circumstances of COVID–19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID–19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID–19 mitigation and prevention.[71] A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID–19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (*e.g.,* paying off fines to businesses incurred for violation of COVID–19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (*e.g.,* requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.[72] Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths[73] [74] The inclusion of ''vaccination programs'' as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: Treasury issued guidance clarifying that ''[vaccine] programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable

[69] *See* Centers for Disease Control and Prevention, COVID Data Tracker, *https://covid.cdc.gov/covid-data-tracker/#trends_dailycases* (last visited December 7, 2021).

[70] *See* Centers for Disease Control and Prevention, COVID–19, *https://www.cdc.gov/coronavirus/2019-ncov/index.html* (last visited November 8, 2021).

[71] *See* § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

[72] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited October 18, 2021).

[73] U.S. Food and Drug Administration, Coronavirus (COVID–19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID–19 Vaccines, *https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age* (last visited November 8, 2021).

[74] U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID–19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, *https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age* (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.'' [75] This use of funds remains permissible under the final rule.

Capital Expenditures

Public Comment: Many commenters requested clarification around the types and scope of permissible capital investments in public facilities to meet pandemic operational needs; ventilation improvements in congregate settings, health care settings, or other key locations; and whether support for prevention and mitigation in congregate facilities could include facilities renovations, improvements, or construction of new facilities, or if the facilities must solely be used for COVID–19 response.

Treasury Response: For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID–19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID–19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID–19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID–19 treatment and mitigation (*e.g.,* emergency rooms, intensive care units, telemedicine capabilities for COVID–19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID–19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response equipment (*e.g.,* emergency response radio systems);
- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID–19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (*e.g.,* developing outdoor spaces).

Other clarifications on COVID–19 mitigation: Medical care, supports for vulnerable populations, data systems, carceral settings. Based on public comments and questions received from recipients following the interim final rule, Treasury is making several further clarifications on enumerated eligible uses in this category.

Public Comment: Several commenters requested clarification on eligible uses of funds for medical care; Treasury addresses those comments in the section Medical Expenses below.

Public Comment: Recipients posed questions on the type and scope of activities eligible as ''supports for vulnerable populations to access medical or public health services.''

Treasury Response: Enumerated eligible uses should be considered in the context of the eligible use category or section where they appear; in this case, ''supports for vulnerable populations to access medical or public health services'' appears in the section COVID–19 Mitigation and Prevention. As such, these eligible uses should help vulnerable or high-risk populations access services that mitigate COVID–19, for example, transportation assistance to reach vaccination sites, mobile vaccination or testing programs, or on-site vaccination or testing services for homebound individuals, those in group homes, or similar settings.

Public Comment: Some commenters asked whether ''enhancement of public health data systems'' could include investments in software, databases, and other information technology resources that support responses to the COVID–19 public health emergency but also provide benefits for other use cases and long-term capacity of public health departments and systems.

Treasury Response: These are permissible uses of funds under the interim final rule and remain eligible under the final rule.

Assistance to Businesses and Nonprofits To Implement COVID–19 Mitigation Strategies

Background: As detailed above, Treasury received many public comments describing uncertainty about which eligible use category should be used to assess different potential uses of funds. As a result, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity, consistent with the principle that uses of funds should be assessed based on their intended beneficiary. For example, COVID–19 mitigation and prevention serves the general public or specific populations within the public. However, in the interim final rule, assistance to small businesses, nonprofits, and impacted industries to implement COVID–19 mitigation and prevention strategies was categorized in the respective sections within Negative Economic Impacts. The final rule consolidates all COVID–19 mitigation and prevention within Public Health.

Public Comment: Treasury has received multiple comments and questions about which eligible use permits the recipient to provide assistance to businesses and nonprofits to address the public health impacts of COVID–19.

Treasury Response: In the final rule, these services have been re-categorized under COVID–19 mitigation and prevention to reflect the fact that this assistance responds to public health impacts of the pandemic rather than the negative economic impacts to a small business, nonprofit, or impacted industry. When providing COVID–19 mitigation and prevention services, recipients can identify the impacted entity as small businesses, nonprofits, or businesses in impacted industries in general. As with all enumerated eligible uses, recipients may presume that all COVID–19 mitigation and prevention programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID–19 prevention or mitigation service to small businesses, nonprofits, and businesses in impacted

[75] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.* Note that programs may provide incentives to individuals who have already received a vaccination if the incentive is reasonably expected to increase the number of people who choose to get vaccinated or motivate people to get vaccinated sooner and the costs are reasonably proportional to the expected public health benefit.

industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID–19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID–19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID–19 transmission outdoors.[76] Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID–19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID–19 disease itself and is eligible for services that mitigate or prevent COVID–19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID–19 mitigation measures is a beneficiary of assistance (*e.g.,* granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID–19 mitigation on behalf of the recipient, the entity is a subrecipient (*e.g.,* contracting with a small business to operate COVID–19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. Medical Expenses

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (*e.g.,* subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (*e.g.,* a county government health plan) for COVID–19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers costs related to medical care provided directly to an individual due to COVID–19 infection (*e.g.,* treatment) or a potential infection (*e.g.,* testing). This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID–19 medical care. These are medical expenses due to COVID–19 and distinguish this category of eligible uses from other related eligible uses, like COVID–19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency. The specific services listed in the interim final rule also remain eligible.[77]

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not

[76] *See* Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, *https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html* (last visited November 8, 2021).

[77] Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other.

In other words, recipients can provide behavioral health services to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive. Recipients may also use this eligible use category to respond to increased rates of behavioral health challenges at a population level or, at an individual level, new behavioral health challenges or exacerbation of pre-existing challenges, including new barriers to accessing treatment.

Services that respond to these impacts of the public health emergency may include services across the continuum of care, including both acute and chronic care, such as prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs (*e.g.,* from emergency departments or criminal justice system involvement), outreach to individuals not yet engaged in treatment, harm reduction, and supports for long-term recovery (*e.g.,* peer support or recovery coaching, housing, transportation, employment services).

Recipients may also provide services for special populations, for example, enhanced services in schools to address increased rates of behavioral health challenges for youths, mental health first responder or law enforcement-mental health co-responder programs to divert individuals experiencing mental illness from the criminal justice system, or services for pregnant women with substance use disorders or infants born with neonatal abstinence syndrome. Finally, recipients may use funds for programs or services to support equitable access to services and reduce racial, ethnic, or socioeconomic disparities in access to high-quality treatment.

Eligible uses of funds may include services typically billable to insurance [78] or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency's exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality.[79] Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (*e.g.,* direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (*e.g.,* inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. Preventing and Responding to Violence

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and how funds may be used to respond to an increase in crime, violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID–19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses—like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities—that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated

[78] However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

[79] In line with the Department of Health and Human Services, Overdose Prevention Strategy, *https://www.hhs.gov/overdose-prevention/,* and the Office of National Drug Control Policy, Administration's Statement on Drug Policy Priorities for Year One (April 1, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf.*

eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

- Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and
- Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: (1) Hiring law enforcement officials—even above pre-pandemic levels—or paying overtime where the funds are directly focused on advancing community policing strategies for gun violence, (2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and (3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households

Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 22 million jobs were lost in March and April 2020.[80] One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,[81] and the unemployment rate hovered around 6 percent.[82]

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months from May to November 2021;[83] the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;[84] and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.[85]

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.[86] Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.[87] Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,[88] and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.[89] Thus, despite much progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.[90] Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.[91] A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.[92]

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately

[80] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited December 7, 2021).

[81] *Id.*

[82] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE* (last visited December 7, 2021).

[83] U.S. Bureau of Labor Statistics, *supra* note 80.

[84] U.S. Bureau of Labor Statistics, *supra* note 82.

[85] U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPC1* (last visited December 7, 2021).

[86] U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at *https://home.treasury.gov/news/press-releases/jy0453.*

[87] Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at *https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601.*

[88] U.S. Bureau of Labor Statistics, *supra* note 80.

[89] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited December 7, 2021).

[90] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (December 6, 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (December 6, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (December 6, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited December 7, 2021).

[91] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (July 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[92] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and* (last visited December 17, 2021).

half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.[93] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.[94] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points [95] during the pandemic as compared to 1.3 percentage points for Black men [96] and 1.7 percentage points for White women.[97]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[98] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores [99] and reduced familial and childhood wellbeing.[100] These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.[101] Similarly, low- and moderate-income households reported being housing insecure [102] at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship [103] at rates statistically significantly greater than the rate for higher-income households.[104] The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.[105] While the entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.[106] Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.[107] During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.[108]

While many households suffered negative economic outcomes as a result of the COVID–19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.[109] Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.[110] The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.[111]

[93] Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), *https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=lhp.*

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

[95] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited December 7, 2021).

[96] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited December 7, 2021).

[97] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited December 7, 2021).

[98] *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

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

[100] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

[101] Kyle J. Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at *https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.*

[102] Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

[103] Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: Pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

[104] *Id.*

[105] Elise Gould and Melat Kassa. Low-wage, low-hours workers were hit hardest in the COVID–19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May 2021), available at *https://www.epi.org/publication/swa-2020-employment-report/.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID–19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research. *https://doi.org/10.3386/w27431.*

[110] M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID–19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), *https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/.*

[111] N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID–19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), *https://*

Summary of Interim Final Rule and Final Rule Structure

Summary: The interim final rule provided a non-exhaustive list of enumerated eligible uses to respond to the negative economic impacts of the pandemic through assistance to households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: (1) Assistance to unemployed workers, (2) state Unemployment Insurance Trust Funds, (3) assistance to households, and (4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: (1) Building stronger communities through investments in housing and neighborhoods, (2) addressing educational disparities, and (3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from ''disproportionately impacted'' to ''impacted'' households accordingly, making these services available to both disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost instructional time for students; [112] and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: Remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

Enumerated Eligible Uses for Impacted Households

The interim final rule included several enumerated eligible uses to provide assistance to households or populations facing negative economic impacts due to COVID–19. Enumerated eligible uses included: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; cash assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. It also posed a question as to what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19.

This section addresses each of these enumerated eligible uses in turn, with the exception of job training, which has been re-categorized for increased clarity to the eligible use for ''assistance to unemployed and underemployed workers.'' In general, commenters supported inclusion of these enumerated eligible uses to address key economic needs among households due to the pandemic, and Treasury is maintaining these eligible uses in the final rule, in line with commenters' recommendations.

1. Food assistance. The interim final rule included an enumerated eligible use for food assistance. Some commenters expressed support for this eligible use and emphasized the importance of aid to address food insecurity. Some commenters raised questions as to whether food assistance funds could be used to augment services provided through organizations like food banks, churches, and other food delivery services, or generally be sub-awarded to these organizations.

Treasury Response: Treasury is maintaining this enumerated eligible use without change. Recipients may, as was the case under the interim final rule, administer programs through a wide range of entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government (see section Distinguishing Subrecipients versus Beneficiaries). Further, Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible; recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

[112] For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

2. Emergency housing assistance. The interim final rule included an enumerated eligible use for rent, mortgage, or utility assistance and counseling and legal aid to prevent eviction or homelessness.

Public Comment: Several commenters supported the inclusion of eviction prevention activities as an eligible use given the high number of households behind on rent and potentially at risk of eviction. Following release of the interim final rule, Treasury had also received requests for elaboration on the types of eligible services in this category. Some commenters also recommended including assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, as an enumerated eligible use.

Treasury Response: In response to requests for elaboration on the types of eligible services for eviction prevention, Treasury has provided further guidance that these services include ''housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing,'' as well as ''legal aid such as legal services or attorney's fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.'' [113] Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters' recommendations. To enhance clarity, Treasury is also elaborating on some types of services included under this eligible use category; this remains a non-exhaustive list of eligible services. For example, eligible services under this use category include: Rent, rental arrears, utility costs or arrears (*e.g.,* electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (*e.g.,* rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households.

This eligible use category also includes emergency assistance for individuals experiencing homelessness, either individual-level assistance (*e.g.,* rapid rehousing services) or assistance for groups of individuals (*e.g.,* master leases of hotels, motels, or similar facilities to expand available shelter).

Further, Treasury is clarifying that transitional shelters (*e.g.,* temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes ''emergency housing assistance,'' or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable housing and homeownership over the long term, see the eligible use for ''promoting long-term housing security: Affordable housing and homelessness.''

3. Emergency assistance for pressing needs: Burials, home repairs, weatherization, or other needs. The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.[114] While small and cosmetic repairs can often wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,[115] meaning they do not have the ability to meet their energy needs.[116] Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.[117] These

[113] *See FAQ 2.21.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[114] Jung Hyun Choi, Laurie Goodman, and Daniel Pang, The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties, Urban Institute (July 23, 2021), *https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties.*

[115] U.S. Energy Information Administration, Residential Energy Consumption Survey (2017), Retrieved from *https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.*

D. Hernández, Understanding 'energy insecurity' and why it matters to health, Social Science & Medicine, 167, 1–10 (2016), *https://doi.org/10.1016/j.socscimed.2016.08.029.*

[116] Hernández, D. (2016). Understanding 'energy insecurity' and why it matters to health. Social Science & Medicine, 167, 1–10. *https://doi.org/10.1016/j.socscimed.2016.08.029.*

[117] U.S. Energy Information Administration, Residential Energy Consumption Survey (RECS) *https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.* (last visited November 9, 2021)

disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.[118] While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. Internet access or digital literacy assistance. The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.[119] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[120] According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.[121] Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID–19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.[122] The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.[123]

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase service for their household due to the high cost. These commenters argued that broadband must be affordable to be accessible.

Commenters proposed several potential responses to affordability concerns. Some commenters recommended that building ''gap networks,'' or broadband networks built at low cost to provide affordable service in areas where it is lacking, be eligible as assistance to households to respond to the negative economic impacts of the pandemic, even if they do not meet the technical standards for eligibility under the eligible use category of broadband infrastructure investment, especially the required speed standards for new service. These commenters argued that the networks have shown promise as a timely means to expand access to affordable broadband internet during the pandemic, even if they may not provide service speeds needed for more intensive internet uses. Another commenter requested eligible uses include funding cellular towers to decrease costs. One commenter recommended that affordability should be addressed through other programs but not SLFRF given that affordability and availability may require nuanced solutions that would be complex to combine.

Treasury Response: The interpretive framework and enumerated eligible uses allow recipients flexibility to address identified pandemic impacts, including through solutions that take into account the particularized issues in their community. Given extensive commenter feedback on the importance of affordability to achieving broadband access, and the centrality of broadband to participating in work, education, healthcare, and other activities during the pandemic, affordability programs are an appropriate eligible use to respond to the negative economic impacts of the pandemic and Treasury is maintaining the enumerated eligible use for assistance to households for internet access and digital literacy programs in the final rule.

Building or constructing new broadband networks is an infrastructure investment and is governed by a separate clause in the statute. Treasury has addressed comments on ''gap networks'' that require infrastructure build-out in the section Broadband Infrastructure in Infrastructure.

---

[118] A. Drehobl, & L. Ross, Lifting the high energy burden in America's largest cities: How energy efficiency can improve low income and underserved communities, American Council for an Energy Efficient Economy (2016), *https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf.*

[119] *See, e.g.,* Nation Telecommunications and Information Administration, More than Half of American Households Used the Internet for Health-Related Activities in 2019, NTIA Data Show (December 7, 2020), *https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show;* Nation Telecommunications and Information Administration, Nearly a Third of American Employees Worked Remotely in 2019, NTIA Data Show (September 3, 2020) *https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, Nation Telecommunications and Information Administration, Digital Nation Data Explorer (June 10, 2020), *https://www.ntia.gov/data/digital-nation-data-explorer.*

[120] BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[121] Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), *https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.*

[122] Pew Research Center, 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (April 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[123] *Id.*

Public Comment: Some commenters also use the term ''gap networks'' to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (*e.g.,* programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (*e.g.,* equipment, property, and facilities).

5. Cash assistance. The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be ''reasonably proportional'' to the negative economic impact they address and may not be ''grossly in excess of the amount needed to address'' the impact. In assessing whether a transfer is reasonably proportional, recipients may ''consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis,'' and transfers ''grossly in excess of such amounts'' are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters' recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients' flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.

Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Finally, Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm.

6. Survivor's benefits. The interim final rule included an enumerated eligible use for survivor's benefits to surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor's benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor's benefits under assistance to households to clarify that households are the intended beneficiaries of survivor's benefits.

7. Assistance accessing or applying for public benefits or services. Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.[124] For example, despite having one of the highest rates of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program

[124] Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, The Quarterly Journal of Economics, vol 134(3), pages 1505–1556 (2019), *https://www.nber.org/papers/w24652.*

(SNAP).[125] In other cases, policies like public charge and asset testing can discourage otherwise eligible households.[126] While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.[127]

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. Promoting healthy childhood environments. The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: Childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day.[128] Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.[129] As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.[130]

Low-income households are also more likely to lose access to quality childcare.[131] The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.[132]

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.[133] [134]

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.[135] This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,[136] and health and safety concerns.[137] As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.[138] The impact also extended

[125] United States Department of Agriculture, Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2018 (May 2021), *https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2016-2018.pdf.*

[126] Jeremy Barofsky et al., Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs, Health Affairs (October 2020), *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763.*

[127] *See, e.g.,* U.S. Department of the Treasury, By ZIP Code: Number of Children under Age 18 with a Social Security Number Who Are Not Found on a Tax Year 2019 or 2020 Tax Return but who Appear on a Tax Year 2019 Form 1095 and Associated Number of Policy Holders (June 2021), *https://home.treasury.gov/system/files/131/Estimated-Counts-of-Children-Unclaimed-for-CTC-by-ZIP-Code-2019.pdf.*

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

[129] *See, e.g.,* Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), *https://cscce.berkeley.edu/child-care-sector-jobs-bls-analysis/;* Emma K. Lee, and Zachary Parolin. The Care Burden during COVID–19: A National Database of Child Care Closures in the United States, Socius (January 2021), doi:10.1177/23780231211032028.

[130] Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID–19 Pandemic, NBER Working Paper No. 28934 (June 2021), *https://www.nber.org/papers/w28934.*

[131] U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at *https://www.census.gov/programs-surveys/household-pulse-survey/data.html.*

[132] *Id.*

[133] N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID–19 Pandemic: A Bad Situation Made Worse. Pediatrics (2021), *https://doi.org/10.1542/peds.2020-041525.*

[134] National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), *https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF.*

[135] G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), *https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19on_Preschool_Enrollment_and_Spending_3_16_21.pdf.*

[136] Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, Washington Post (September 19, 2021), *https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/.*

[137] Monash University, The emotional toll of COVID–19 among early childhood educators (August 5, 2020) *https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators.*

[138] Daphna Bassok and Anna Shapiro, Understanding COVID–19-era enrollment drops

Continued

to parents. Parents, especially mothers, may face challenges reentering or remaining in the workforce if early learning services are unavailable.

Treasury Response: Childcare and Early Learning Services: Treasury agrees with commenters' analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents. As such, these enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities. Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities.

Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID–19.[139] Furthermore, pregnant individuals with COVID–19 are more likely to experience preterm birth (delivering the baby earlier than 37 weeks).[140] In addition to heightened health risks from COVID–19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic [141] or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.[142]

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.[143] Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.[144] Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.[145]

Treasury Response: Home Visiting: Given the widespread impact of COVID–19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities. Under the final rule, these eligible uses are available to impacted households or classes of households.

Public Comment: Child Welfare: While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID–19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,[146] essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.[147] Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.[148] As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,[149] or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

among early-grade public school students, Brookings Institution (February 22, 2021), *https://www.brookings.edu/blog/brown-center-chalkboard/2021/02/22/understanding-covid-19-era-enrollment-drops-among-early-grade-public-school-students/.*

[139] Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html* (last visited November 9, 2021).

[140] *Id.*

[141] Sarah Javaid, Sarah Barringer, Sarah D Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID–19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, Midwifery, Volume 98, 2021, 102991, ISSN 0266–6138, *https://doi.org/10.1016/j.midw.2021.102991.*

[142] A Basu, HH Kim, R Basaldua, KW Choi, L Charron, et al., A cross-national study of factors associated with women's perinatal mental health and wellbeing during the COVID–19 pandemic, PLOS ONE 16(4): e0249780, (2021), *https://doi.org/10.1371/journal.pone.0249780.*

[143] Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, New York Times (April 6, 2020), *https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html.*

[144] Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID–19, California Health Care Foundation (April 20, 2020), *https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/.*

[145] U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, *https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief.*

[146] National Conference of State Legislatures, Criminal Justice System Responses to COVID–19 (November 16, 2020), *https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx.*

[147] John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) *https://jbay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf.*

[148] John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), *https://imprintnews.org/subscriber-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006.*

[149] Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. Trauma, Violence, & Abuse, vol. 21, no. 1, Jan. 2020, pp. 157–178, doi:10.1177/1524838018756122.

and families that may otherwise become involved in the child welfare system.

Treasury Response: In the final rule, Treasury is clarifying that services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care.

9. Addressing the impacts of lost instructional time.

Public Comment: The interim final rule included an enumerated eligible use to address educational disparities in disproportionately impacted communities, recognizing that underserved students have been more severely impacted by the pandemic and including responsive services for early learning, enhance funding to high-poverty districts, and providing evidence-based services to address the academic, social, emotional, and mental health needs of students. Some commenters expressed concerns that learning loss or the negative impacts of lost instructional time due to school closures or remote education during the pandemic had affected a significant share of students in grades kindergarten through twelve (K–12), including students who may not fall within a disproportionally impacted group.

Background: The COVID–19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to report experiencing negative mental- and physical health outcomes than children who received in-person instruction.[150]

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. When providing services to address lost instructional time, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.[151]

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness, were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that ''emergency housing assistance,'' or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for ''emergency housing assistance'' above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for ''housing vouchers and assistance relocating'' below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.[152]

[150] Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID–19 Pandemic—COVID Experiences Survey, United States, October 8–November 13, 2020. MMWR Morb Mortal Wkly Rep 2021;70:369–376. DOI: *http://dx.doi.org/10.15585/mmwr.mm7011a1external* icon.

[151] U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from *https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf.*

[152] Consumer Financial Protection Bureau, Housing insecurity and the COVID–19 pandemic

Continued

The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes.[153] Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.[154]

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID–19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID–19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

Additionally, as noted above, Treasury is finalizing the rule with some changes to the treatment of affordable housing development designed to clarify that permanent supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units, are responsive to individuals and households that were impacted by the pandemic in addition to those that were disproportionately impacted. This shift is in line with commenters' recommendations and consistent with the facts described above, which demonstrate that lack of supply of affordable housing units contributed to the pandemic's impact on housing insecurity and unsustainable housing cost burdens and that these impacts were experienced broadly across the country.

Public Comment: Eligible Activities: Many commenters asked for clarity on what types of activities (*e.g.,* land acquisition, construction, pre-construction costs, operating costs, etc.) are eligible uses of SLFRF, and what affordability criteria must be applied to affordable housing development. Commenters encouraged Treasury to allow the full array of affordable housing activities, including particular requests for broad flexibility for Tribal communities, and to specify that ''development'' should include construction, preservation, rehabilitation, and operation. Other commenters requested clarification about permissible program administration approaches for affordable housing, such as contracting methods and distribution of funds.

Some commenters asked that Treasury require SLFRF funds to be focused on the lowest-income households, who suffer the most severe rent burdens and risks of housing instability, and whose housing situation has left them particularly vulnerable to COVID–19. For example, one commenter argued that SLFRF funds should only be used to support affordable housing for households making 50 percent of AMI or less and that recipients should be required to set aside significant portions of any developments for renters making 30 percent of AMI or less and persons with physical and sensory disabilities. Other commenters requested a more flexible approach to affordable housing definitions.

Treasury Response: Eligible Activities: The final rule clarifies eligibility of affordable housing development for recipients; these uses were eligible under the interim final rule, but Treasury is providing further guidance to enhance clarity and respond to recipient and commenter questions.

As with all interventions to address the negative economic impacts of the pandemic, affordable housing projects must be responsive and proportional to the harm identified. This test may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for low-income households. While there may be less costly (or non-capital) alternatives to affordable housing development, a comprehensive response to the widespread housing challenges underscored by the pandemic will require the production of additional affordable homes, and targeted affordable housing development is a cost-effective and proportional response to this need.

For purposes of this test, Treasury will presume that any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds. Note that these programs use different income limits than the definition of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program. Alignment with these programs, which define ''affordable housing'' in a manner consistent with a proportionate response to the affordable housing challenges faced by low- and moderate-income households as a result of the negative economic impacts of the pandemic, is intended to give recipients comfort and clarity as they design a

(March 2020), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.*

[153] Joint Center For Housing Studies Of Harvard University, The State of the Nation's Housing (June 2021), *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.*

[154] Davin Reed and Eileen Divringi, Household Rental Debt During COVID–19: Update for 2021, Federal Reserve Bank of Philadelphia (2020), available at: *https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021.* Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. *See* Trading Equity for Liquidity (June 2019), available at *https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf.*

wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, to further support sustainable and durable homeownership, recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing, mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (*e.g.,* if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule: Both the development of affordable housing (including operating subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (*e.g.,* legal and social services) to services that respond to needs widely experienced across the country (*e.g.,* access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (*e.g.,* senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly across jurisdictions and populations, are eligible under the interim final rule as assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID–19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: One study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID–19.[155]

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.[156] Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.[157] Workers of color and workers with lower incomes are less likely to have access to paid leave.[158] [159]

[155] Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID–19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID–19, Health Affairs 39, no. 12 (2020): 2197–2204, *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863.*

[156] Scott Brown et al., Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys, Abt Associates (July 2020), *https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf.*

[157] *Id.*

[158] Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), *https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-andmedical-leave.htm.*

Continued

For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.[160] COVID–19 has also increased the levels of ''caregiving intensity'' [161] and ''caregiving burden'' [162] for those providing care to seniors or older family members.[163] [164] When surveyed, more than half of caregivers reported that COVID–19 increased both the amount of caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.[165]

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of illness or hospitalization due to COVID–19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.[166] By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.[167] Participation in Medicaid, the Children's Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic; Medicaid and CHIP enrollment increased by 9 percent from February to September 2020 [168] and 8.3 million people enrolled in insurance through the ACA marketplace.[169]

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.[170] Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.[171]

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient's health insurance plan to cover additional employees who currently lack coverage.

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.[172] Currently, over 5 percent of families, or 7 million households are ''unbanked,'' meaning they do not have a bank account.[173] Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally,

[159] U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), *https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf.*

[160] Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, Proceedings of the National Academy of Sciences, vol 117(38), pages 23484–23489 (2020), *https://www.pnas.org/content/117/38/23484;* Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, Journal of Policy Analysis and Management, *https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210.*

[161] J.C. Jacobs, A. Laporte, C.H. Van Houtven, P.C. Coyte, Caregiving intensity and retirement status in Canada. Social Science & Medicine, 102, 74–82 (2014), *https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631.*

[162] E. Lightfoot, R.P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID–19 outbreak, Journal of Gerontological Social Work, 63(6–7), 542–552 (2020), *https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793.*

[163] Note: ''Caregiving intensity'' is defined as the amount and type of care provided by informal caregivers; ''Caregiving burden'' is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.

[164] SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID–19, Gerontology and Geriatric Medicine (January 2021), doi:10.1177/2333721421999279.

[165] *Id.*

[166] Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[167] Joshua Aarons et. al., As the COVID–19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), *https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured.*

[168] Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at *https://www.medicaid.gov/sites/default/files/2021-01/september-medicaid-chip-enrollment-trend-snapshot.pdf.*

[169] Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at *https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot.*

[170] Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at *https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial.*

[171] *Id.*

[172] Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), *https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf.*

[173] Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, *https://www.fdic.gov/analysis/household-survey/2019report.pdf.*

underbanked households—those that have a bank account but rely on alternative financial services, such as money orders, payday loans, and check cashing services— account for 16 percent of all households in the United States.[174] As a result of the COVID–19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.[175] As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (*e.g.,* Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, *e.g.,* via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts, pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including ''services like job training to accelerate rehiring of unemployed workers.'' Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include ''other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[,]'' as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that ''public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training'' are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as ''individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.'' This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and working part-time for economic reasons.[176] The latter two classifications are types of labor underutilization, or ''underemployed'' workers.[177] Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics' definitions of unemployed workers and other labor underutilization, using a common, widely known definition that incorporates a broad group of individuals both unemployed or whose skills are otherwise underutilized in the labor market.

In addition, recognizing that the pandemic has generated broad workforce disruption, in the final rule, Treasury is making clear that recipients may provide job training or other enumerated types of assistance to individuals that are currently employed but are seeking to move to a job that provides better opportunities for economic advancement, such as higher wages or more opportunities for career advancement.

Recipient Unemployment Insurance Trust Funds and Related Expenses

Under the interim final rule, a recipient may use funds to make deposits into its account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. These costs support the solvency of the unemployment insurance system and, ultimately, unemployment insurance benefits provided to unemployed

[174] Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018–May 2019, *https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm.*

[175] Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID–19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978–0–12–824313–8.00008–5.

[176] Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, *https://www.bls.gov/cps/definitions.htm* (last visited November 9, 2021).

[177] *Id.*

workers during the pandemic.[178] The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion, arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (*e.g.,* through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (*i.e.,* the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.[179] These requirements were not in effect under the interim final rule and do not apply to funds used (*i.e.,* obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (*i.e.,* the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. In other words, excluding interest due on Title XII advances, the magnitude of the decrease of the balance in the unemployment insurance trust fund plus the principal outstanding on any Title XII borrowings made from the beginning of the public health emergency to the date of publication of the SLFRF interim final rule sets a cap on the amount of SLFRF funds a recipient may use for trust fund contributions and repayment of principal on Title XII advances. Further, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that

[178] Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

[179] *See, e.g.,* U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, *https://home.treasury.gov/system/files/136/IFR-Explainer.pdf.*

balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

Enumerated Eligible Uses for Disproportionately Impacted Households

Background

The COVID–19 pandemic has had disproportionally negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women disproportionately lost their jobs during the COVID–19 pandemic and experienced disproportionate rates of negative health outcomes.[180] [181]

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID–19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.[182] This pattern held true for the effects of COVID–19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.[183]

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID–19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of $32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by $600. During that same time period, households with a bachelor's degree saw an increase in their average household income of $6,100 (measured in 2018 dollars).[184]

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID–19 and the economic downturn had on workers of color, and specifically, women of color.[185] Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID–19 infection rates eight times higher than high-poverty, majority white counties.[186] Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: (1) Addressing disparities in public health outcomes, (2) building stronger communities through investments in housing and neighborhoods, (3) addressing educational disparities, and (4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, healthy childhood environments, and addressing lost instructional time in K–12 schools into the category ''assistance to impacted households,'' recognizing that these pandemic impacts were widely shared across the country.

This section discusses enumerated eligible uses to address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or assistance relocating to areas of greater economic opportunity, and additional eligible uses to respond to negative economic impacts in disproportionately impacted communities. While many of these services impact both health and economic outcomes, Treasury has consolidated them into a single section for simplicity and clarity and to reflect the intertwined nature of these issues.

As a reminder, recipients can presume these uses are eligible when provided in a QCT, to families and individuals living in QCTs, by Tribal or territorial governments, or to low-income households or communities. As provided in section Standards: Designating Other Disproportionately Impacted Classes, recipients can also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. Recipients may also identify additional disproportionate impacts of the pandemic and design an appropriate response to address that harm. For details on eligibility standards and presumed eligible populations, see section General Provisions: Structure and Standards.

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing health disparities.

Public Comment: General: In general, commenters supported eligible uses to address health disparities and support health equity; several commenters highlighted the disparities faced by communities of color and low-income populations, as well as the importance of community engagement in developing effective programs to serve disproportionately impacted communities. Many commenters recommended additional enumerated eligible uses to address health disparities; these are discussed further below in this section.

Treasury Response: In line with commenters' recommendations, the final rule maintains several enumerated eligible uses to address health disparities, specifically:

a. Community health workers. Treasury received few comments on community health workers, though one

[180] U.S. Department of Health and Human Services, COVID–19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199901/covid-economic-equity-brief.pdf.*

[181] Adelle Simmons et al., Health disparities by race and ethnicity during the COVID–19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199516/covid-equity-issue-brief.pdf.*

[182] Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID–19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (Febuary 2021), *https://www.pnas.org/content/118/8/e2020685118.*

[183] *Id.*

[184] Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), *https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/.*

[185] Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).

[186] Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID–19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

requested further clarification on their role.[187] Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.[188]

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (*e.g.,* removal of lead paint), are eligible responses, although this does not include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID–19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.[189] Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for ''building stronger communities through investments in housing and neighborhoods,'' the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued further guidance clarifying that ''investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments.''

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that ''neighborhoods people live in have a major impact on their health and well-being.'' [190] As such, CDC identifies ''neighborhoods and built environment'' as one of five key social determinants of health [191] and includes ''creat[ing] neighborhoods and environments that promote health and safety'' as one of the agency's goals for social determinants of health outcomes.

a. Neighborhood features that promote improved health and safety outcomes.

Public Comment: Commenters argued that neighborhoods impact physical health outcomes in several ways. First, some commenters reasoned that the physical environment and amenities in a community [192] influence a person's level of physical activity, with features like parks, recreation facilities, and safe sidewalks promoting increased physical activity that improves health outcomes. Conversely, commenters argued that a lack of these features in a neighborhood could dampen physical activity and contribute to health conditions like obesity that are risk factors for more severe COVID–19 health outcomes.

Second, some commenters also suggested that access to healthy food in a neighborhood impacts health outcomes. These commenters reasoned

[187] *See, e.g.,* Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, *https://www.cdc.gov/dhdsp/pubs/toolkits/chw-toolkit.htm* (last visited November 9, 2021).

[188] Environmental Protection Agency, 40 CFR 141.80(c)(1), *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80.*

[189] *See, e.g.,* Opportunity Insights, Creating Moves To Opportunity (August 2019), *https://opportunityinsights.org/policy/cmto/.*

[190] U.S. Department of Health and Human Services, Neighborhood and Built Environment, *https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1* (last visited November 9, 2021).

[191] Social determinants of health are ''the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes.'' Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), *https://www.cdc.gov/social determinants/about.html* (last visited November 9, 2021).

[192] In public health, this is referred to as ''built environment,'' or the man-made physical aspects of a community (*e.g.,* homes, buildings, streets, open spaces, and infrastructure).

that lacking adequate access to affordable, healthy food or living in a ''food desert'' may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID–19 outcomes. These commenters cited public health research finding ''clear evidence for disparities in food access in the United States by income and race.'' [193]

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.[194] Finally, some commenters argued that activities like installing streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.[195] [196]

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of mortality and illness and increased well-being.[197] Urban park use during the COVID–19 pandemic may have declined among lower-income individuals.[198] Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID–19 outcomes.[199] Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID–19 pandemic.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID–19 from February 2020 to May 2020.[200] Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID–19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID–19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood's built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID–19's disproportionate impacts on low-income communities.

The final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks,[201] projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other, which describes additional eligibility standards that apply to uses of funds for capital expenditures.

b. Vacant or abandoned properties. As discussed above, the interim final rule included enumerated eligible uses for building stronger communities through investments in housing and neighborhoods in disproportionately impacted communities. The interim final rule also posed a question of whether other potential uses in this category, specifically ''rehabilitation of blighted properties or demolition of abandoned or vacant properties,'' address the public health or economic impacts of the pandemic.

Public Comment: Several commenters argued that programs or services to address vacant or abandoned property would respond to the public health and negative economic impacts of the pandemic in disproportionately impacted communities. Some commenters cited research suggesting that living near such property is correlated with worse physical health and mental health outcomes, noted that such properties pose an environmental hazard, or argued that such properties present a barrier to economic recovery. These commenters suggested that renovation or demolition of vacant or abandoned property could benefit community health and raise property values. Other commenters recommended that Treasury include an enumerated eligible use for the operation of land banks that redevelop or renew vacant properties and land.

Treasury Response: As noted throughout the final rule, the pandemic underscored the importance of safe, affordable housing and healthy

[193] J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966–2007, Prev Chronic Dis 2009;6(3):A105, *http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm.*

[194] *See, e.g.,* Yijun Zhang et al. The Association between Green Space and Adolescents' Mental Well-Being: A Systematic Review. International journal of environmental research and public health vol. 17,18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, JAMA Netw Open. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

[195] *See, e.g.,* Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang, The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, Cities, Volume 79, Pages 45–52, ISSN 0264–2751 (2018), *https://doi.org/10.1016/j.cities.2018.02.021.*

[196] A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, Journal of Quantitative Criminology (2021), *https://doi.org/10.1007/s10940-020-09490-6.*

[197] *See, e.g.,* American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), *https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature.*

[198] LR Larson et al., Urban Park Use During the COVID–19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, Front. Sustain. Cities 3:710243 (2021), *https://doi.org/10.3389/frsc.2021.710243.*

[199] JP Després, Severe COVID–19 outcomes—the role of physical activity. Nat Rev Endocrinol 17, 451–452 (2021). *https://doi.org/10.1038/s41574-021-00521-1.*

[200] Caroline George and Adie Tomer, Beyond 'food deserts': America needs a new approach to mapping food, Brookings Institution (August 17, 2021), *https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/.*

[201] However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.[202] Such properties may be in significant disrepair (*e.g.,* major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.[203]

Treasury presumes that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities and that use of SLFRF funds for such activities would therefore be ineligible. This includes activities that convert occupiable housing units for low- and moderate-income individuals into housing units unaffordable to current residents in the community. Recipients may assess whether units are ''occupiable'' and what the housing need is for a given area taking into account vacancy rates (as described above), local housing market conditions (including conditions for different types of housing like multi-family or single-family), and applicable law and housing codes as to what units are occupiable. Recipients should also take all reasonable steps to minimize the displacement of persons due to activities under this eligible use category, especially the displacement of low-income households or longtime residents.

Recipients engaging in these activities and other construction activities with SLFRF funds should be mindful of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,[204] for example, requirements around the

[202] A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (*see* U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, *https://www.hudexchange.info/programs/relocation/overview/#overview-of-the-ura* (last visited November 9, 2021) and other state and local requirements like condemnation and code enforcement. U.S. Department of Housing and Urban Development, What is the definition of vacant properties as referenced in NSP Eligible Use E—Redevelop Demolished or Vacant Properties? (October 2012), *https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/redevelopment/what-is-the-definition-of-vacant-properties-as-referenced-in-nsp-eligible/.* U.S. Department of Housing and Urban Development, What are the definitions of abandoned and foreclosed? (October 2012), *https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/program-requirements/eligible-activitiesuses/what-are-the-definitions-of-abandoned-and-foreclosed/.*

[203] For analysis of vacancy rates considered low or high, see, *e.g.,* page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), *https://www.lincolninst.edu/publications/policy-focus-reports/empty-house-next-door#:~:text=%E2%80%9CAlan%20Mallach%20is%20the%20sage,through%20data%20and%20model%20* practices. Recipients may determine the appropriate geographic unit for which to analyze vacancy rates (*e.g.,* county, census tract) based on their circumstances. As needed, recipients may refer to the Current Population Survey/Housing Vacancy Survey data series on Housing Vacancies and Homeownership as one data source to assess vacancy rates. See *https://www.census.gov/housing/hvs/index.html.* Other data sources include the American Community Survey five-year estimates, for smaller geographic areas, or tabulations by the Department of Housing and Urban Development based on United States Postal Service Vacancy Data. See, respectively, *https://data.census.gov/cedsci/table?q=DP04&tid=ACSDP5Y2019.DP04&hidePreview=true* or *https://www.huduser.gov/portal/datasets/usps.html.*

[204] *See* U.S. Environmental Protection Agency, Large-Scale Residential Demolition, *https://www.epa.gov/large-scale-residential-demolition* (last visited November 9, 2021) for a primer on requirements that may apply.

handling and disposal of asbestos-containing materials, lead paint, and other harmful materials may apply, as well as environmental standards for any backfill materials used at demolition sites. Treasury encourages recipients to consult and apply best practices from the Environmental Protection Agency as well.

Recipients must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward related to safely and properly conducting activities under this eligible use. This may include checking for any past violations recorded by state or local environmental, workplace safety, licensing, and procurement agencies, as well as regular reviews for suspensions, debarments, or stop work orders. Recipients must establish rigorous oversight and internal controls processes to monitor compliance with any applicable requirements, including compliance by subrecipients.

4. Addressing educational disparities. The interim final rule included an enumerated eligible use for addressing educational disparities in disproportionately impacted communities and outlined some enumerated eligible services under this use. These enumerated uses included early learning services, assistance to high-poverty school districts to advance equitable funding across districts and geographies, and educational and evidence-based services to address the academic, social, emotional, and mental health needs of students. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can also begin to mitigate the impact of COVID–19 on schools and students and can close long-standing gaps in educational opportunity. As discussed above, in the final rule, early learning services and addressing the impacts of lost instructional time for K–12 students are enumerated eligible uses for impacted communities, not just disproportionately impacted communities.

Public Comment: Treasury received some comments in this category. Generally, commenters expressed agreement with the elements of the interim final rule regarding use of funds for addressing educational disparities. Some commenters had questions about whether a few specific uses of funds qualified under this category. For example, commenters inquired about whether the funds could be used for behavioral health in a school setting or cultural language classes.

Treasury Response: Treasury is maintaining these enumerated eligible uses in the final rule, which are now organized under the heading of ''services to address educational disparities.'' Treasury reiterates that these uses include addressing educational disparities exacerbated by COVID–19, including but not limited to: increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students' social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Further, Treasury is clarifying that improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Treasury notes that services to promote healthy childhood environments, including childcare, early learning services, and home visiting programs that serve infants and toddlers, is a separate category of enumerated eligible uses for households impacted by the pandemic (see eligible uses for ''promoting healthy childhood environments''). Similarly, education services to address the impact of lost instructional time during the pandemic are a separate eligible use category for households impacted by the pandemic; when providing these services, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services (see eligible uses for ''addressing the impact of lost instructional time'').

Proposed Additional Enumerated Eligible Uses Not Incorporated

The interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the disproportionate public health or negative economic impacts of COVID–19 on low-income populations and communities.

In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist disproportionately impacted households, ranging from general categories of services (*e.g.,* long-term investments to remediate long-term disparities) to highly specific examples of services (*e.g.,* a specific type of healthcare equipment). As discussed above, Treasury is including several additional categories of enumerated eligible uses in the final rule in response to public comments.

Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in disproportionately impacted communities in the final rule aims to provide enumerated eligible uses that respond to disproportionate impacts of the pandemic experienced widely in many jurisdictions across the country and are intended to simplify and clarify these enumerated eligible uses. At the same time, Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify additional disproportionate impacts to additional households or classes of households and pursue programs and services that respond to those disproportionate impacts.

In the final rule, Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to disproportionate impacts experienced in many jurisdictions across the country, supporting an enumerated eligible use available to all recipients presumptively. However, the final rule continues to provide a framework to allow recipients to identify and respond to additional disproportionate impacts (for details, see section General Provisions: Structure and Standards). Some types of proposed additional enumerated eligible uses for assistance to households in disproportionately impacted communities were recommended by several commenters:

- Capital expenditures. Many commenters recommended that capital expenditures on many different types of public and private facilities be enumerated eligible uses. For clarity, Treasury has addressed all comments on the eligibility of capital expenditures on property, facilities, or equipment in one

section (see section Capital Expenditures in General Provisions: Other).

• Equity funds. Several commenters recommended that Treasury permit SLFRF funds to be deposited into an equity fund to support long-term racial and economic equity investments. The eligibility of such use would depend on the specific structure and uses of funds. Under the statute, SLFRF funds can only support costs incurred until December 31, 2024; see section Timeline for Use of SLFRF Funds in Program Administration Provisions. Further, recipients may calculate the cost incurred with respect to investments in revolving loan funds based on the methodology described in section Treatment of Loans in Program Administration Provisions. Projects funded by a revolving loan fund using SLFRF funds would also need to be eligible uses of SLFRF funds.

• Environmental quality and climate resilience. Several commenters recommended eligible uses to enhance environmental quality, remediate pollution, promote recycling or composting, or increase energy efficiency or electrical grid resilience. Whether these projects respond to the disproportionate impacts of the pandemic on certain communities would depend on the specific issue they address and its nexus to the public health and economic impacts of the pandemic.

b. Assistance to Small Businesses

Background

The pandemic has severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [205] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[206] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[207] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[208] The negative outlook for small businesses has continued: As of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[209]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[210] In general, small businesses can face greater hurdles in accessing credit,[211] and many small businesses were already financially fragile at the outset of the pandemic.[212]

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.[213] During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.[214] Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.[215]

Many of the disparities in how minority business owners experienced the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over $1 million compared to 31 percent of white-owned businesses.[216] Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (*e.g.,* services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food services).[217] Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.[218]

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.[219]

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may ''respond to the public health emergency or its negative economic impacts,'' by, among other things, providing ''assistance to . . . small businesses.'' Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A

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

[206] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

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

[208] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[209] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited December 7, 2021).

[210] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

[211] *See, e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

[212] Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

[213] Robert Fairlie, The impact of COVID–19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions, Journal of economics & management strategy (August 27, 2020), *https://doi.org/10.1111/jems.12400.*

[214] U.S. Small Business Administration, The Effects of the COVID–19 Pandemic on Small Businesses (March 2021), *https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[215] Robert Fairlie, *supra* note 213.

[216] Federal Reserve Bank of Atlanta. 2019. Small Business Credit Survey 2019 Report on Minority-Owned Firms. December. *fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms.*

[217] Ding, Lei, and Alvaro Sanchez. 2020. What Small Businesses Will Be Impacted by COVID–19? Federal Reserve Bank of Philadelphia. *philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.*

[218] Lucas Misera, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms, Federal Reserve Bank of Cleveland (October 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx.*

[219] Robert Fairlie, A. Robb, D. Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), *https://www.nber.org/papers/w28154.*

''small business'' is defined as a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.,* comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID–19 mitigation and prevention strategies, see section COVID–19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (*e.g.,* microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and

document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of ''small business,'' which used the Small Business Administration's (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with very few employees, self-employed individuals, and Tribally owned businesses.[220] Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were negatively impacted by COVID–19. Several commenters also argued that funds should be available to support and grow microbusinesses, or businesses with five or fewer employees, which are more likely to be owned by women and people of color.

Treasury Response: In the final rule, Treasury is maintaining and clarifying the enumerated eligible uses of funds for assistance to small businesses that are impacted or disproportionately impacted by the pandemic.

Impacted small businesses. Specifically, Treasury is maintaining enumerated eligible uses from the interim final rule for assistance to impacted small businesses. These include but are not limited to:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics (see section Public Health for details on these eligible uses); and
- Technical assistance, counseling, or other services to assist with business planning needs.

Treasury acknowledges a range of potential circumstances in which assisting small businesses could be responsive to the negative economic impacts of COVID–19, including for small businesses startups and microbusinesses and individuals seeking to start small or microbusinesses. For example:

- As noted above, a recipient could assist small business startups or microbusinesses with additional costs associated with COVID–19 mitigation tactics; see section Public Health for details on these eligible uses.
- A recipient could identify and respond to a negative economic impact of COVID–19 on new small business startups or microbusinesses; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic.
- The interim final rule also discussed, and the final rule maintains, eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID–19 public health emergency, including uses that provide job training for unemployed individuals. These initiatives also may support small business start-ups, microbusinesses, and individuals seeking to start small or microbusinesses.

Disproportionately impacted small businesses. Additionally, Treasury agrees with commenters that disproportionately impacted small businesses may benefit from additional assistance to address the sources of that disparate impact.

As such, the final rule provides a broader set of enumerated eligible uses for disproportionately impacted small businesses and/or small businesses in disproportionately impacted business districts. Recipients may use SLFRF funds to assist these businesses with certain capital investments, such as rehabilitation of commercial properties, storefront improvements, and façade improvements. Recipients may also provide disproportionately impacted microbusinesses additional support to operate the business, including financial, childcare, and transportation supports.

Recipients could also provide technical assistance, business incubators, and grants for start-ups or expansion costs for disproportionately impacted small businesses. Note that some of these types of assistance are similar to those eligible to respond to small businesses that experienced a negative economic impact (''impacted'' small businesses). However, because the final rule presumes that some small businesses were disproportionately impacted, these enumerated eligible uses can be provided to those businesses without any specific assessment of whether they individually experienced negative economic impacts or disproportionate impacts due to the pandemic.

Cross-References: Recipients providing assistance to small businesses for capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that apply to capital expenditures. Recipients should also note that services to address vacant or abandoned commercial or industrial properties are addressed in section Vacant or Abandoned Properties in Assistance to Households.

Loans to Small Businesses

Public Comment: Treasury received many comments requesting clarification on using SLFRF funds to establish funds that provide loans to small businesses. For example, commenters sought clarification of how eligible use

[220] In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 CFR 121.103(b)(2). This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a ''small business concern'' relating to Tribal governments as well as how Tribal enterprises are defined for the State Small Business Credit Initiative (SSBCI).

requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.[221] Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.[222] This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.[223] Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.[224] Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.[225] Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November 2021, the sector remained 485,000 jobs below its pre-pandemic level.[226] In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.[227]

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others —by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may ''respond to the public health emergency or its negative economic impacts,'' by, among other activities, providing ''assistance to . . . nonprofits.'' The interim final rule defined assistance to nonprofits to include ''loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency,'' and ''nonprofit'' to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.[228]

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (*i.e.,* a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (*e.g.,* a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of organizations, including nonprofit or for-profit organizations, as subrecipients to carry out eligible uses of funds on their behalf. For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Transfers of Funds and section Distinguishing Subrecipients versus Beneficiaries under the Public Health and Negative Economic Impacts eligible use category.[229]

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID–19 mitigation and prevention strategies, see section COVID–19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.[230] Commenters requested that Treasury note that the pandemic is

[221] *See, e.g.,* Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid.*

[222] Philanthropy and COVID–19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), *https://www.issuelab.org/resources/38039/38039.pdf.*

[223] *Id.*

[224] Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), *https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.*

[225] *Id.*

[226] Chelsea Newhouse, COVID–19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), *http://ccss.jhu.edu/november-2021-jobs/.*

[227] Elizabeth T. Boris et al. *supra* note 224 at p. 38.

[228] § 35.3 Definitions.

[229] The ARPA also states under ''Transfer Authority'' that a Recipient may transfer funds to a private nonprofit organization such as those defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17). *See* 602 & 603(c)(3) of the Social Security Act. *See* section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

[230] While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (*e.g.,* advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

leading to a changing financial landscape for nonprofits.

Treasury Response: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: The interim final rule provided for, and the final rule maintains, the ability for recipients to provide direct assistance to nonprofits that experienced public health or negative economic impacts of the pandemic. Specifically, recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic. For example, if a nonprofit organization experienced impacts like decreased revenues or increased costs (*e.g.,* through reduced contributions or uncompensated increases in service need), and a recipient provides funds to address that impact, then it is providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603. Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services that respond to the negative economic impacts of the COVID–19 public health emergency.

A recipient may identify a negative economic impact experienced by a nonprofit, or class of nonprofits, and design and implement a response to that negative economic impact, see section Standards: Designating a Negative Economic Impact. The final rule provides a non-exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (*e.g.,* attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (*e.g.,* to outdoor or online venues), their revenue structure (*e.g.,* adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (*e.g.,* unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (*e.g.,* social services) made them eligible for direct assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.[231]

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, *e.g.,* via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (*e.g.,* assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a ''nonprofit'' that is acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.[232] See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.[233]

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this requirement, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by, *inter alia,* making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively. A recipient may not use control over SLFRF funds for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

Public Comment: Definition of Nonprofit: Treasury also received several requests to expand the definition of nonprofits so that other tax-exempt entities (*e.g.,* 501(c)(7)s, 501(c)(9)s, 501(c)(19)s, nonprofits with ''historical

[231] Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

[232] *See* sections 602(c)(3) and 603(c)(3) of the Social Security Act. *See also* Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17), which defines a ''private nonprofit organization.''

significance'') could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.[234] The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (*e.g.,* housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans' organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.[235]

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient's direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for ''aid to tourism, travel, and hospitality, and other impacted industries'' that responds to the negative economic impacts of the COVID–19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the ''extent of the economic impact as compared to tourism, travel, and hospitality'' and ''whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.'' [236] Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts [237] that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid include assistance to implement COVID–19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic. The interim final rule and Treasury's subsequent Compliance and Reporting Guidance also required governments to publicly report assistance provided to private-sector businesses under this eligible use and maintain records of their assessments to facilitate transparency and accountability.

Reorganization and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. In the interim final rule, aid to impacted industries to implement COVID–19 mitigation and prevention strategies was categorized under Aid to Impacted Industries; the final rule addresses these items under the section COVID–19 Mitigation and Prevention in Public Health. Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with impacted industries; for further information, see section Distinguishing Subrecipients versus Beneficiaries.

Designating an Impacted Industry

Public Comment: Many commenters requested greater clarity on how to designate ''other impacted industries'' within their jurisdiction. Commenters requested greater specificity as to the metrics used to measure impact, with some suggesting metrics such as the change in the size of an industry's workforce due to the pandemic, as well as consideration of whether and why employees are choosing to return to work at slower rates in certain industries. One commenter asked if this meant nearly every industry was ''disproportionately impacted.'' Some commenters encouraged Treasury to focus on industries most negatively impacted by the pandemic, including disallowing across-the-board business subsidies to businesses that were not negatively impacted by the pandemic and saw revenue or profit growth. Other commenters asked for flexibility for recipients to determine impacted industries based on their local knowledge of the economic landscape.

Treasury Response: The final rule maintains the interim final rule's approach of allowing recipients to designate impacted industries outside the travel, tourism, and hospitality industries, and, in response to comments, provides greater clarity as to how recipients may designate such impacted industries.

Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that the tourism, travel, and hospitality industries are severely negatively impacted by the pandemic. Under the final rule, recipients may provide eligible aid (described in further detail herein) to the tourism, travel, and hospitality industries. Treasury considers Tribal development districts, which are commercial centers for Tribal hospitality, gaming, tourism, and entertainment and can include Tribal enterprises, as part of the tourism, travel, and hospitality industries that have been severely hit by the pandemic. Therefore, Treasury reaffirms that Tribal development districts are considered impacted industries and recipients may provide eligible aid to them.

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: Identifying an industry and determining whether that industry is comparably impacted.

[234] § 35.3 Definitions.

[235] Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (*e.g.,* tourism promotion in aid of an impacted industry).

[236] Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

[237] For a definition of ''Tribal development districts,'' please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.[238] Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify ''personal care services'' as an industry, or they may identify a more specific category within the ''personal care services'' industry (*e.g.,* barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

Second, to determine whether the industry is ''impacted,'' recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).[239] The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an ''impacted industry.''

For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (*e.g.,* a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

2. *If simplified test is not met.* If an industry does not satisfy the test above or data are unavailable, the recipient may still designate the industry as impacted by demonstrating the following:

a. The recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID–19 public health emergency. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to pre-pandemic levels. Recipients may rely on available economic data, government research publications, research from academic sources, and other quantitative sources for this determination.

If quantitative data is unavailable, the recipient can rely on qualitative data to show that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID–19 public health emergency. Recipients may rely on sources like community interviews, surveys, and research from relevant state and local government agencies.

As the public health emergency and economic recovery evolves, recipients should assess how industry impacts shift over time. Impacted industries may recover in a short period of time and no longer face a negative economic impact; in those circumstances, the recipient should ensure that the extent and length of aid is reasonably proportional to the negative economic impact that is experienced, as detailed further below and in section General Provisions: Structure and Standards. Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption, as detailed herein.

Eligible Aid

Public Comment: Commenters asked for further clarification as to the definition of eligible aid to an impacted industry, with many requesting that a broad range of aid be eligible. Examples of aid that recipients asked to be considered eligible include aid to businesses to cover COVID–19 mitigation costs and planned renovations or improvements to tourism, travel, and hospitality facilities, as well as marketing and in-kind incentives to attract visitors. Commenters also asked about the eligibility of aid to broadly cover losses incurred by facilities such as convention centers and hotels due to the pandemic's economic impact. Commenters also asked for further clarification about the requirements related to private-sector reporting. Further, some commenters asked for clarification about eligible aid to impacted industries owned and operated by Tribal governments, including for Tribal construction projects that have been delayed due to the pandemic's economic impacts, and for deference to Tribal determinations of negative economic impacts.

[238] Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

[239] National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, *https://www.bls.gov/iag/tgs/iag70.htm* (last visited December 7, 2021).

Treasury Response: In response to commenters' requests for clarification on eligible aid, the final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry.

First, recipients should identify a negative economic impact, *i.e.,* an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an ''impacted'' industry that experienced a negative economic impact (*e.g.,* through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID–19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID–19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to impacted industries for COVID–19 public health measures should review the section Assistance to Businesses to Implement COVID–19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (*e.g.,* aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and conflicts of interest.[240] Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain records to support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the public health emergency and how the aid provided responds to these impacts.

Recipients providing aid to impacted industries for capital expenditures (*i.e.,* expenditures on property, facilities, or equipment), including Tribal governments providing aid to Tribal development districts, should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that are applicable to these expenditures, depending on the type of aid. Recipients providing assistance in the form of loans should review the section Treatment of Loans in Program Administration Provisions.

4. General Provisions: Other

As noted above, the final rule consolidates into a General Provisions section several types of uses of funds; in the interim final rule, the eligibility of these uses of funds was discussed within specific categories of eligible uses for public health and negative economic impacts. Treasury anticipates that this re-organization will enhance recipient clarity in assessing eligible uses of funds. These General Provisions apply across all uses of funds under public health and negative economic impacts.

Specifically, this section considers eligible uses for:

- *Public Sector Capacity and Workforce,* which includes several separate and non-mutually exclusive categories articulated in the interim final rule: public health and safety staff; rehiring state, local, and Tribal government staff; expenses for administering COVID–19 response programs; expenses to improve the efficacy of public health or economic relief programs; and administrative expenses caused or exacerbated by the pandemic. Treasury recognizes that these are closely related and frequently overlapping categories. The final rule treats them as a single purpose, supporting public sector capacity, and provides coordinated guidance on the standards and presumptions that apply to them.
- *Capital Expenditures,* which was addressed only under Public Health in the interim final rule. The final rule moves this expense to General Provisions and provides more clarity on the eligibility of capital expenditures across all aspects of the public health and negative economic impacts eligible use category.
- *Distinguishing Subrecipients versus Beneficiaries,* which describes the differences between these two categories. Recipient governments responding to the public health and negative economic impacts of the pandemic may provide assistance to beneficiaries or execute an eligible use of funds through a subrecipient; some types of entities (*e.g.,* nonprofits) could fit into either category depending on the specific purpose of the use of funds.
- *Uses Outside the Scope of this Category,* which addresses uses of funds that are ineligible or generally ineligible under this eligible use category in the interim final rule. These uses of funds remain ineligible under the final rule, but Treasury has re-categorized where they are addressed, as described below.

[240] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in awarding aid to impacted industries by, inter alia, making aid available to businesses in the industry on generally applicable terms or utilizing a competitive grant process. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

This section also addresses enumerated eligible uses proposed by commenters that Treasury has not incorporated into the final rule.

Recipients should also note that the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called the ''Uniform Guidance'') generally applies to SLFRF.

a. Public Sector Capacity and Workforce

Public Safety, Public Health, and Human Services Staff

Summary of Interim Final Rule: Under the interim final rule, funds may be used for payroll and covered benefits [241] for *public safety, public health, health care, human services, and similar employees* [242] of a recipient government, for the portion of the employee's time that is spent responding to COVID–19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID–19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is ''primarily dedicated'' to responding to COVID–19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID–19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID–19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID–19 and what other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID–19 response in an easily administrable manner.

Treasury also provided further guidance on the types of employees covered by this category of eligible use, specifically: ''Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees [243] would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (*e.g.,* laboratory technicians, medical examiner, or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.''

Public Comment: Measuring Time Spent on COVID–19 Response: Treasury received public comments on several components of this eligible use category. Many commenters argued that it poses an administrative burden to identify the extent to which staff are responding to COVID–19 and to maintain records to support that assessment. Largely citing administrative burden in assessing eligibility, several commenters recommended revisions to the administrative convenience that the full payroll and covered benefits for public health and safety staff ''primarily dedicated'' to responding to COVID–19 may be paid with SLFRF funds. Some commenters recommended presuming that all public health and safety staff are primarily dedicated to COVID–19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID–19 response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID–19 (*i.e.,* to be able to pay the full payroll and covered benefits for any staff ''primarily dedicated'' to COVID–19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID–19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID–19 and, if a majority of its employees are dedicated to responding to COVID–19, determine that the entire division is primarily dedicated to responding to COVID–19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID–19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health and safety staff are primarily dedicated to responding to COVID–19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (*e.g.,* the number and type of staff in various positions), attestations from supervisors or staff (*e.g.,* self-attestation of share of time spent on COVID–19), or regular work product or correspondence (*e.g.,* calendars, email correspondence, documents, and other electronic

[241] In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

[242] Note that the interim final rule adapted prior guidance issued for CRF that described these four categories of employees; however, when listing the specific occupations or types of employees in each of these categories, the guidance collapses health care and public health into one category titled ''public health.'' Therefore, the presumption described around public health employees also covers health care employees.

[243] Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category.

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID–19 and simply retain those employees' electronic records as a record to support their assessment.

Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID–19 Response: Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID–19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

Treasury Response: The interim final rule recognized that COVID–19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID–19 response. At the same time, many public health and safety workers perform roles unrelated to COVID–19; coverage of all roles would be overbroad compared to the workers responding to COVID–19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID–19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID–19 in disproportionately impacted communities, the ''primarily dedicated'' approach recognizes this increased need.

Public Comment: Eligible Types of COVID–19 Response: Some public commenters also sought further clarification on how to identify eligible types of ''COVID–19 response.'' For example, commenters requested clarification on delineating COVID–19 response from general public health response and defining COVID–19 response for public safety employees.

Treasury Response: Treasury is clarifying that ''responding to'' COVID–19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For example, responding to COVID–19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID–19 prevention and mitigation protocols in a carceral setting.

Public Comment: Eligible Employees: Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

Treasury Response: Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health ''employees involved in providing medical and other health services to patients and supervisory personnel'' includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID–19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID–19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

Public Comment: Time Period: Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID–19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

Treasury Response: In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID–19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves.

Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

Public Comment: Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID–19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

Treasury Response: The final rule allows for an expanded set of eligible uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Restoring pre-pandemic employment. In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due the pandemic without undergoing further analysis. Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline, by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire. Recipients may choose between these options but cannot use both.

To pursue the first option, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021, without undergoing further analysis. For these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID–19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- *Step One:* Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline.*
- *Step Two:* Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline.*
- *Step Three:* Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID–19 public health emergency.[244] This is called the *actual number of FTEs.*
- *Step Four:* Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be hired and covered by SLFRF funds.

Recipients may use SLFRF funds to cover payroll and covered benefit costs obligated by December 31, 2024, and expended by December 31, 2026, up to the number of FTEs calculated in Step Four, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level of budgeted FTEs (*i.e.,* the *actual number of FTEs*); note again that recipients may choose whether to conduct the analysis of FTEs that can be covered by SLFRF funds on a government-wide basis or for an individual department, agency, or authority.

These FTEs must have begun their employment on or after March 3, 2021, which is the beginning of the period of performance. For administrative convenience, recipients do not need to demonstrate that the reduction in number of FTEs was due to the COVID–19 pandemic, as Treasury assumes the vast majority of employment reductions during this time were due to pandemic fiscal pressures on state and local budgets. Recipients do not need to hire for the same roles that existed pre-pandemic.

For illustration, consider a hypothetical recipient with 1,000 budgeted FTEs on January 27, 2020 (950 filled FTE positions and 50 unfilled FTE positions). The recipient's *pre-pandemic baseline* is 1000 FTEs; its *adjusted pre-pandemic baseline* is 1,000 * 1.075 = 1075 FTEs. Now, assume that on March 3, 2021, the recipient had 800 budgeted FTEs in total (795 filled FTE positions and 5 unfilled FTE positions), with 50 FTEs primarily dedicated to responding to the COVID–19 public health emergency. The recipient would have the option of using either 800 FTEs or 750 FTEs as its *actual number of FTEs* for the calculation; assuming it chooses the lower number, it would be able to fund up to 325 FTEs with SLFRF funds (that is, 1,075 − 750 = 325 FTEs).

[244] Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID–19 public health emergency. Further, for administrative convenience, the recipient may consider public health and safety FTEs to be entirely devoted to mitigating or responding to the COVID–19 public health emergency if the FTE, or his or her operating unit of division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may also consider other presumptions for assessing the extent to which an FTE, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response.

Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.[245] Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (*e.g.,* fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

Avoiding layoffs. Funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary. Recipients must be able to substantiate that layoffs were likely in the absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts (*e.g.,* fiscal pressures on state and local budgets) and should document their assessment.

Retaining workers. Funds may be used to provide worker retention incentives, which are designed to persuade employees to remain with the employer as compared to other employment options. Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment. For example, a recipient may determine that a retention bonus is necessary based on the presence of an alternative employment offer for an employee.

All worker retention incentives must be narrowly tailored to need and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Further, because retention incentives are intended to provide additional incentive to remain with the employer, they must be entirely additive to an employee's regular rate of wages and other remuneration and may not be used to reduce or substitute for an employee's normal earnings. Treasury will presume that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as the other requirements are met.

Ancillary administrative costs. Funds may be used to pay for ancillary administrative costs associated with administering SLFRF-funded hiring and retention programs detailed above, including costs to publish job postings, review applications, and onboard and train new hires. For additional information on administrative expenses, see section Administrative Expenses in Program Administration Provisions.

Effective Service Delivery: Administrative Expenses

The interim final rule provided that funds could be used for: ''Expenses to improve efficacy of public health or economic relief programs: Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.'' In the final rule, Treasury is clarifying that there are several categories of eligible administrative expenses.

First, recipients may use funds for administrative costs to improve the efficacy of public health or economic relief programs through tools like program evaluation, data analysis, and targeted consumer outreach (see section Effective Service Delivery: Program Evaluation, Data, and Outreach).

Second, recipients may use funds for administrative costs associated with programs to respond to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded. In other words, Treasury recognizes that responding to the public health and economic impacts of the pandemic requires many programs and activities, some of which are not funded by SLFRF. Executing these programs effectively is a component of responding to the public health and negative economic impacts of the pandemic.

Finally, recipients may use funds for direct and indirect administrative costs for administering the SLFRF program and projects funded by the SLFRF program. See section Administrative Expenses in Program Administration Provisions for details on this eligible use category.

Effective Service Delivery: Program Evaluation, Data, and Outreach

The Supplementary Information of the interim final rule provided that state, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID–19 pandemic and to improve the efficacy of programs addressing negative economic impacts. The interim final rule included high-level guidance about how SLFRF funds could be used in this eligible use category, including the use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Since the publication of the interim final rule, Treasury has also released

[245] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c)112 that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.[246] Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- *Program evaluation and evidence resources* to support building and using evidence to improve outcomes, including development of Learning Agendas [247] to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

  Recipients are also encouraged to use relevant evidence Clearinghouses,[248] among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).
- *Data analysis resources* to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.
- *Technology infrastructure* resources to improve access to and the user-experience of government information technology systems, including upgrades to hardware and software as well as improvements to public-facing websites or to data management systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).
- *Community outreach and engagement* resources to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.
- *Capacity building* resources to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (*e.g.,* backlogs in court systems).[249] This also includes

[246] Results for America, Invest in What Works State Standard of Excellence (August 2020), *https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.*

[247] Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M–19–23, available at: *https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf* and OMB Memorandum M–21–27, available at: *https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf.*

[248] Evidence Clearinghouses are databases of research in particular program areas. Frequently these Clearinghouses identify evidence-based programs, the strength of the evidence for those programs, and provide contextual or supporting information in easy to understand formats. Many federal departments have developed rigorous and helpful Clearinghouses that cover a wide range of uses enumerated in this final rule as well as other programs that may be responsive to public health or negative economic impacts of the pandemic. For more information on Clearinghouses, please see the Compliance and Reporting Guidance: U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

[249] *See FAQ 2.19.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.* In the case of courts specifically, this includes ''implementing COVID–19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case

using funds for increased repair or maintenance needs to respond to significantly greater use of public facilities during the pandemic (*e.g.,* increased use of parks resulting in damage or increased need for maintenance). Some commenters expressed support for the ability to use funds for these purposes. Treasury is maintaining these enumerated eligible uses in the final rule and clarifying that capital expenditures such as technology infrastructure to adapt government operations to the pandemic (*e.g.,* video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID–19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID–19 mitigation tactics; ventilation improvements in congregate settings, health care settings, or other key locations; assistance to small businesses and nonprofits and aid to impacted industries to implement COVID–19 prevention or mitigation tactics, such as physical plant changes to enable social distancing. For disproportionately impacted populations and communities, the interim final rule also expressly permitted development of affordable housing to increase the supply of affordable and high-quality living units.

Public Comment: Many commenters supported the interim final rule's allowance of capital expenditures in facilities to meet pandemic operational needs but requested that the final rule explicitly allow for a broader range of capital expenditures. Commenters expressed an interest in investing in equipment, real property, and facilities that they argued will yield lasting benefits beyond the SLFRF period of performance. Some commenters stated that the approach in the interim final rule limited the vast majority of capital expenditures to governments that experienced revenue loss under Sections 602(c)(1)(C) and 603(c)(1)(C) and that this approach may prevent some governments from fully meeting the needs of their residents. A few commenters argued that Treasury should limit use of funds on capital expenditures not related to addressing a direct pandemic harm, such as general economic development or workforce development, and some expressed support for generally limiting capital expenditures to those that address the needs of low-income communities and communities of color.

Many commenters requested that capital expenditures related to direct COVID–19 public health response be included as enumerated eligible uses. The requested types of expenditures include improvements and construction of hospitals and health clinics (including behavioral health clinics), as well as other health-related infrastructure improvements, such as improvements to medical equipment or public health information technology. These commenters stated that investments in health and public health systems are vital to ensuring critical infrastructure necessary to respond to continued impacts of COVID–19 or to address disparities in health, due to lack of access to health care, that contributed to disproportionate impacts of COVID–19 on some communities. Further, some commenters requested that construction or improvements of emergency management and public safety facilities be deemed eligible, citing that some of these sites serve as remote vaccination sites or are otherwise crucial to the pandemic public health response.

Commenters also requested use of funds for capital expenditures that support community needs apart from health care, such as new construction or improvements to schools, affordable housing (beyond presumed disproportionately impacted communities), childcare facilities, and community centers; some suggested that all types of projects permissible under the Community Development Block Grant Program should be eligible both for policy and administrability reasons. Further, some commenters also asked for clarification as to whether parks and recreational facilities are eligible if built in certain disproportionately impacted areas, as well as public transportation infrastructure.

Finally, some commenters also requested use of funds for capital expenditures in government administration buildings, such as public courthouses, as well as technology infrastructure that would allow for remote delivery of public benefits. Others also asked about whether funds could be used to renovate vacant business district buildings or commercial spaces to spur economic recovery.

Treasury Response: Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. The final rule clarifies and expands how SLFRF funds may be used for certain capital expenditures, including criteria and documentation requirements specified in this section, as applicable.

Treasury provides presumptions and guidelines for capital expenditures that are enumerated earlier in sections Public Health, Negative Economic Impacts, and General Provisions: Other under the Public Health and Negative Economic Impact eligible use category (''enumerated projects''), along with capital expenditures beyond those enumerated by Treasury. In addition to satisfying the two-part framework in Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact for identifying and designing a response to a pandemic harm, Treasury will require projects with total expected capital expenditure costs of $1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for projects that are larger in size, as well as projects that are not enumerated as eligible by Treasury, with certain exceptions for Tribal governments discussed below. Smaller projects with total expected capital expenditures below $1 million will not be required to undergo additional analysis to justify their capital expenditure, as such projects will be presumed to be reasonably proportional, provided that they are responding to a harm caused or exacerbated by the public health emergency. These standards and documentation requirements are designed to minimize administrative burden while also ensuring that projects are reasonably proportional and supporting Treasury's risk-based approach to overall program management and monitoring.

This section provides (1) an overview of general standards governing capital expenditures; (2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and (3) additional standards and requirements that may apply.

resolution, and other expenses to expedite case resolution are eligible uses.''

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of $1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of $1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).[250] This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably

[250] See 25 U.S.C. 5108.

feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm identified.

As an example, a recipient considering building a new diagnostic testing laboratory to enhance COVID–19 testing capacity may consider whether existing laboratories sufficiently meet demand for COVID–19 testing, considering the demand for test results (along with their turnaround time) as well as the impact of current testing availability on the spread of COVID–19. Recipients may also consider other public health impacts of the level of diagnostic testing capacity, for example if insufficient capacity has decreased testing for other health conditions. The recipient may consider alternatives such as expanding existing laboratories or building a laboratory of a different size. In comparing the effectiveness of the capital expenditures, examples of factors that the recipient may consider include when the facilities will become operational and for how long; the daily throughput of COVID–19 tests; and the effect on minimizing delays in test results on the populations that such tests will serve. In comparing costs, the recipient may compare the total expected cost of the new laboratory (including costs of acquisition of real property, construction of the laboratory, and purchase of any necessary equipment needed to operationalize the lab), against the expected costs of expanding existing laboratories (whether by replacing current equipment with higher throughout devices or physically expanding space to accommodate additional capacity) or building a new laboratory of a different size, including by leasing property. As a reminder, recipients should only consider alternatives that are potentially effective and reasonably feasible.

Because, in all cases, uses of SLFRF funds to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic, some capital expenditures may not eligible. For example, constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.[251] In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than $1 million, would generally not be a proportional response to mitigate or prevent COVID–19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of the disease.[252] These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.[253]

Presumptions on Capital Expenditures

For administrative convenience, the final rule provides presumptions on whether a Written Justification is required—and required to be submitted to Treasury through reporting—based on the type and size of the capital expenditure, as detailed in the table below.

As discussed above, Tribal governments are not required to complete the Written Justification for applicable capital expenditures, but the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.

[251] *See, e.g.,* ''Economic Perspectives on Incarceration and the Criminal Justice System,'' Council of Economic Advisers (April 2016), pg. 36–43.

[252] For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS–CoV–2 Spread in Nursing Homes (September 10, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.*

[253] For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, ''independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.'' John Siegfried and Andrew Zimbalist, The Economics of Sports Facilities and Their Communities, Journal of Economic Perspectives 14, no. 3 (Summer 2000): 95–114, *https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95.*

If a project has total expected capital expenditures of	and the use is enumerated by Treasury as eligible, then [254]	and the use is beyond those enumerated by Treasury as eligible, then [255]
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

In selecting these thresholds, Treasury recognized that capital expenditures vary widely in size and therefore would benefit from tiered treatment to implement eligibility standards while minimizing administrative burden, especially for smaller projects. For example, Treasury selected $1 million as a threshold for whether a recipient needs to complete a Written Justification as well as a threshold under which capital expenditures would be presumed reasonably proportional. Treasury estimates that $1 million would encapsulate the costs of a significant portion of equipment or small renovations. These types of smaller projects are often a necessary and reasonably proportional part of a response to the public health emergency; therefore, the $1 million threshold provides a simplified pathway to complete smaller projects more likely to meet the eligibility standard. At the same time, Treasury selected $10 million as the threshold for more intensive reporting requirements, estimating that projects larger than $10 million would likely constitute significant improvements or construction of mid- or large-sized facilities. As discussed above, given their scale and longer time to completion, these types of larger projects may be less likely to be reasonably proportional responses. The $10 million threshold also generally aligns with thresholds in other parts of the SLFRF program, such as for enhanced reporting on labor practices.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (*e.g.,* acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (*e.g.,* acquisition of a fleet of ambulances that would be used for COVID–19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (*e.g.,* development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects.

Projects Enumerated as Eligible by Treasury

Under the public health and negative economic impacts eligible use category, the final rule provides a non-exclusive list of eligible uses of funding for projects that respond to the public health emergency or its negative economic impacts. Treasury has determined that these enumerated projects are related to the public health emergency and its negative economic impacts; however, recipients (other than Tribal governments) undertaking these projects with total expected capital expenditures of $1 million or greater must still complete and meet the substantive requirements of a Written Justification as part of their demonstration that the project is a related and reasonably proportional response to the harm identified.

- *Projects with total expected capital expenditures of under $1 million:* Treasury provides a safe harbor for projects with total expected capital expenditures of less than $1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification for the capital expenditure. In essence, recipients may pursue an enumerated project with total expected capital expenditures of under $1 million without having to undergo additional assessments to meet SLFRF requirements.
- *Projects with total expected capital expenditures of at least $1 million but under $10 million:* Recipients should complete a Written Justification for the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Recipients will not be required to submit the Written Justification as part of regular reporting to Treasury but should keep documentation for their records.
- *Projects with total expected capital expenditures of at least $10 million:* Similar to the above, recipients should complete a Written Justification of the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury. Similar to other parts of the SLFRF program, such as on reporting on labor practices, Treasury recognizes that projects with expected total capital expenditures of at least $10 million may be less likely to meet eligibility requirements and therefore requires recipients to provide an enhanced level of information to Treasury.

Projects Beyond Those Enumerated as Eligible by Treasury

As with all uses, recipients that undertake capital expenditures beyond those enumerated as eligible by Treasury must meet the two-part framework under Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards,

[254] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are ''related'' to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than $1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under $1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

[255] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under $1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

including the requirement that responses are related and reasonably proportional to the harm or impact identified. As part of that assessment, these recipients may also be asked to complete a Written Justification. Recipients (other than Tribal governments) are subject to the following presumptions for the Written Justification of the capital expenditure, based on the total expected capital expenditures of the project:

- *Projects with total expected capital expenditures of under $1 million:* Treasury provides a safe harbor for unenumerated projects with total expected capital expenditures of under $1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification of the capital expenditure. Recipients should still make a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts.
- *Projects with total expected capital expenditures of $1 million or over:* Recipients should complete a Written Justification of the capital expenditure and make an independent assessment that their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Additional Provisions, Standards, and Definitions

Strong Labor Standards in Construction

Treasury encourages recipients to carry out projects in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (*e.g.,* professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Environmental, Uniform Guidance, and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 CFR part 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 CFR part 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.

Definitions

Treasury adopts several definitions from the Uniform Guidance at 2 CFR 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies.

Per the Uniform Guidance, the term ''capital expenditures'' means ''expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.'' The term ''capital assets'' means ''tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles].''

Capital assets include lands, facilities, equipment, and intellectual property. Equipment means ''tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000.'' Supplies, which means all tangible personal property other than those included as ''equipment,'' are not considered capital expenditures.

Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds.

c. Distinguishing Subrecipients Versus Beneficiaries

Under the interim final rule, state, local, and Tribal governments that receive a federal award directly from a federal awarding agency, such as Treasury, are designated as ''recipients,''

and state, local, and Tribal governments are authorized to transfer funds to other entities, including private entities like nonprofits. The interim final rule stated that, ''[a] transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding.''

For funds transferred to a subrecipient, the interim final rule noted that ''[r]ecipients continue to be responsible for monitoring and overseeing the subrecipient's use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the SLFRF funds for the duration of the award.''

Public Comment: Treasury received many comments requesting clarification about which entities qualify as subrecipients and are, in turn, subject to subrecipient monitoring and reporting requirements. For example, commenters sought clarification about whether a nonprofit that received a grant to provide services under a program to carry out an enumerated eligible use would qualify as a subrecipient and be subject to subrecipient monitoring and reporting requirements. Similarly, commenters also wondered if a nonprofit that received a grant in recognition of experiencing a negative economic impact of the public health emergency would also be a subrecipient and subject to subrecipient reporting requirements.

Treasury Response: Treasury is clarifying the distinction between a subrecipient and beneficiary in the final rule. The Uniform Guidance definitions for subaward and subrecipient inform Treasury's distinction between subrecipients and beneficiaries.

First, per 2 CFR 200.1 of Uniform Guidance ''[s]ubaward means an award provided by a pass-through entity [256] to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.''

Further, 2 CFR 200.1 of the Uniform Guidance defines a subrecipient, in that ''[s]ubrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.'' Treasury is aligning the definition of subrecipient in the final rule with the definition of subrecipient in the Uniform Guidance.

Treasury is maintaining the monitoring and subrecipient reporting requirements outlined in the final rule. Per 2 CFR 200.101 (b)(2) of the Uniform Guidance, the terms and conditions of federal awards flow down to subawards to subrecipients. Therefore, non-federal entities, as defined in the Uniform Guidance, must comply with the applicable requirements in the Uniform Guidance regardless of whether the non-federal entity is a recipient or subrecipient of a federal award. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.

The Uniform Guidance definitions for both subaward and subrecipient specify that payments to individuals or entities that are direct beneficiaries of a federal award are not considered subrecipients. The final rule adopts this definition of a beneficiary and outlines that households, communities, small businesses, nonprofits, and impacted industries are all potential beneficiaries of projects carried out with SLFRF funds. Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F or subrecipient reporting requirements.

The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

d. Uses Outside the Scope of This Category

Summary of the Interim Final Rule and Final Rule Structure

In the interim final rule, Treasury noted that certain uses of funds are not permissible under the eligible use category of responding to the public health and negative economic impacts of the pandemic. In the final rule, these uses remain impermissible, but Treasury has re-categorized where they are addressed to increase clarity.

Specifically, the interim final rule provided that the following uses of funds are not eligible under this eligible use category: Contributions to rainy day funds, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; fees or issuance costs associated with the issuance of new debt; and satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. These uses of funds remain ineligible under the final rule; Treasury has re-categorized these issues to the section Restrictions on Use, which describes restrictions that apply to all eligible use categories, to clarify that these uses are not eligible under any eligible use category of SLFRF. Treasury responds to public comments on this issue in the section Restrictions on Use.

As noted above, the interim final rule also posed several questions on what other types of services or costs Treasury should consider as eligible uses to respond to the public health and negative economic impacts of COVID–19, including in disproportionately impacted communities. In this section, Treasury addresses proposed uses of funds suggested by commenters that Treasury has not included as enumerated eligible uses of funds in this eligible use category.

General Eligible Uses

Public Comment: Commenters proposed a wide variety of additional recommended enumerated eligible uses

[256] In this context, a pass-through entity means a recipient of SLFRF funds.

in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (*e.g.,* legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (*e.g.,* access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (*e.g.,* healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (*e.g.,* senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a ''general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need.''

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is ''necessary'' and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic

development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID–19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.[257]

Treasury Response: In the final rule, Treasury maintains the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. As noted above, to identify an eligible use of funds under this category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance, and recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact. Provision of assistance to a business that did not experience a negative economic impact, under the theory that such assistance would generally grow the economy and therefore enhance opportunities for workers, would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact. Research cited by some commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. Premium Pay

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used ''to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers

[257] See, *e.g.,* Matthew D. Mitchell et al., The Economics of a Targeted Economic Development Subsidy (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at *https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy*; Timothy J. Bartik, Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy (Upjohn Institute Technical Report No. 13–034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at: *https://research.upjohn.org/up_technicalreports/34/*; Cailin Slattery and Owen Zidar, Evaluating State and Local Business Tax Incentives, Journal of Economic Perspectives 34, no. 2 (2020): 90–118, available at: *https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90*; Kenneth Thomas, The State of State and Local Subsidies to Business (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at: *https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf*; Dennis Coates, Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2015), available at: *https://www.mercatus.org/system/files/Coates-Sports-Franchises.pdf*; Dennis Coates and Brad R. Humphreys, Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?, Econ Journal Watch 5, no. 3 (2008): 294–315, available at: *https://econjwatch.org/articles/do-economists-reach-a-conclusion-on-subsidies-for-sports-franchises-stadiums-and-mega-events*; Matthew D. Mitchell, Daniel Sutter, and Scott Eastman, The Political Economy of Targeted Economic Development Incentives, Review of Regional Studies 48, no. 1 (2018): 1–9, available at: *https://www.mercatus.org/publications/corporate-welfare/political-economy-targeted-economic-development-incentives.*

that have eligible workers who perform essential work.''

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID–19 pandemic. Premium pay can be thought of as hazard pay by another name.[258]

During the public health emergency, employers' policies on COVID–19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[259] Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.[260] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[261] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID–19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed questions regarding premium pay program structuring. This section responds to the comments by addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines ''eligible workers'' as ''those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents.'' The interim final rule supplemented this definition by identifying a list of ''essential critical infrastructure sectors'' whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.[262] In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public [263] sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdiction.

Public Comment: Treasury received multiple comments on the definition of ''eligible worker'' included in the interim final rule. Many commenters agreed with the definition of eligible worker adopted by Treasury. Other commenters sought clarification about or changes to the definition of eligible worker, including the definition of eligible sectors, the inclusion of government workers in the definition of eligible workers, and the process for designating additional non-public sectors as eligible.

Some commenters asked Treasury to change how it identifies eligible sectors, including suggestions to add to or subtract from the list of eligible sectors. For example, some commenters asked Treasury to consider using Bureau of Labor Statistics (BLS)-Standard Occupational Classifications to identify specific sectors or occupations, in contrast to the approach taken in the interim final rule, which included a mixture of economic sectors, industries, and occupations. Many commenters asked Treasury to explicitly clarify that a particular industry or occupation is covered by the definition of ''essential critical infrastructure sector.'' Some of these commenters represented public employees, *e.g.,* employees of facilities and public works; public utilities; courthouse employees; police, fire, and emergency medical services; and waste and wastewater services. Others were a mixture of public and private sector employees, *e.g.,* coroners and medical examiners; transportation infrastructure (specifically electric vehicle infrastructure and supply equipment); electric utilities, natural gas, and steam supply; and grocery employees. Other commenters requested that Treasury prohibit certain occupations currently included in the eligible workers definition (*e.g.,* police and corrections officers) from receiving premium pay for performance of regular duties.

Commenters also asked Treasury to clarify which government workers are included in the definition of eligible workers. The interim final rule included as an essential critical infrastructure sector, ''any work performed by an employee of a State, local, or Tribal government.'' Some commenters requested that Treasury adopt a definition of eligible worker that includes all employees of the recipient government; however, all public employees of state, local, and Tribal governments are already included in the interim final rule definition of ''eligible worker.'' Commenters asked whether this includes governments that did not receive SLFRF funds (*i.e.,* ''non recipient governments''). Many commenters from Tribal governments requested that the definition of eligible worker, which includes ''any work performed by an employee of a . . . Tribal government,'' also include an employee of a ''Tribal enterprise'' to remove uncertainty regarding which employees are included.

Finally, commenters made suggestions for the process by which the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical. Commenters asked that Treasury adopt a requirement that Treasury must approve or deny any additional non-public sector identified by the chief executive of a recipient government prior to implementation of the recipient's program.

Some commenters asked Treasury to clarify whether their chief executive (or equivalent) could designate particular, and in some cases *all,* employees of the recipient government as eligible for premium pay.

Treasury Response: In the final rule, Treasury will preserve the definition of ''eligible worker'' as it was defined in the interim final rule with minor modifications to clarify that all public

[258] *See* U.S. Department of Labor, *Hazard Pay, https://www.dol.gov/general/topic/wages/hazardpay* (last visited October 18, 2021).

[259] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

[260] McCormack, *supra* note 65.

[261] *Id.*

[262] *See* H.R. 6800, 116th Cong. (2020).

[263] Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

employees of recipient governments are already included in the interim final rule definition of ''eligible worker.'' A more specific eligibility system (*e.g.,* linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID–19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of ''eligible worker'' even though these workers already fall within the scope of ''any work performed by an employee of a State, local, or Tribal government.'' Treasury has clarified in the final rule that the chief executive's discretion to designate additional sectors as critical relates only to ''non-public'' sectors, since all public employees of recipient governments are already included in the definition of ''eligible worker.'' While all such public employees are ''eligible workers'' and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (*e.g.,* performing essential work).

Treasury recognizes that the list of ''essential critical infrastructure sectors'' includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.[264] Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient's chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the final rule,[265] the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of ''essential critical infrastructure sectors.'' For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this Supplementary Information how a recipient may qualify other non-public sectors as essential critical infrastructure.

Essential Work

The interim final rule defined ''essential work'' as work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Treasury adopted this definition of essential work to ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work during a pandemic.

Public Comment: Some commenters found the definition unclear and asked Treasury to clarify what constitutes ''essential work.'' Others disagreed with the essential work test altogether, arguing that it forces recipients to distinguish between essential and non-essential employees, which may be difficult to do. Accordingly, these commenters asked Treasury to allow recipients to determine which workers qualify as essential. Treasury also received several requests that specific occupations be explicitly deemed essential, including all public employees, veterinarians, election administrators, detention staff and sheriff's deputies, and employees of utilities, such as electric power, natural gas, steam supply, water supply, and sewage removal.

Several commenters requested that Treasury not distinguish between remote and in-person work or amend the standard so that employees providing essential services would still be eligible even if they worked remotely. Finally, a few commenters requested clarification as to the definition of ''regular'' in-person interactions and whether Treasury could clarify which job functions merit more (or less) premium pay.

Treasury Response: Treasury is maintaining the definition of ''essential work'' in the final rule without modification. The test adopted in the interim final rule was designed to compensate workers facing disproportionate risk due to the pandemic. COVID–19 is transmitted through person-to-person interactions, and therefore, workers with regular in-person interactions are the primary group facing increased health risks. Although COVID–19 is not transmitted primarily by people handling items, such work may present increased risk in certain cases, and the final rule maintains the interim final rule's inclusion of such work in order to give recipient governments the flexibility to include workers performing such work as they determine appropriate. Changing the test as some commenters suggested, *e.g.,* by eliminating the in-person work requirement or allowing recipients to designate which employees are essential, even if not working in person, would no longer focus the program on workers taking on additional health risks and instead allow premium pay to be awarded to individuals who experienced relatively little risk of exposure to COVID–19. To maintain flexibility, Treasury is not defining the term ''regular'' with regard to in-person interactions, allowing recipients to develop programs based on the specific workforce to be served and local circumstances. Generally speaking, however, recipients are encouraged to consider an eligible worker's risk of exposure in designing premium pay programs.

Respond To

As required by the ARPA, the interim final rule required that premium pay programs ''respond to'' eligible workers performing essential work during the COVID–19 public health emergency. Premium pay responds to eligible workers performing essential work if it prioritizes low- and moderate-income persons, given the significant share of essential workers that are low- and moderate-income and may be least able to bear added costs associated with illness. The level of the award limit—up to $13 per hour not to exceed $25,000 in aggregate—in the ARPA supports this reasoning.

Accordingly, the interim final rule required written justification for how premium pay to certain higher-income workers responds to eligible workers performing essential work: If a recipient

[264] *See, e.g.,* sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, *https://www.bls.gov/ooh/*.

[265] Public sector workers are ''eligible workers'' under the interim final rule and final rule.

(or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay ''responds to'' eligible workers performing essential work when it is provided to employees who are not exempt from the Fair Labor Standards Act (FLSA) overtime provisions—a test that employers are routinely required to apply.[266]

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (*e.g.,* public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay ''responds to'' eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers' pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.[267] This change will expand the number of workers eligible to receive premium pay [268] and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients. Incorporating this change further simplifies application of the final rule for recipients because Treasury understands that most employers, public and private, are familiar with and are routinely required to apply the FLSA.

With this addition, the final rule provides that premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) The worker's pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.

The final rule makes it clear that written justification to Treasury is not necessary with respect to eligible workers whose pay is less than the wage threshold. Nor is written justification necessary with respect to eligible workers who are not exempt from the FLSA overtime provisions. The written justification is only necessary if the worker's pay (with or without the premium) exceeds the threshold, *and* the worker is exempt from the FLSA overtime provisions. The final rule also clarifies that a worker's pay exceeds the threshold if either the premium pay increases the worker's total pay above the wage threshold or the worker's total pay was already above the threshold, before receiving premium pay.

Treasury has also updated the final rule to clarify that written justification means a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the workers' higher income.

Recipients should refer to SLFRF program reporting guidance, user guides, and other documentation for further guidance on the form and content of the written justification. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Definition of Premium Pay

The statute defines premium pay as ''an amount of up to $13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker.'' The interim

[266] *See generally* 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), *https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay.*

[267] Department of Labor, Overtime Pay, *https://www.dol.gov/agencies/whd/overtime; see also* 29 U.S.C. 207.

[268] Among workers that report working overtime, roughly 41–44 percent of workers earn above $50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at *https://www.bls.gov/oes/.* See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at *https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html.* Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

final rule incorporated this definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of ''premium pay.'' Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the $25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.[269]

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the $25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (*e.g.,* monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed $13 per hour or $25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed $13 per hour, even if strict time-and-a-half calculation requires more.[270] To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of $13 per hour or $25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy those obligations.

Program Structure

Public Comment: Several commenters also requested elaboration on eligible types of employees and permissible structures for awarding premium pay. A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay.

Some commenters asked Treasury to provide more detail on when premium pay may be paid retroactively or if a government could reimburse its general fund for hazard pay already paid before the start of the period of performance.

Treasury Response: Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.

Under the final rule, recipients may award premium pay retroactively; however, SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received, subject to the other requirements and limitations set forth in the ARPA and this final rule.

Finally, as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.[271] Twenty-two state governments took actions to close budget gaps in fiscal year 2020[272] and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.[273] Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.[274]

The economic recovery, aided by the broad distribution of COVID–19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal

[269] *See* 29 U.S.C. 207(a) (''[A]t a rate not less than one and one-half times the regular rate at which he is employed.'').

[270] All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. *See generally,* Department of Labor, *Wages and the Fair Labor Standards Act, https://www.dol.gov/agencies/whd/flsa.*

[271] In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, *https://www.census.gov/programs-surveys/qtax.html.*

[272] National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), *available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.*

[273] National League of Cities, City Fiscal Conditions (2020), available at *https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[274] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.[275] However, despite a stable budget situation overall, many governments face uncertainty as the COVID–19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,[276] and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.[277] Budget challenges persist as governments work to mitigate and contain COVID–19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[278] Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,[279] while employment in the sector returned to the previous peak in August 2019, nearly a decade later.[280] Just months after recouping losses from the previous downturn, the COVID–19 pandemic caused state and local government employment to contract again, but this time more sharply: By May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.[281]

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' The interim final rule provided a formula for calculating revenue loss through a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.,* last full fiscal year before January 27, 2020), called the *base year revenue*.
- *Step 2:* Estimate *counterfactual revenue,* which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of the average annual growth rate across all State and Local Government ''General Revenue from Own Sources'' in the most recent three years prior to the emergency, 5.2 percent, or the recipient's average annual revenue growth in the three full fiscal years prior to the COVID–19 public health emergency.[282] This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.
- *Step 3:* Identify *actual revenue,*[283] which equals revenues collected over the twelve months immediately preceding the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If *actual revenue* exceeds *counterfactual revenue,* the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government ''General Revenue from Own Sources'' in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	107.9	113.5	119.4	125.6

[275] Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, supra note 271.

[276] National League of Cities, City Fiscal Conditions (2021), *available at https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf*.

[277] Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID–19, Pandemic's Negative Effects Persist in Indian Country (May 2021), *available at https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country*.

[278] *See, e.g.,* Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html*; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at *https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf*; Gordon, supra note 16.

[279] State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, *https://www.census.gov/programs-surveys/gov-finances.html*.

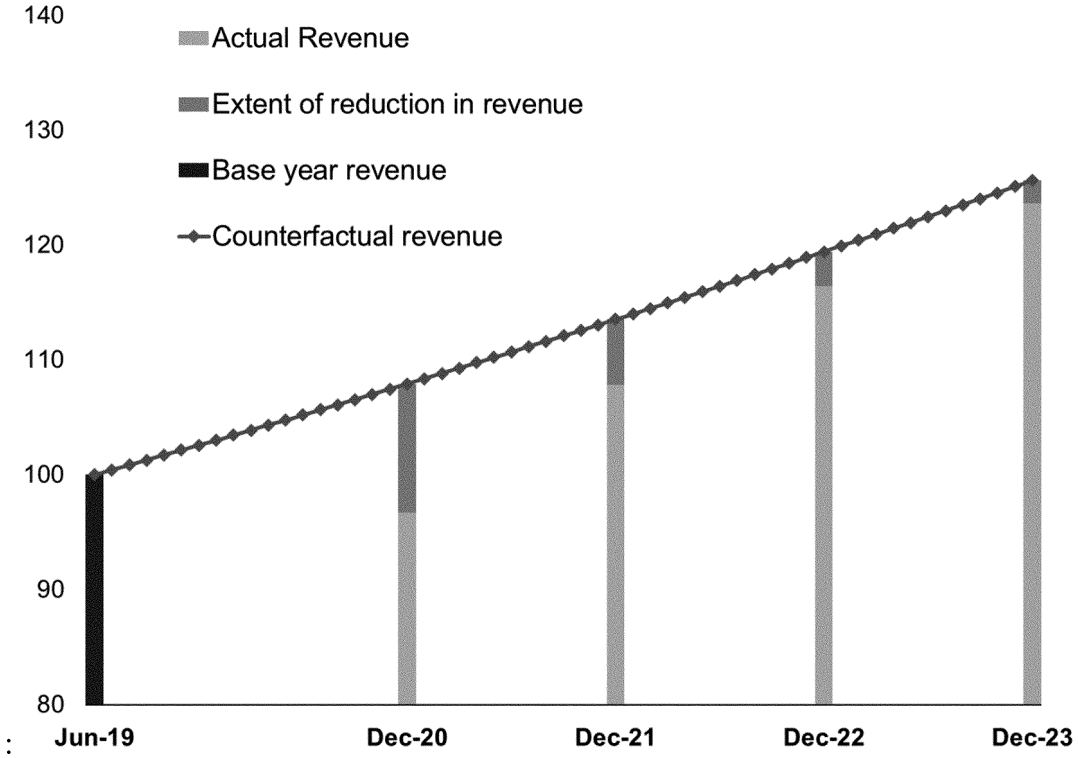
[280] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001*.

[281] Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), *available at https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers*.

[282] At the time the interim final rule was published, the average annual growth across all state and local government ''General Revenue from Own Sources'' in the most recent three years of available data (2015–2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

[283] As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase ''due to the COVID–19 public health emergency'' is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to ''take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are 'due to' the COVID–19 public health emergency.''

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: The overall methodology for calculating revenue loss; the definition of ''revenue''; whether revenue should be aggregated or calculated on some alternative basis (*e.g.,* source-by-source or fund-by-fund); the appropriate calculation dates (*i.e.,* fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of ''government services.''

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. Specifically, in the final rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed

amount, referred to as the ''standard allowance,'' is set at up to $10 million total for the entire period of performance not to exceed the recipient's SLFRF award amount. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (*i.e.,* choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The $10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this estimate, Treasury applied a variation of the final rule's revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (*e.g.,* calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.[284] Treasury also assessed counterfactual trends using different revenue growth rates (*e.g.,* the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016–2018 and fiscal years ending in 2017–2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017–2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (*i.e.,* Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).[285] The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau's survey do not entirely align with SLFRF recipients. The Census Bureau's figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 ''General Purpose Governments'' defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from $0 to $11.7 million per recipient over the period of performance.[286] Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: Some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients' experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.[287]

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.[288]

General Revenue

The interim final rule adopted a definition of ''general revenue'' based largely on the components reported under ''General Revenue from Own Sources'' in the Census Bureau's Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[289] Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities, social insurance trust revenues, and intergovernmental

[284] Because the Census Bureau's state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.

[285] Annual Survey of State and Local Government Finances (2019).

[286] This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

[287] See, *e.g.,* Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID–19 Pandemic in Selected States (July 2021) (noting that ''[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity.''); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic ''pushed down state and local government tax collections'' and that while some of the drag is ''abating'' state and local ''government payrolls . . . have only edged up from their lows at the onset of the pandemic'').

[288] Local government tax revenue data in the Census Bureau's Quarterly Summary of State and Local Tax Revenue, *supra* note 271, is provided on an aggregated basis.

[289] The Department also released guidance clarifying how a recipient may determine whether a particular entity is ''part of the recipient's government.'' *See FAQ 3.14.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.[290] In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of ''general revenue.'' For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.[291] Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of ''general revenue'' and that ''Tribal enterprise'' be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (*i.e.,* revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of ''general revenue'' from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.[292] This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (*e.g.,* certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of ''general revenue.'' [293]

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury believes revenue from government-owned liquor stores is better classified as general revenue than it is as tax revenue, so the final rule includes it as part of general revenue.

In response to requests that the definition of general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property, Treasury is maintaining its position in the final rule that such revenue is included in general revenue. While such revenues may be less predictable than other sources of revenue (*e.g.,* property taxes), these are not uncommon sources of revenue for recipients, and their inclusion provides a more complete view of the financial health of a recipient government and is consistent with the Census Bureau methodology. Treasury is also maintaining the exclusion of all payments from the federal government (including payments for services) from general revenue in order to avoid substantial dilution of the definition of revenue, particularly in light of extraordinary fiscal support provided during the pandemic. Treasury is maintaining the inclusion of intergovernmental transfers other than from the federal government for the reasons provided in the Supplemental Information to the interim final rule; to do otherwise would be to significantly distort the revenue calculations for local governments that regularly receive revenue sharing payments, for example, from their state governments. Treasury is also maintaining the approach that ''general revenue'' includes revenue from Tribal enterprises. This approach recognizes that these enterprises often form the revenue base for Tribal governments' budgets.

To ease the burden on recipients and account for anomalous variations in revenue, as mentioned above, Treasury has incorporated a ''standard allowance'' option into the final rule. A recipient may choose to use the standard allowance, which under the final rule is set at up to $10 million, not to exceed the recipient's SLFRF award amount, as an alternative to calculating revenue loss according to the formula described above. This addition will promote administrative efficiency and simplify the revenue loss calculation for the vast majority of recipients. Treasury intends to amend its reporting forms to provide a mechanism for recipients to elect to utilize either the revenue loss formula or the standard allowance, in addition to other changes made as part of the final rule.

Aggregate Revenue Loss Calculation

Under the interim final rule, revenue loss was calculated based on aggregate revenues and therefore loss in one type of revenue could be offset by gains in another. The amount of SLFRF funds available to provide government services was based on overall net revenue loss. In the Supplementary Information to the interim final rule, Treasury asked commenters to discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or

[290] The interim final rule stated that ''general revenue'' and ''tax revenue'' excludes refunds and other correcting transactions. Instead of ''excluding'' refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined ''net of'' refunds and other correcting transactions. The use of ''excluding'' in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses ''net of'' instead of ''excluding.'' Current charges are defined as ''charges imposed for providing current services or for the sale of products in connection with general government activities.'' It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

[291] The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

[292] U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), *available at https://www.eia.gov/electricity/sales_revenue_price/.*

[293] FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID–19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (*e.g.,* source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to ''*the* reduction in revenue of such State, local government, or Tribal government.'' The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients' overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients' fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID–19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption That Revenue Loss Is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID–19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID–19 public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are ''due to'' the COVID–19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID–19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the interim final rule calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss ''due to'' the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient's revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss ''due to the COVID–19 public health emergency.'' The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss ''Due To'' the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to ''cover costs . . . for the provision of government services,'' but only ''to the extent of the reduction in revenue . . . due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year . . . prior to the emergency.'' In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.[294] The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are ''due to the COVID–19 public health emergency'' and could impact ''the provision of government services.''

Courts have recognized that the phrase ''due to'' can refer to various causal standards.[295] Here, in the context of Congress's addressing economic disruptions caused by the COVID–19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus ''due to'' the pandemic) or instead from the recipient's own discretionary actions (and, in this context, were not ''due to'' the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient's own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.[296] Most state budgeting processes require a ''budget score,'' often developed through a consensus process with executive and legislative branch experts,[297] and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases, recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes are the single largest source of revenue for state and local government recipients in the aggregate.

Revisions to Presumption To Address Tax Reductions

For these reasons, Treasury is providing in the final rule that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule (January 6, 2022) will not be treated as due to the public health emergency, and the estimated fiscal impact of such tax cuts must be added to the calculation of ''actual revenue'' for purposes of calculation dates that occur on or after April 1, 2022. Tax cuts include final legislative or regulatory action or a new or changed administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of reducing tax revenue relative to current law. This includes the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the issuance of the final rule.

In assessing whether a tax change has had the effect of reducing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. More specifically, recipients may rely on information typically prepared in the course of developing the budget (*e.g.,* expected revenues) and/or considering tax changes (*e.g.,* budget scores, revenue notes) to determine the amount of revenue that would have been collected in the absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic

[294] *See also* sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to ''mitigate the fiscal effects stemming from the public health emergency'').

[295] *U.S. Postal Service* v. *Postal Regulatory Comm'n,* 640 F.3d 1263 (D.C. Cir. 2011); *see Kimber* v. *Thiokol Corp.,* 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams* v. *Director, OWCP,* 886 F.2d 818, 821 (6th Cir. 1989).

[296] Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.

[297] *See generally,* National Association of State Budget Officers, Budget Processes in the States, (2021), available at *https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/NASBO_2021_Budget_Processes_in_the_States_S.pdf.*

growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Revisions to Presumption To Address Tax Increases

As noted above, the calculation methodology in the interim final rule implicitly assumed that recipients did not experience a reduction in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue relative to the counterfactual estimate. Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by other revenue, particularly in the case of increases to tax revenue resulting from a tax increase. The final rule requires recipients that increased taxes to deduct the amount of increases to revenue attributable to such tax increase. This change is also consistent with the incorporation in the interim final rule and final rule of a counterfactual growth rate, which effectively permits recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth.

For these reasons, Treasury is providing in the final rule that recipients must subtract from their calculation of actual revenue the effect of tax increases adopted after the date of adoption of this final rule (January 6, 2022) for purposes of calculation dates that occur on or after April 1, 2022. This change and the change to the final rule described above treat tax changes in a consistent manner: In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of that reduction to its calculation of actual revenue, and in the case of an increase in revenue resulting from a tax increase, a recipient must subtract the amount of additional revenue collected as a result of the tax increase from its calculation of actual revenue.[298]

As is the case with tax cuts, discussed above, tax increases that must be reflected in the calculation of revenue include final legislative or regulatory action or a new or changed administrative interpretation that increases any tax and that the recipient assesses has had the effect of increasing tax revenue relative to current law. In assessing whether a tax change has had the effect of increasing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared in the course of developing the budget (*e.g.,* expected revenues) and/or considering tax changes (*e.g.,* budget scores, revenue notes) to determine the amount of revenue that was collected as a result of the tax increase as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Previously Adopted Tax Changes

As discussed above, the final rule will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the final rule. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.[299] If a recipient elects to do so, it must do so with respect to all of its tax changes adopted between the beginning of the public health emergency and the adoption of the final rule. Treasury intends to revise its reporting requirements to permit recipients to amend their previously reported calculation periods to reflect such changes.

Determination of the Base Year

Under the ARPA and interim final rule, SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue . . . relative to revenues collected in the most recent full fiscal year'' of the recipient. Therefore, the base year for the revenue loss calculation is the most recent full fiscal year prior to the COVID–19 public health emergency.

Public Comment: Treasury received multiple comments asking for flexibility in determining base year revenues. For instance, some commenters asked to use a different base year than the ''most recent full fiscal year'' prior to the pandemic for calculating revenue loss; others asked to be able to average prior years. Commenters stated that, for various reasons, revenue was artificially low in the last full fiscal year prior to the public health emergency, and, therefore, using revenue in that year as the base year did not accurately reflect expected revenue in a normal year. For example, several Tribes stated that unforeseeable weather events resulted in forced closure of casinos which, in turn, artificially deflated revenues in the base year. Other commenters indicated that one-time anomalies in the timing of tax collection in that year artificially pushed revenue into the following fiscal year. Similarly, a few commenters noted that tax changes that took effect in the middle of the base year may artificially skew the size of the revenue loss experienced by the recipient government.

Treasury Response: Treasury understands that recipients may have experienced events in the base year that led to lower or higher revenues than what they otherwise would have collected. The ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic, and therefore the final rule maintains its incorporation of the statutory definition.

In calculating revenue loss, recipients may use data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period, which might help recipients adjust to certain delays in revenue receipt. Both the standard allowance and elements of the formula (*e.g.,*

[298] The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments would outweigh the benefit of having a somewhat larger amount of funds available for government services.

[299] The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

counterfactual growth rate) incorporate generous assumptions to give recipients flexibility and to account for variation among recipients' experiences during the pandemic.

Government Services

The **SUPPLEMENTAL INFORMATION** to the interim final rule provided a non-exhaustive list of examples of services that are government services. The interim final rule also discussed why neither payment of debt service nor replenishing financial reserves constitutes government services, as these expenditures do not provide services but relate to the financing of such services. Similarly, government services under the interim final rule did not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, unless the judgment or settlement required the provision of government services.

Public Comment: Treasury received several comments requesting further clarification regarding the scope of government services, including asking for either a specific definition of government services or that a specific use be expressly deemed to be a government service. Some commenters disagreed with the exclusions from government services in the interim final rule. For instance, many of the comments Treasury received suggested that replenishing reserve funds and at least certain types of debt service should be treated as providing governmental services. Some commenters also suggested that a recipient should be able to use funds for costs incurred before March 3, 2021. Other commenters asked Treasury to maintain the prohibition on using the funds to pay debt service.

Treasury Response: Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying here that, generally speaking, services provided by the recipient governments are ''government services'' under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building [300] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

The aforementioned list of government services is not exclusive. However, recipients should be mindful that other restrictions may apply, including those articulated in the section Restrictions on Use. In the final rule, Treasury is maintaining the limitations on government services included in the interim final rule and has addressed and responded to public commenters on these issues in the section Restrictions on Use.

D. Investments in Water, Sewer, and Broadband Infrastructure

Summary of Interim Final Rule

Under the ARPA, recipients may use funds to make necessary investments in water, sewer, and broadband infrastructure. The interim final rule provided recipients with the ability to use funds for a broad array of uses within these categories.

The interim final rule discussed two general provisions that apply across all water, sewer, and broadband infrastructure investments. First, the interim final rule addressed the meaning of ''necessary'' investments as meaning those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds. Second, the interim final rule encouraged recipients to use strong labor standards in water, sewer, and broadband projects, as discussed below.

Necessary Investments

The statute limits investments to those that are necessary. As discussed in more detail below, Treasury determined that the types of water and sewer projects that were authorized under the interim final rule by reference to existing Environmental Protection Agency (EPA) programs would in all cases be necessary investments given the conditions applicable to such EPA programs. Similarly, the interim final rule's definition of eligible broadband projects as those designed to provide a certain standard of service to those households and businesses with limited existing service was based on the statutory requirement that investments in water, sewer, and broadband must be ''necessary.''

As discussed further below, Treasury has expanded the scope of what is an eligible water and sewer infrastructure project to include additional uses. In particular, the final rule permits use of SLFRF funds for certain dam and reservoir restoration projects and certain drinking water projects to support population growth. The nature of these additional uses is such that additional factors must be considered in determining whether one of these additional uses is a necessary project. In addition, Treasury recognizes that there may be a need for improvements to broadband beyond those households and businesses with limited existing service as defined in the interim final rule. Treasury has replaced this specific requirement based on an understanding that broadband investments may be necessary for a broader set of reasons.

Given this expansion of what is considered in scope as a water, sewer, or broadband infrastructure project, the final rule provides a further elaboration of Treasury's understanding of the conditions under which an infrastructure project will be considered to be a necessary investment. Treasury considers a necessary investment in infrastructure to be one that is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, given that drinking water is a resource that is subject to depletion, in the case of investments in infrastructure that supply drinking water in order to meet projected population growth, the project must be projected to be sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but still encourages recipients to prioritize projects that would provide the greatest public benefit in their respective jurisdictions.

Strong Labor Standards in Water, Sewer, and Broadband Construction

As stated in the Supplementary Information to the interim final rule, Treasury encourages recipients to carry out investments in water, sewer, or broadband infrastructure in ways that produce high-quality infrastructure, avert disruptive and costly delays, and

[300] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

promote efficiency.[301] Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (*e.g.,* professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality infrastructure projects and support the economic recovery through strong employment opportunities for workers. Such practices will also reduce the likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to water, sewer, or broadband infrastructure project that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided. Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.[302]

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. Water and Sewer Infrastructure

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds ''to make necessary investments in water [and] sewer . . . infrastructure.'' The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients' identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to ''necessary investments.''

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

[301] Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (*e.g.,* those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

[302] *See* U.S. Department of the Treasury, *Compliance and Reporting Guidance,* 21 (June 24, 2021), *https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.*

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.[303] The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.[304]

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be ''necessary'' even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for ''necessary water, sewer, and broadband infrastructure.'' Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.[305] Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of

[303] *See* 40 CFR 35.3520(b)(2)(vi).

[304] In such cases, either the projects are presumptively cost-effective (*e.g.,* lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

[305] In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of ''water'' and ''sewer'' infrastructure also makes clear that ''water'' in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

wastewater and stormwater are the typical responsibilities of ''water and sewer'' authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.[306]

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word ''infrastructure'' in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.[307] As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule's alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA's DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that (1) implement a nonpoint source pollution management program [308] or (2) constitute reuse of

[306] In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress' inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds' longer eligible use date, is responsive to this unmet need. As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

[307] *See, e.g.,* section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining ''green infrastructure'' as ''the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.''

[308] Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution

Continued

wastewater, stormwater, or subsurface drainage water are in fact eligible uses under the CWSRF. Furthermore, under the DWSRF, eligible projects include certain aquifer storage and recovery systems for water storage.

Treasury Response: Eligible projects articulated in the DWSRF and CWSRF continue to be eligible uses of SLFRF funds under the final rule. Recognizing that recipients have faced challenges interpreting eligible use categories under the interim final rule or cross-referencing EPA program materials to interpret eligible project types, Treasury is including in this Supplementary Information additional information on the types of projects eligible under the DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.[309] The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects,* including installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the SDWA.

(ii) *Transmission and distribution projects,* including installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source projects,* including rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage projects,* including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects,* including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems,* including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.[310] The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule. [311] Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such projects under the final rule is discussed separately below under ''Expansion of Drinking Water Service.'' Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF. The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA) [312] provides that the CWSRF can provide assistance:

(i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA); [313]

(ii) for the implementation of a management program established under section 319 of the CWA; [314]

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA; [315]

(iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (*e.g.,* individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

(v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. For example, projects that are specifically required by a Municipal Separate Storm Sewer System (MS4) permit are eligible, regardless of ownership. Projects may include, but are not limited to green roofs, bioretention basins, roadside plantings, porous pavement, and rainwater harvesting.

(vi) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse. Eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible.

management program under section 319 of the Clean Water Act. This could include projects in which desalinated seawater is injected into the aquifer to mitigate or prevent salt water intrusion, as well as projects in which brackish water is removed from an aquifer, desalinated, and returned to the aquifer.

[309] *See* 42 U.S.C. 300j–12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g–1 or otherwise significantly further the health protection objectives of the SWDA); *See also* 40 CFR 35.3520(b).

[310] *See* 40 CFR 35.3520(d)(1).

[311] *See id at* § 35.3520(e)(2)–(4).

[312] 33 U.S.C. 1383(c).

[313] 33 U.S.C. 1292.

[314] 33 U.S.C. 1329.

[315] 33 U.S.C. 1330.

Equipment to reuse effluent (*e.g.,* gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.[316] Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (*e.g.,* gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (*i.e.,* security guards) and monitoring activities are not eligible.

[316] 33 U.S.C. 1274.

Other Clarifications of DSWRF and CWSRF Eligible Project Categories

Public Comment: Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

Treasury Response: After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require pre-approval from another federal or state agency.

Expanded Eligible Uses for Water and Sewer Infrastructure

Summary

Public Comment: Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

Treasury Response: Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

Stormwater Infrastructure

Public Comment: Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

Treasury Response: The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they (1) implement a nonpoint source management plan, (2) implement National Estuary Program Comprehensive Conservation and Management Plan, or (3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (*e.g.,* gravel) wetlands, bioretention/bioswales (*e.g.,* bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.[317]

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other entities. Given the lifelong impacts of lead exposure for children and the widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the ''public portion'' of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.[318] Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA's Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead [319] and certain other water systems.[320]

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.[321] Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system's service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are eligible uses of SLFRF funds.[322] Remediation

[317] The White House, Updated Fact Sheet: Bipartisan Infrastructure Investment and Jobs Act (August 2, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/.*

[318] *See* EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), *https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements* (advising against partial lead service line replacement).

[319] Environmental Protection Agency, *supra* note 188.

[320] Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198. 40 CFR 141.84, and preamble *at* 4215, January 15, 2021, *https://www.federalregister.gov/d/2020-28691;* scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, *https://www.federalregister.gov/d/2021-12600.*

[321] Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

[322] Such testing and remediation programs would be an eligible use of SLFRF funds given that they

activities such as replacement of faucets, internal plumbing, and fixtures in schools and childcare facilities are also an eligible use of SLFRF funds.

Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the final rule because the vast majority of lead contamination cases can be solved by replacing lead service lines (including on public and private property) and faucets and fixtures themselves. As such, replacement of lead pipes within a home would not be considered a cost-effective means for achieving the desired level of service and thus would not be a ''necessary'' investment. The provision of bottled water is also not an eligible use of SLFRF funds under this eligible use category, as it is not an investment in infrastructure. However, bottled water in areas with an action level exceedance for lead in water may be an eligible use of SLFRF funds under a separate eligible use category for ''remediation of lead paint and other lead hazards;'' see Assistance to Households in Public Health and Negative Economic Impacts.

Water filtration systems are eligible under the EPA grant programs and the final rule as long as they are installed as a permanent part of a facility's system and not intended for temporary use. Conducting remediation, follow-up monitoring, and conducting public education and outreach about the availability of infrastructure programs, such as water testing and fixture replacement programs funded with SLFRF funds or otherwise, are also eligible projects. Finally, recipients should note that ''remediation of lead paint and other lead hazards'' is a separate eligible use category and a broader range of programs and services may be eligible under that section, including investments that are not infrastructure; see the eligible use for ''remediation of lead paint and other lead hazards'' in section Assistance to Households in Public Health and Negative Economic Impacts.

Dams and Reservoirs

Public Comment: Many commenters requested that Treasury broaden eligibilities to include dams and reservoirs, infrastructure that commenters noted may in its current state be unsafe and could put surrounding communities at risk. Some commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.[323] In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury's final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under ''Expansion of Drinking Water Service Infrastructure'' below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, *i.e.,* that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.[324] The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury's understanding of the significant need for investments in rehabilitation to address deterioration of dams and the diminished capacity of reservoirs. Further, Treasury expects that in many cases it would be considerably more difficult to demonstrate that construction of a new dam or reservoir would be necessary for the purpose of the provision of drinking water than is the case for rehabilitation of dams and reservoirs already serving that purpose for a particular population, particularly given opportunities to meet drinking water needs through water reuse and conversation efforts. For these reasons, and given that the relatively short period of availability of the funds makes new dam and reservoir construction with these funds less likely, Treasury has limited the scope of the final rule to dam and reservoir rehabilitation projects.

As discussed above, Treasury has determined that ARPA does not authorize the use of SLFRF funds for uses other than the provision of drinking water and the management of wastewater and storm water. As such, the final rule does not include infrastructure projects related to dams and reservoirs as eligible uses of SLFRF funds unless they meet the conditions discussed above.

would help a recipient determine whether an infrastructure project, such as a lead line replacement, is necessary. In contrast, as mentioned above, the costs of continual testing that is part of a drinking water or wastewater facilities' operating costs would not be considered part of an infrastructure project.

[323] *See* EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at *https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021_0.pdf.*

[324] As noted in the EPA's class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (*e.g.,* epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (*e.g.,* anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a ''reasonable'' amount of population growth over the useful life of the project.[325]

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are ''necessary.'' As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

Investments must be determined to be necessary when they are initiated. Accordingly, Treasury is clarifying in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth. For example, a recipient expecting increased population during the period of performance may install a drinking water treatment plant to meet that growth. In addition, a recipient expecting increased population growth outside the period of performance may install the treatment plant if the planning and construction timeline for the project would require work to begin during the performance period in order to meet the expected population growth. A recipient may install transmission lines as part of the development of new housing occurring during the period of performance. In this case, the housing development must be in progress; a recipient may not use the SLFRF funds to install a water main, for example, to an undeveloped tract in the expectation that in the future that tract will be developed with housing, because there would be no need for that investment to be made at the time it is initiated.

For the reasons discussed above, if a project is undertaken to address expected growth in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife. A drinking water project that is designed to address a growing population cannot be considered a necessary investment if the source of drinking water will cease to be available to meet the population's needs before the end of the estimated useful life of the project. In such a case, a recipient should consider alternative sources for drinking water. See ''Interpretation of Necessary Investments and Water and Sewer Infrastructure'' above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds ''may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].'' [326]

This amendment permits the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.[327] Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea walls, elevation projects, dredging, or nature-based flood mitigation projects be included as eligible projects.

Treasury Response: Treasury notes that some floodplain management and flood mitigation infrastructure projects, including green infrastructure designed to protect treatment works from flood waters and flood impact are currently eligible under the CWSRF and therefore continue to be eligible under the final rule.

Treasury has not included floodplain management and flood mitigation projects more generally as eligible under the final rule. Although floodplain management and flood mitigation are functions of many state and local governments, they are not the sort of generally-provided essential services included within the meaning of water

[325] *See* 40 CFR 35.3520(e)(5).

[326] *See* Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

[327] *See* Public Law 117–58 § 40909(c).

and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection, and efficiency related to infrastructure improvements, *e.g.,* incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. Broadband Infrastructure

Under the ARPA, recipient governments may use SLFRF funds to make ''necessary investments in . . . broadband infrastructure.'' In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments ''designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds.'' Treasury explained that, with respect to broadband specifically, such necessary investments include projects that ''establish [ ] or improve [ ] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.''

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives. First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,[328] middle-mile projects,[329] pre-project development costs,[330] broadband connections to schools or libraries,[331] and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.[332]

Summary of Public Comments: Treasury received several comments on the interim final rule's requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury's encouragements in the Supplementary Information of the interim final rule. Many commenters found the interim final rule's requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule's requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

[328] *See FAQ 6.8, 6.9, 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[329] *See FAQ 6.10. Id.*

[330] *See FAQ 6.12. Id.*

[331] *See FAQ 6.16. Id.*

[332] *See FAQ 6.4, 6.17. Id.*

few others argued that the interim final rule should remain technology-neutral and that lower speed standards would be more appropriate for today's usage needs.

Summary of Treasury Response: In response to the comments, the final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds. In addition, as discussed further below, the final rule further supports the expansion of affordable access to broadband service for households by requiring that recipients use a provider that participates in a qualifying affordability plan. Treasury encourages recipients to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. As was the case under the interim final rule, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections, whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to either participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low-income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.

The final rule also clarifies that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A) and 603(c)(1)(A). See section Assistance to Households in Negative Economic Impacts.

Treasury continues to encourage recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives. In addition, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams. Further, Treasury highlights that recipients are subject to the prohibition on use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216 and 2 CFR 200.471 and clarifies that modernization of cybersecurity for existing and new broadband networks are eligible uses of funds under sections 602(c)(1)(D) and 603(c)(1)(D).

Finally, this Supplementary Information to the final rule incorporates and confirms guidance issued by Treasury following the interim final rule regarding middle-mile projects,[333] pre-project development costs,[334] broadband connections to schools or libraries,[335] and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.[336]

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) Eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an ''advanced telecommunications capability'' for wireline broadband services.

Public Comment: Many commenters discussed the disadvantages of such an approach. Some commenters, including several local government recipients, argued that limiting investments to locations without access to reliable wireline 25/3 Mbps [337] was too

[333] *See FAQ 6.10.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[334] *See FAQ 6.12. Id.*

[335] *See FAQ 6.16. Id.*

[336] *See FAQ 6.4, 6.17. Id.*

[337] In the remainder of this Supplementary Information, ''25/3 Mbps'' refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3

restrictive because some urban jurisdictions are already mostly or entirely covered by a network with at least 25/3 Mbps speeds yet lack widespread broadband adoption for various reasons. Commenters suggested that recipients would benefit from greater flexibility to provide necessary investments in broadband access in areas that are nominally covered by speeds of at least 25/3 Mbps, such as to provide affordable broadband access in low-income areas or to address service quality and reliability issues. Further, commenters argued that Treasury's requirement that new projects meet minimum reliable speeds of 100 Mbps symmetrical was inconsistent with the requirement that broadband infrastructure projects focus on those with access to significantly lower speeds, and further noted that several states have already expanded the focus of their broadband programs beyond those without reliable access to speeds of 25/3 Mbps. Commenters argued that if the limitation to unserved and underserved households and businesses were maintained, the definition of unserved and underserved households and businesses should be revised to include households and businesses currently served by higher standards. Commenters proposed a number of alternative cutoff speeds, including 25/25 Mbps, 50/10 Mbps, and 100 Mbps symmetrical. Others expressed support for providing flexibility for recipients to make their own determination on eligible areas for investment. These commenters referenced studies indicating that 25/3 Mbps is inadequate for today's modern household or business needs.

Some commenters advocated for unserved and underserved areas to be prioritized while providing flexibility for recipients to serve areas beyond those designated as unserved or underserved. Reflecting the perceived restrictiveness of the interim final rule approach, some commenters asked for assurance that projects conducted under other categories of SLFRF eligible uses, specifically to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A)–(C) and 603(c)(1)(A)–(C), were not barred by the presence of 25/3 Mbps service, including ''gap networks,'' which are networks designed to offer low-cost or no-cost internet access for lower-income households with low broadband adoption rates.

Commenters suggested additional factors to be incorporated in the consideration of locations that are eligible to be served. Many commenters suggested that affordability should be considered a key factor when determining whether a community has access to broadband, as the presence of 25/3 Mbps service does not necessarily mean the service is financially accessible to the area's residents. Commenters noted that surveys indicate that affordability, not lack of coverage, is the most significant barrier for most Americans who do not have robust broadband service in their households. Some advocated that the final rule allow for investments in areas with existing reliable wireline access at or above 25/3 Mbps as long as existing broadband service has been unaffordable for a certain segment of the population; others advocated that Treasury presume eligibility when investments are made in certain areas, such as Qualified Census Tracts or neighborhoods with persistent poverty, or are made by Tribal governments. Separately, some commenters noted that Treasury should provide more clarification on what constitutes a ''reliabl[e]'' connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment. Recipients have flexibility to identify a need for additional broadband infrastructure investment: Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,[338] in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),[339] and other factors related to

Mbps upload speeds. ''100 Mbps'' symmetrical refers to broadband infrastructure that is designed to reliably meet or exceed at least 100 Mbps download speeds and 100 Mbps upload speeds.

[338] *See FAQ 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[339] Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. *See, e.g., https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf* (comparing copper to fiber and noting that copper wire networks have ''limited speeds,'' are ''susceptible to signal interference/loss,'' and have a ''relatively short life''); *https://*

Continued

the services to be provided by the project. In addition, recipients may consider the actual experience of current broadband customers when making their determinations; whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

Build-To Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the **SUPPLEMENTARY INFORMATION** to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a ''gold standard'' future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today's demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is complete,[340] while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.[341] Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering superior, reliable performance and is generally most efficiently scalable to meet future needs.[342] In designing these projects, recipients should ensure that the broadband infrastructure provides ''reliable'' service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,[343] while recipients are permitted to make investments in ''middle-mile'' connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on

data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf (comparing fiber with DSL and cable technologies on a number of dimensions); *https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband* (providing a technical background comparing fiber technology to other legacy technologies).

[340] Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today is estimated to need 100 Mbps download to work simultaneously. *See* Federal Communications Commission, Broadband Speed Guide, available at *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited October 28, 2021).

[341] United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at *https://www.speedtest.net/global-index/united-states#fixed.*

[342] Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), *https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband.*

[343] *See FAQ 6.10,* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

projects that will achieve last-mile connections—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

Affordability

The interim final rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take particular actions. The interim final rule also provided that assisting households with internet access and digital literacy is an eligible use of SLFRF funds under sections 602(c)(1)(A) and 603(c)(1)(A) to respond to the negative economic impacts of COVID–19.

Public Comment: Many commenters suggested that Treasury provide recipients with a broader set of tools to tackle what the commenters characterized as an affordability crisis in the broadband sector. As noted above, some commenters proposed that Treasury consider affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.[344] This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing agreement to provide service that reliably delivers 100/20 Mbps by December 31, 2024 was too restrictive. Commenters noted that many plans do not always lead to a successful and complete deployment, as issues may arise that prevent such infrastructure from deploying on time or at all, and that several existing federal grants were designed and awarded before the onset of the COVID–19 pandemic and do not meet the critical broadband needs highlighted by the pandemic. Other commenters argued that Treasury's encouragement to avoid duplication of resources should be strengthened, as investing in areas with existing agreements would be an inefficient duplication of efforts.

Treasury Response: Given the final rule's revised requirements on eligible areas for investment, this

[344] The Executive Office of the President, Community-Based Broadband Solutions (January 2015), *https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf.*

Supplementary Information to the final rule also modifies the interim final rule's requirements around duplication of resources. Since recipients must ensure that the objective of the broadband projects is to serve locations with an identified need for additional broadband investment, the final rule provides that, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

Cybersecurity

Public Comment: Several commenters expressed concern about the cybersecurity of new broadband projects funded with SLFRF funds and urged Treasury to prohibit recipients from utilizing SLFRF funds to procure equipment from certain providers from the People's Republic of China that may pose a national security risk. These commenters pointed out that the 2019 National Defense Authorization Act (NDAA) and the FCC's Universal Service Fund have similar prohibitions. Further, several commenters requested that Treasury explicitly include cybersecurity costs as an eligible use for broadband infrastructure investment given the growing threat of cyber-attacks and cyber-intrusions into the nation's infrastructure.

Treasury Response: Treasury highlights that investments in broadband infrastructure must be carried out in ways that comply with applicable federal laws, including the 2019 NDAA. Among other requirements contained in 2 CFR part 200, 2 CFR 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 CFR 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.[345] Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds To Meet Non-Federal Match Under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment ''shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs.'' [346] It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

[345] For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, *https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc;* Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), *https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/.*

[346] *See* Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).

III. Restrictions on Use

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use of funds apply. The ARPA includes two statutory provisions that further define the boundaries of the statute's eligible uses. First, section 602(c)(2)(A) of the Social Security Act provides that states and territories may not ''use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase.'' Second, sections 602(c)(2)(B) and 603(c)(2) prohibit all recipients, except Tribal governments, from using funds for deposit into any pension fund. These restrictions support use of funds only for the congressionally permitted purposes described in the Eligible Uses section by providing a backstop against the use of funds for purposes outside of the eligible use categories provided for in the statute.

In addition to the restrictions on use of funds provided for in the ARPA statute, the interim final rule noted that several uses of funds would be ineligible under any eligible use category, including as a response to the public health and negative economic impacts of the pandemic or as a ''government service'' under the revenue loss eligible use category. Specifically, use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment were ineligible uses of funds under the eligible use categories for public health and negative economic impacts and revenue loss. These restrictions apply to all recipients.

Recipients should note that restrictions on use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment apply to all eligible use categories, not just the eligible use categories in which they were discussed in the interim final rule.

Recipients are also subject to other restrictions on use of funds in the ARPA, the Award Terms and Conditions, and other federal laws. As discussed further below, uses of funds may not conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID–19. Per the Award Terms and Conditions, recipients must adopt and abide by policies to prevent conflicts of interest. Finally, recipients are reminded that other federal laws

also apply to uses of funds, including environmental and civil rights laws.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule consolidates these restrictions on use of funds into one section and makes clear that they apply to all eligible use categories and any use of funds under the program by recipients to whom each specific restriction applies.

This section discusses the aforementioned restrictions, public comments received, and Treasury's response to these comments. For clarity, Treasury has divided the following discussion into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions.

A. Ineligible Uses of Funds Under the ARPA Statute

1. Offset a Reduction in Net Tax Revenue

For states and territories (recipient governments [347]), section 602(c)(2)(A)—the offset provision—prohibits the use of SLFRF funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [348] during the covered period. If a state or territory uses SLFRF funds to offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, the ARPA provides that the state or territory must repay to Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount of SLFRF funds received by the state or territory. A state or territory that uses SLFRF funds to offset a reduction in net tax revenue does not forfeit its entire allocation of SLFRF funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-SLFRF funding.

The interim final rule implements these conditions by establishing a framework for states and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.,* cover the cost of—any reduction in net tax revenue resulting from such changes. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than SLFRF funds: Organic revenue growth, increases in revenue due to policy changes (*e.g.,* an increase in a tax rate), and certain cuts in spending.

Specifically, the interim final rule establishes a step-by-step process for determining whether, and the extent to which, SLFRF funds have been used to offset a reduction in net tax revenue, based on information reported by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to ''pay for'' with sources other than SLFRF funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which it is reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than SLFRF funds. These are:
  - State or territory tax changes that would increase any source of general fund revenue, such as a change that would increase a tax rate; and
  - Spending cuts in areas not being replaced by SLFRF funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.,* fiscal year 2019 tax revenue adjusted for inflation). This ''revenue reduction cap,'' together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts along with an explanation of such amounts. This process is discussed in greater detail in section Remediation and Recoupment of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with SLFRF funds.

Overview of Comments: Many commenters supported the framework established under the interim final rule. These commenters argued that the offset provision, and the interim final rule's implementation of the offset provision, was essential to ensuring SLFRF funds are used in a manner consistent with the statute's defined eligible uses and, in particular, to support the use of SLFRF funds to build public sector capacity. Several commenters argued that the framework should be made more restrictive; for example, some comments advocated that the offset provision be applied to local governments.

Other commenters argued that the offset provision and the interim final rule's implementation of the offset provision is too restrictive, with some asserting that the offset provision prohibits states from making changes to reduce taxes. Many of these commenters argued that the offset provision presents constitutional concerns. These commenters asserted that the offset provision is ambiguous and the restriction is unrelated to the purpose of the ARPA. These commenters also

[347] In this sub-section, ''recipient governments'' refers only to states and territories. In other sections, ''recipient governments'' refers more broadly to eligible governments receiving funding from the SLFRF.

[348] For brevity, this phrase is referred to as ''changes in law, regulation, or interpretation'' for the remainder of this **SUPPLEMENTARY INFORMATION.**

argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.[349] Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term ''offset'' implies a deliberate use SLFRF funds to ''pay for'' a tax cut.

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly ''upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the 'general Welfare.' '' [350] ''The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place.'' [351] Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB,* which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.[352] Further, the conditions placed on the use of SLFRF funds under the ARPA—both the eligible uses and additional limitations on deposits into pension funds and the offset provision—were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority ''to issue such regulations as may be necessary or appropriate to carry out'' section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. Definitions

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation.'' Consistent with this language, the interim final rule defines a ''covered change'' to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period.[353] Changed

[349] *See, e.g., State of West Virginia* v. *U.S. Department of the Treasury,* No. 7:21–cv–00465–LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); *State of Ohio* v. *Yellen,* No. 1:21–cv–181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

[350] *National Fed'n of Indep. Bus.* v. *Sebelius (NFIB),* 567 U.S. 519, 580 (2012) (plurality opinion); see, *e.g., South Dakota* v. *Dole,* 483 U.S. 203, 206–208 (1987); *Gruver* v. *Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll.,* 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, *see, e.g., Brief Reply for Appellants, Ohio* v. *Yellen,* No. 21–3787 (6th Cir. Oct. 26, 2021).

[351] *Sabri* v. *United States,* 541 U.S. 600, 608 (2004).

[352] The new federal funds offered by the Affordable Care Act totaled $100 billion per year. Even the dissenting Justices agreed that ''Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion,'' although they disagreed with the majority about whether that funding condition was severable. NFIB at 687–688 (joint dissent).

[353] For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA *See, e.g.,* Tax

administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period. The operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only changes within the control of the state or territory are considered covered changes. Finally, covered changes do not include changes that simply conform with recent changes in federal law (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program).

Scope of Covered Changes

Public Comment: Several commenters argued that the definition of covered change, and thus the limitations of the offset provision, should apply to subsidies for businesses. Similarly, other commenters requested that Treasury clarify that the offset provision applies to tax abatements and reductions in corporate taxes, even if administered by a sub-unit of the recipient government. Citing to empirical research and other evidence, these commenters argued that these types of economic development policies were poorly administered, reduced public sector capacity, and were ineffective at achieving stated objectives of creating jobs, increasing income, and increasing economic growth. On the other hand, some commenters argued that, because subsidies were economically similar to some tax cuts, neither action should be considered a covered change and subject to the offset provision. Finally, other commenters requested that Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: Section 602(c)(2)(A) applies to any change that ''reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase.'' Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans, grants, or other types of interventions that do not reduce tax revenue.[354] In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of ''covered change'' in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that—consistent with the statutory text—they result from a change in law, regulation, or administrative interpretation.

Prior Enactment and Phase-In

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change should include changes that were made prior to the covered period but that phase-in during the covered period.

Treasury Response: As discussed above, the offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation'' made during the covered period. Consistent with the statutory text, ''covered change'' is defined to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period.

Conformity

Public Comment: A number of commenters requested clarification on the scope of covered changes. Specifically, several commenters requested clarification on the scope of changes that would be considered as conforming to recent changes in federal law. These commenters requested that Treasury clarify whether actions to selectively conform with federal law would be considered covered changes and requested clarification regarding the extent to which changes would be considered ''recent.'' For example, these commenters requested clarification regarding conformance with the Global Intangible Low-Taxed Income provision of the 2017 Tax Cuts and Jobs Act. Some commenters further argued that changes that selectively conform or decouple from the Internal Revenue Code should be included within scope of covered changes and thus subject to the offset provision.

Treasury Response: The final rule maintains the treatment of changes that simply conform with recent changes in federal law, such as those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program [355] and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule's definition of ''tax revenue'' is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[356] It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of ''tax revenue.'' These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without

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).

[354] Assistance must be consistent with eligible uses of SLFRF funds. *See* section Eligible Uses of this **SUPPLEMENTARY INFORMATION**.

[355] *See* Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at *https://home.treasury.gov/news/press-releases/jy0113.*

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

change and maintaining a consistent definition of ''tax revenue.'' [357]

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[358]

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a ''reduction'' in net tax revenue requires identification of a baseline. In other words, a ''reduction'' can be assessed only by comparing two amounts. The Act defines ''covered period'' to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID–19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or ''pay for'' a reduction in net tax revenue due to a covered change: Increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,[359] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify the ''most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency'' as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of ''baseline'' without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term ''reporting year.'' [360] Commenters did not express concern regarding other definitions in the interim final rule.

2. Framework

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s).[361] Further, estimation approaches may not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule's approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

Timing of the Impact of Covered Changes

Public Comment: Several commenters expressed concern that recipient governments, to evade the offset provision, may backload the costs of certain covered changes outside of the covered period, and advocated that covered changes be instead evaluated as the net present value in the year that the covered change is enacted. These commenters argued that some tax cuts could have effects on tax revenue for many decades or could be structured to take effect after the end of the covered period.

Treasury Response: As discussed in section Timeline for Use of SLFRF Funds, SLFRF funds must be used to cover costs incurred prior to December 31, 2024. Accordingly, SLFRF funds

[357] As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

[358] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

[359] Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), *available at https://home.treasury.gov/news/press-releases/jy0453*.

[360] One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. ''Reporting year'' is defined in the interim final rule and final rule to mean ''a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.''

[361] By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis.* Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as ''resulting from'' tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (*e.g.,* to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[362]

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and for the reasons discussed above, Treasury is maintaining the measurement of actual tax revenue without adjustment for population growth.

(4) *Consideration of other sources of funding.* The recipient government will then identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. Recipient governments should use the same approach to identify and value covered changes that increase tax revenue as applied to covered changes that reduce tax revenue. For the reasons discussed above, Treasury is adopting these aspects of identifying and valuing covered changes without change.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays in an area where the recipient government has not spent SLFRF funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent SLFRF funds on that same department, agency, or authority. If the recipient government has not spent SLFRF funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have spent SLFRF funds in such department, agency, or authority, the SLFRF funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of SLFRF funds spent on the department, agency, or authority would count. This approach—allowing only spending reductions in areas where the recipient government has not spent SLFRF funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using SLFRF funds to supplant state or territory funding in the eligible use

[362] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to ''indirectly'' offset revenue reductions due to covered changes.

Department, Agency, or Authority

Public Comment: Several commenters supported the interim final rule's approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to ''directly or indirectly'' offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending Cuts Baseline

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient's FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID–19 public health emergency and governments' extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[363] In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. Reporting

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.[364]

Reporting Burden

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report

[363] This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

[364] *See* Reporting Guidance, Section C.11, available at *https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.*

information regarding permissible offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting Transparency

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (*e.g.,* information submitted from the public).

2. Deposit Into Pension Funds

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that ''[n]o State or territory may use funds made available under this section for deposit into any pension fund.'' Similarly, subsection 603(c)(2) of the Social Security Act provides that ''[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund.''

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean ''an extraordinary payment of an accrued, unfunded liability.'' The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the **SUPPLEMENTARY INFORMATION** to the interim final rule said that a payment would be an extraordinary payment if it reduces a liability incurred prior to the start of the COVID–19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must (1) be eligible under one of the eligible use categories and (2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (*i.e.,* they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID–19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The **SUPPLEMENTARY INFORMATION** to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.[365] The interim final rule also provided that replenishing financial reserves (*e.g.,* rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of

[365] ''[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services.'' 86 FR 26796–97 (May 17, 2021).

government services to the extent of revenue loss.[366]

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (*e.g.,* hotel room taxes) or revenue sources (*e.g.,* hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (*e.g.,* a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commentors suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses—such as issuance of debt or payment of debt service—do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.[367]

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID–19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds.

[366] ''In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.''

[367] Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

In other words, satisfaction of a settlement or judgment itself is not itself an eligible use of funds, unless the settlement requires the recipient to provide services or incur other costs that are eligible uses of SLFRF funds.

In the final rule, Treasury is maintaining the interim final rule approach and clarifying that it applies to all eligible use categories and any use of funds under the SLFRF program.

3. General Restrictions

In addition to the above restrictions, there are three general restrictions that apply to SLFRF funds. These restrictions, which reflect existing laws and regulations, the Award Terms and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID–19.[368] As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID–19 mitigation and prevention.[369] See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID–19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID–19. The interim final rule and final rule help support recipients in stopping the spread of COVID–19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID–19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID–19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID–19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (*e.g.,* paying off fines to businesses incurred for violation of COVID–19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (*e.g.,* requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.[370] Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as ''government services,'' including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws [371] and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex, (including sexual orientation and gender identity), religion, disability, or age, or familial status (having children under the age of 18).

IV. Program Administration Provisions

The interim final rule included several sections that described the processes and requirements for administering the program on an ongoing basis, specifically: Distribution of funds, transfer of funds, use of funds for program administration, reporting on the use of funds, and remediation and recoupment of funds used for ineligible purposes.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule organizes these issues into one section on Program Administration Provisions. Recipients should also consult Treasury's Compliance and Reporting Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance.

A. Payments in Tranches to Local Governments and Certain States

Section 602(b)(6)(A)(ii) of the Social Security Act authorizes the Secretary to withhold payment of up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provides its statutorily-required certification to the Secretary. The Social Security Act requires any such withholding be based on the unemployment rate in the state or territory as of the date of the certification.

Under the interim final rule, Treasury provided that it would withhold 50 percent of the amount allocated from any state that had an unemployment rate less than two percentage points above its unemployment rate in February 2020 as of the date the state submitted its initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act. Based on data available at the time of the issuance of the interim final rule, this threshold was expected to result in a majority of states being paid in two tranches. Treasury did not split the payments of any territories.

Public Comment: One commenter asked Treasury to allow a state to request release of the portion of the state's second tranche payment after the state could demonstrate that it had allocated the entirety of the first tranche, a need to continue ongoing programs, and a desire to avoid borrowing costs. Another commenter asked Treasury to clarify whether states that received half their funding in the

[368] *See* Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

[369] *See* 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

[370] Specifically, the Award Terms and Conditions provide that ''[r]ecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112.''

[371] An exception is statutes that do not apply unless explicitly stated, including, *e.g.,* the National Environmental Policy Act and the Davis-Bacon Act.

first payment would receive their second half payment within 12 months. Similarly, some recipients requested clarification on whether they could obligate second tranche funds before receipt or use second tranche funds for costs incurred prior to receipt.

Treasury Response: The final rule maintains the approach in the interim final rule with two modifications. As described in the interim final rule, splitting payments for most states provides consistency with payments to local governments and encourages states to adapt their use of funds to developments that arise in the course of the economic recovery. Moreover, SLFRF funds may be used for costs incurred during the period of performance. Recipients may use their jurisdiction's budgeting and procurement practices and laws to determine how and when second tranche funds may be obligated.

The final rule makes two adjustments for operational purposes. First, the final rule provides that Treasury expects to make all second tranche payments to states available beginning 12 months from the date that funding was first made available by Treasury (May 10, 2021) regardless of when each individual state submitted its initial certification. This should increase clarity and consistency on the timing of second tranche payments for both states and Treasury. Second, also to ease recipient states' administrative burden, the final rule strikes a requirement from the interim final rule that states must certify for their second tranche payments and file all required reports at least 30 days prior to the date on which their second payment is made available. The final rule simply requires that states certify for their second tranche payment and file all required reports before receiving their second tranche payment, with no 30 day wait period required.

B. Payments to Nonentitlement Units of Local Government (NEUs) and Units of Local Government (UGLGs) Within Non-UGLG Counties

The interim final rule established requirements related to distributions of SLFRF funds by states and territories to NEUs and UGLGs within non-UGLG counties. Specifically, the interim final rule provided that the total distribution to an NEU cannot exceed 75 percent of the most recent budget for the NEU (the 75 percent budget cap); a requirement set forth in section 603(b)(2)(C)(iii) of the Social Security Act. The interim final rule **SUPPLEMENTARY INFORMATION** defined the NEU's budget for purposes of calculating the 75 percent budget cap as the NEU's ''most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020.'' The interim final rule further provided that states and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap. Further, the interim final rule prohibited states and territories from placing additional conditions or requirements on distributions to NEUs beyond those required by the statute, the interim final rule, or Treasury's guidance and from offsetting any debt owed by such NEUs against such distributions.

Commenters predominantly focused on the definition of an NEU's budget for purposes of calculating the 75 percent budget cap, NEU allocations and eligibility, and the prohibition on states and territories imposing additional conditions or requirements in the NEU distribution process.

Definition of NEU Budget

Public Comment: Commenters suggested that Treasury provide greater clarification on the definition of an NEU's ''most recent budget'' for purposes of the 75 percent budget cap calculation. Treasury provided updated guidance on its interpretation of the 75 percent budget cap on June 30, 2021, and a commenter suggested that Treasury incorporate such updated interpretation into the **SUPPLEMENTARY INFORMATION** of the final rule.

Treasury Response: Consistent with the Update on Interpretation for the 75 Percent Budget Cap Calculation published on June 30, 2021,[372] the **SUPPLEMENTARY INFORMATION** of the final rule defines an NEU's budget for purposes of calculating the 75 percent budget cap as its total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. The guidance also gives states and territories flexibility to provide further guidance to their NEUs to operationalize the 75 percent budget cap. Given the variance in local financial accounting, this updated definition will better facilitate states' and territories' distribution of SLFRF funds to NEUs.

Allocations and Eligibility

Public Comment: Many commenters provided feedback on specific allocation calculations and eligibility of local governments for NEU funding. Commenters addressed how a locality was classified as an NEU or metropolitan city, deviations between Treasury's allocation calculations and earlier estimates from other sources, treatment of unincorporated areas, sources for population data, and Treasury's allocation of NEU funding to states and territories based on the population of a state and territory outside of its metropolitan cities. Two commenters proposed that Treasury provide an appeal process for localities that were not identified on the List of Local Governments used by states and territories as part of the process in which a state or territory determines the eligibility of an NEU in accordance with Treasury guidance, or for Minor Civil Divisions (MCDs) that were denied funding as part of a facts-and-circumstances test undertaken by a weak-MCD state.

Treasury Response: Neither the interim final rule nor the final rule addresses eligibility or allocations issues, and comments on these topics are outside the scope of this rulemaking. These questions are addressed in other Treasury guidance, including the Guidance on Distribution of Funds to Non-entitlement Units of Local Government and Non-entitlement Unit of Local Government Definitional and Data Methodology guidance documents available on Treasury's website.[373] Because Treasury interpreted the definition of an NEU [374] in accordance with the statute and established an NEU distribution process in May 2021, the final rule does not incorporate an appeals process regarding the definitions or the facts-and-circumstances test used for eligibility determinations.

Prohibition on Additional Conditions or Requirements in the NEU Distribution Process

Public Comment: One commenter expressed support for Treasury's prohibition on states and territories

[372] Treasury's Update on Interpretation for the 75 Percent Budget Cap Calculation can be found at: *https://home.treasury.gov/system/files/136/NEU-Update-75-Percent-Budget-Cap.pdf.*

[373] The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: *https://home.treasury.gov/system/files/136/NEU_Guidance.pdf.* The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: *https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.*

[374] Treasury has interpreted NEU to generally include both incorporated places and MCDs with active functioning governments, subject to the state determining, in the case of weak-MCD States, that a weak MCD has the legal and operational capacity to accept SLFRF funds and provides a broad range of services that would constitute eligible uses under ARPA. More details can be found in the Nonentitlement Unit of Local Government Definitional and Data Methodology, available at *https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.*

placing additional conditions or requirements on distributions to NEUs. This prohibition restricts states and territories from imposing limitations on NEUs' use of SLFRF funds based on an NEU's proposed spending plan or other policies, offsetting any debt owed by an NEU against the NEU's distribution, or providing funding on a reimbursement model. In particular, the commenter noted that a reimbursement model would lead to inequities in accessing SLFRF funds.

Treasury Response: The final rule maintains and finalizes the prohibition on states and territories placing additional conditions or requirements on distributions to NEUs as well as to any UGLGs within counties that are non-UGLGs. Such conditions or requirements may contravene the statutory requirement that states and territories make distributions based on population and within the statutorily defined timeframe.

Other Provisions

Treasury did not receive substantive comments on the requirement that states and territories permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap, or Treasury's interpretation of the 75 percent budget cap applying only to a consolidated government's NEU allocation under section 603(b)(2) but not to a consolidated government's county allocation under section 603(b)(3). Further, Treasury did not receive substantive comments on the interim final rule's allowance that states and territories be able to use SLFRF funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government. As such, the final rule maintains these provisions as written in the interim final rule without modification.

Treasury received some comments that are not addressed because they are beyond the scope of the NEU provision of the interim final rule or not authorized by the statute, including comments related to state accounting practices, re-allocations of NEU allocations that exceed the 75 percent budget cap, and concerns around eligible uses under SLFRF that small local governments may find particularly salient.

C. Timeline for Use of SLFRF Funds

The interim final rule provided that ''[a] recipient may only use funds to cover costs incurred during the period beginning March 3, 2021 and ending December 31, 2024.'' The interim final rule also provides that the period of performance will run until December 31, 2026, which will provide recipients an additional two years during which they may expend funds for costs incurred (*i.e.,* obligated).

As explained in more detail below, in the final rule Treasury is maintaining these time periods. Treasury will retain March 3, 2021 as the first date when costs may be incurred, to provide for forward-looking or prospective use of funds and to align with the start date of the ''covered period'' as such term is used in section 602(c)(2)(A). The deadline for costs to be incurred—which the final rule clarifies means obligated—December 31, 2024, is specified in the ARPA statute, and Treasury will retain December 31, 2026 as the end of the period of performance to provide a reasonable amount of time for recipients to liquidate obligations incurred by the statutory deadline.

Public Comments. Some commenters expressed concerns about costs incurred before March 3, 2021 not being covered and recommended the ''start date'' be changed to January 2020 to coincide with the declaration of the public health emergency. These commenters argued that recipient governments began incurring costs to respond to COVID–19 and its economic impacts in January 2020 and that prior federal fiscal relief, such as relief provided in the Coronavirus Aid, Relief, and Economic Security Act, did not fully compensate recipient governments for these costs. These commenters recommended that costs incurred before March 3, 2021 that otherwise fit within eligible use categories for SLFRF should be permissible uses of funds.

Some commenters asked Treasury to clarify whether local governments are subject to the same covered period as states and territories beginning March 3, 2021. Commenters noted that section 603(g) of the Social Security Act does not contain the same definition of ''covered period'' as section 602(g)(1) of the Social Security Act, which references a statutory provision that only applies to states and territories.

Many commenters requested that the deadline for costs to be incurred and the period of performance be extended due to the longer timeline for completing water and sewer projects. One commenter requested that recipients be able to split projects into different phases so that funds could be expended on larger, longer term projects (*e.g.,* by obligating funds on one portion of the project by the statutory deadline). One commenter recommended that the period of performance be extended for at least two additional years beyond the expenditure deadline set forth in the interim final rule, *i.e.,* until December 31, 2028. One commenter wrote that the final rule should allow for extended projects (*e.g.,* over a time horizon of more than ten years) for recipients working to develop long-term water supplies to prepare for extreme drought.

Treasury Response. In the final rule, Treasury is maintaining March 3, 2021 as the date when recipients may begin to incur costs using SLFRF funds. As described in the interim final rule, use of SLFRF funds is forward looking and the eligible use categories provided by statute are all prospective in nature. While recipients may identify and respond to negative economic impacts that occurred during 2020, the costs incurred to respond to these impacts remain prospective. Further, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be a relevant reference point for this purpose that provides some flexibility for recipients that began incurring costs in the anticipation of enactment of the ARPA or in advance of the issuance of the interim final rule and receipt of payment.

Finally, establishing an earlier start date would permit governments to use funds received in 2021 to satisfy obligations incurred in 2020. This use raises a substantial risk of SLFRF funds being used to supplant other recipient funds previously used to pay for such 2020 obligations, freeing funds for recipients to use for any purpose rather than eligible uses of SLFRF funds under the ARPA. Permitting such usage would undermine the provisions setting forth permissible and impermissible uses in the statute. Therefore, a reading of the statute permitting use of funds prior to March 3, 2021 would be inconsistent with the statutory structure.

In the final rule, Treasury is also maintaining the deadlines by which funds must be obligated (*i.e.,* December 31, 2024) and by which such obligations must be liquidated (*i.e.,* December 31, 2026). The December 31, 2024 deadline by which eligible costs must be incurred is established by statute. Treasury is finalizing its interpretation of ''incurred'' to be equivalent to the definition of ''obligation,'' based on the definition used for purposes of the Uniform Guidance. Treasury is also maintaining the period of performance, which will run through December 31, 2026, and provides the deadline by which recipients must expend obligated funds. Most recipients received SLFRF funds in the spring and summer of 2021,

meaning that they have over three years to obligate and over five years to expend funds. This provides a sufficient amount of time for recipients to plan and execute projects.

D. Transfers of Funds

Under section 602(c)(3) of the Social Security Act, a state, territory, or Tribal government may transfer SLFRF funds to a ''private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.'' Similarly, section 603(c)(3) authorizes a local government to transfer SLFRF funds to the same entities (other than Tribal organizations). Separately, section 603(c)(4) authorizes a local government to transfer SLFRF funds to the state in which it is located.

Entities Eligible for a Transfer Under Sections 602(c)(3) and 603(c)(3)

Regarding transfers permitted under sections 602(c)(3) and 603(c)(3) of the Act, the interim final rule Supplementary Information clarified that the lists of transferees in these sections are not exclusive and that state, local, territorial, and Tribal governments may transfer funds to other constituent units of government or private entities beyond those specified in the statute.

Public Comment: Several commenters supported Treasury's interpretation of eligible transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive. However, many commenters asked for greater clarity as to whether specific entities not listed in Treasury's examples of eligible subrecipients, such as nonprofits and Tribal governments, were eligible transferees. One commenter also asked whether a recipient may transfer SLFRF funds to a higher level of government, such as a locality to the county in which it is located.

Treasury Response: The final rule clarifies that, in addition to the entities enumerated in sections 602(c)(3) and 603(c)(3), recipients may transfer SLFRF funds to any entity to carry out as a subrecipient an eligible use of funds by the transferor, as long as they comply with the Award Terms and Conditions and other applicable requirements, including the Uniform Guidance at 2 CFR 200.331–200.333. Eligible subrecipients include, but are not limited to, other units of government (including Tribal governments), nonprofits and other civil society organizations, and private entities. Further, the final rule clarifies that transfers may be made to both constituent or non-constituent units of government. For example, county A may transfer SLFRF funds to county B as long as county B abides by the use restrictions applicable to county A and the transfer would constitute an eligible use of the funds by county A. County A must receive a benefit proportionate to the amount transferred.

As detailed in the interim final rule Supplementary Information, once transfers are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law, regulations, and program guidance. Further, the transferor remains responsible for monitoring and overseeing the subrecipient's use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the Award Terms and Conditions. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the SLFRF for the duration of the award.

Pooling Funds

Public Comment: Several commenters asked for clarification about whether they may pool SLFRF funds for a project with other recipients, including when doing so involves a transfer to another entity, such as a regional organization or government that undertakes projects on behalf of a number of local governments. Commenters also asked for clarification on the oversight and reporting obligations that would result from such transfers.

Treasury Response: Consistent with guidance issued following the interim final rule,[375] the final rule clarifies that recipients may pool SLFRF funds for projects, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the final rule

SUPPLEMENTARY INFORMATION. A recipient may transfer funds to a government outside its boundaries (*e.g.,* county transfers to a neighboring county), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

Blending and Braiding of Funds

Treasury is clarifying in the final rule that, consistent with further guidance issued by Treasury following the interim final rule,[376] recipients may fund a project with both SLFRF funds and other sources of funding, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the SLFRF program. Specifically,

- All funds provided under the SLFRF program must be used for projects, investments, or services that are eligible under the SLFRF program. SLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the SLFRF program. For example:
  - SLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure that is eligible under section 602 or 603 of the Social Security Act and the final rule.
  - SLFRF funds could *not* be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury's final rule. However, the recipient could use SLFRF funds only for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the ''project'' for SLFRF purposes under this program would be only the eligible use component of the larger project.
- In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

[375] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[376] *See FAQ 4.10. Id.*

Scope of a 603(c)(4) Transfer

Unlike in the case of a transfer under sections 602(c)(3) or 603(c)(3), the interim final rule **SUPPLEMENTARY INFORMATION** specified that transfers from a local government to the state under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee state.

Public Comment: Two commenters suggested that Treasury expand section 603(c)(4) beyond transfers from localities to the state to include transfers from counties to their constituent local governments, which would incentivize counties to augment funds to address the needs of local governments. These commenters noted that counties are disincentivized to make transfers under section 603(c)(3), as is currently allowed, as such transfers would require that counties provide oversight and monitoring over its subrecipients.

Treasury Response: Section 603(c)(4), by its terms, applies only to transfers from local governments to states. Accordingly, the final rule must maintain the interim final rule's limitation of section 603(c)(4) transfers as applicable only to transfers from local governments to states. Expansions of section 603(c)(4) transfer authority beyond transfers from local governments to states were not explicitly authorized by Congress. As such, transfers under section 603(c)(4) may only be made by local governments to the state in which they are located.

Congress enumerated two separate transfer provisions for local governments—section 603(c)(3) and section 603(c)(4)—that use different language and were intended to operate differently. Section 603(c)(4) contains prefatory language (''Notwithstanding paragraph (1)''—a reference to the eligible SLFRF uses) that section 603(c)(3) does not. In other words, section 603(c)(4) transfers are not required to constitute an eligible use of the funds from the perspective of the transferor local government, but section 603(c)(3) transfers are required to constitute an eligible use. A transfer to accomplish an eligible use fits within the recipient-subrecipient framework.

Further, treating section 603(c)(3) transfers as leading to a cancellation of the award for the transferor local government would result in scenarios that are inconsistent with the statutory language. An award cancellation pursuant to a section 603(c)(3) transfer would result in either (1) non-governmental entities becoming award recipients under the program, which would contravene the purpose of SLFRF or (2) transfers to governmental and non-governmental entities being treated in a distinct and inconsistent manner. That is, section 603(c)(3) transfers to governmental entities would lead to award cancellation but section 603(c)(3) transfers to non-governmental entities would lead to a recipient-subrecipient relationship. Therefore, in the final rule, Treasury maintains its distinct treatment of a section 603(c)(3) transfer and section 603(c)(4) transfer.

The final rule clarifies that a transfer under section 603(c)(4) will result in a modification, termination, or cancellation of the award on the part of the transferor local government and a modification of the award to the transferee state or territory. As detailed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, the transferor must provide notice of the transfer to Treasury in a format specified by Treasury. Until the local government provides such notice and Treasury provides confirmation of its acceptance of the notice, the local government will remain responsible for ensuring that the SLFRF award is being used in accordance with the Award Terms and Conditions, section 602 or 603 of the Social Security Act, the final rule, and program guidance including reporting on such uses of the award funds to Treasury.

A state that receives a transfer from a local government under section 603(c)(4) will be bound, by statute, by all of the use restrictions set forth in section 602(c) with respect to the use of those SLFRF funds, including the prohibitions on use of such SLFRF funds to offset certain reductions in taxes or to make deposits into pension funds. The state will be responsible as the prime recipient for the use and reporting on any funds transferred under section 603(c)(4) by the local government. Such transferred funds will be subject to the Award Terms and Conditions previously accepted by the state in connection with its SLFRF award.

Subrecipient Transfers

Public Comment: Commenters sought clarification as to how funds may be transferred from a recipient to another entity. For instance, one commenter requested that recipients be able to advance funds to subrecipients as opposed to reimbursing subrecipients for expenses incurred.

Treasury Response: Treasury did not specify in the interim final rule whether recipients may advance funds to subrecipients. This omission was not intended to prevent recipients from advancing funds to subrecipients, consistent with the various methods permitted under the Uniform Guidance. Given the broad flexibility that recipients have in selecting eligible uses and the broad variety of potential subrecipients, Treasury believes that specifying a single method of advancement or reimbursement would add unnecessary administrative difficulty to program administration. Recipients may determine the optimal payment structure for the transfer of funds (*e.g.,* advance payments, reimbursement basis, etc.) from recipients to subrecipients. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients.

E. Administrative Expenses

The interim final rule permitted, under the heading ''[e]xpenses to improve efficacy of public health or economic relief programs,'' use of funds for ''[a]dministrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.''

Following release of the interim final rule, Treasury issued Compliance and Reporting Guidance that provided that ''recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.'' [377] Several commenters

[377] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-*

Continued

requested clarity on which administrative expenses are permissible uses of funds and how recipients should structure administrative costs.

In the final rule, Treasury is clarifying that direct and indirect administrative expenses are permissible uses of SLFRF funds and are a separate eligible use category from ''[e]xpenses to improve efficacy of public health or economic relief programs,'' which refers to efforts to improve the effectiveness of public health and economic programs through use of data, evidence, and targeted consumer outreach. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's Compliance and Reporting Guidance.[378] Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

F. Treatment of Loans

The interim final rule allowed recipients to use SLFRF funds to make loans for uses that are otherwise eligible (for example, for small business assistance). Subsequent guidance clarified how recipients must track and dispose of program income from loans, consistent with the statutory requirements for the timing of SLFRF expenditures.

SLFRF funds must be used to cover ''costs incurred'' by the recipient between March 3, 2021 and December 31, 2024. The interim final rule provided that SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. In using SLFRF funds to make loans, recipients must be able to determine the amount of funds used to make a loan and must comply with restrictions on the timing of the use of funds and with restrictions in the Uniform Guidance.

When SLFRF funds are used as the principal for loans, there is an expectation that a significant share of the loaned funds will be repaid. Thus, recipients may not simply consider the full amount of loaned funds to be permanently expended and must appropriately account for the return of loaned funds.

For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with Treasury's guidance regarding loans made by recipients using payments from the Coronavirus Relief Fund.[379] Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of principal and interest (*i.e.,* ''program income,'' as defined under 2 CFR 200). When the loan is made, recipients must report the principal of the loan as an expense.

Repayment of principal may be re-used only for eligible uses and is subject to restrictions on the timing of the use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and final rule. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.

For loans with maturities longer than December 31, 2026, the recipient must estimate the cost to the recipient of extending the loan over the life of the loan. In other words, at origination, the recipient must measure the projected cost of the loan and may use SLFRF funds for the projected cost of the loan. Recipients have two options for estimating this amount: They may estimate the subsidy cost (*i.e.,* net present value of estimated cash flows) or the discounted cash flow under current expected credit losses (*i.e.,* CECL method). See further guidance issued by Treasury for further explanation.[380]

Public Comment: Many commenters asked for further clarification on the treatment of loans and the calculation of ''costs incurred.'' Some commenters requested that grants made for eligible activities prior to December 31, 2024 to a revolving loan fund, an economic development corporation, a land bank, or a similar facility should be considered obligated and expended at the time of the grant. This would allow funds to be expended by the grantee beyond the covered period and for funds returned to the grantee to be re-invested in further uses outside of the covered period.

Treasury Response: The final rule maintains the treatment of loans from the interim final rule and subsequent guidance, as discussed above. This approach is consistent with the statutory requirement that funds be used for costs incurred for eligible purposes by December 31, 2024 and is consistent with standard accounting practices and the Uniform Guidance.

G. Use of Funds for Match or Cost-Share Requirements

As a general matter and as referenced in the **SUPPLEMENTARY INFORMATION** to the interim final rule, funds provided under one federal program may not be used by a recipient to meet the non-federal match or cost-share requirements of another federal program.

However, Treasury has since determined that, consistent with this general principle and the requirements of the Uniform Guidance at 2 CFR 200.306(b)(5), the funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. Federal funds that constitute revenue sharing to state and local governments may generally be used to meet non-federal match requirements.[381] The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the SLFRF funds available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency's federal program, such awarding agency is required to accept such funds for the purpose of that program's match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

recovery-funds/recipient-compliance-and-reporting-responsibilities.

[378] *Id.*

[379] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

[380] *See FAQ 4.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[381] See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II,* p. 10–99, GAO–06–382SP (February 2006), *https://www.gao.gov/assets/gao-06-382sp.pdf.*

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. Note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

Public Comment: Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

Treasury Response: Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).[382] Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific form of reporting (*e.g.,* example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

Reporting Deadlines

Public Comment: Treasury received comments requesting various changes to reporting deadlines to ease compliance burdens. For example, Treasury received several comments requesting that Treasury delay early reporting deadlines for various reasons, including to align with the timeline for issuing a final rule and to allow for more time for recipients to determine SLFRF allocations. Commenters also requested changes to the immediacy of reporting, for example requesting that Treasury allow expenses to be reported with a lag instead of the quarter in which they were accrued or that reports be due 90 days after period close instead of 30 days after the close of a reporting period. Some commenters requested changes to the reporting frequency, for example to report biannually rather than quarterly.

Treasury Response: Treasury has clarified reporting deadlines in the Compliance and Reporting guidance.[383] Treasury is retaining the reporting deadline of 30 days after the close of the reporting period to ensure timely accounting of the use of SLFRF funds; this timeline also aligns with practices in many other federal programs. The final rule maintains Treasury's discretion to extend or delay reporting deadlines.

Administrative Costs for Reporting and Compliance

Public Comment: Many commenters sought clarification about whether various administrative costs related to reporting and compliance were eligible uses of funds and asked for clarification on the limits of such use.

Treasury Response: Treasury notes that administrative costs are generally allowable uses of SLFRF funds, including for reporting. For additional information on administrative expenses, please see section Administrative Expenses under Program Administration Provisions.

Uniform Guidance

Public Comment: The **SUPPLEMENTARY INFORMATION** of the interim final rule clarified that SLFRF funds were generally subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit

[382] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

[383] *Id.*

Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost. Treasury received many comments requesting clarification about or modifications to the applicability of the Uniform Guidance on various issues.

For example, one commenter requested that Treasury remove requirements that expenditures of funds be made in conformance with the Uniform Guidance, particularly in case of expenditures made during period from March 3, 2021 to the release of the interim final rule, while other comments requested that Treasury raise the single-audit threshold from $750,000 to $5 million. Commenters sought clarification on items such as: The applicability of the Uniform Guidance for funds that are used for the provision of government services, the applicability of particular sections of the cost principles provided in subpart E of the Uniform Guidance, the applicability of the procurement provisions of the Uniform Guidance, and requirements for subrecipient reporting.

Treasury Response: Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026 unless otherwise specified in this rule or program-specific guidance. Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards. Recipients that receive an aggregate amount of federal financial assistance in a given fiscal year that exceeds the Single Audit threshold are subject to the requirements in 2 CFR 200 Subpart F, Audit Requirements, unless otherwise specified in program-specific guidance.

SLFRF funds transferred to subrecipients are also subject to reporting and Uniform Guidance requirements. Additional information about the definition of subrecipients is available in the section Distinguishing Subrecipients versus Beneficiaries.

Recipients should refer to the Assistance Listing for details on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing is available on SAM.gov. Additional changes to compliance and reporting guidelines, including any clarifications on Uniform Guidance requirements, will be addressed in Compliance and Reporting Guidance and the User Guide.[384]

[384] *Id.*

I. Remediation and Recoupment

Sections 602(e) and 603(e) of the Social Security Act provide the Secretary with the power to recoup ''funds used in violation'' of the Social Security Act. The interim final rule implemented these provisions by establishing a process for recoupment. Treasury may identify funds used in violation of the Social Security Act based on information submitted by recipients, including as part of reporting requirements, as well as information from other sources.[385] If a potential violation is identified, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts. A recipient then has 60 calendar days following receipt of a recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the interim final rule provided that a recipient will receive a final notice of the Secretary's decision to affirm, withdraw, or modify the recoupment notice. If the recipient did not submit a request for reconsideration, the initial notice of recoupment would be deemed a final notice. A recipient would then be required to repay any amounts subject to recoupment within 120 calendar days of either the initial recoupment notice, if the recipient does not request reconsideration, or the final recoupment notice, if the recipient does request reconsideration.

Public Comments

Treasury received several comments on the process for recoupment. For instance, some commenters, including many Tribal governments, requested additional time to file a request for reconsideration and submit repayment to ensure that small entities have the time necessary to carry out any logistical steps and consult with counsel. Treasury was also asked to align its recoupment process with that of the Office of the Inspector General and other departmental administrative processes to resolve findings, agency decisions, and related timelines. One commenter asked if the 120-calendar-day time limit for repayment was based on the initial notice, rather than a final decision issued by the Secretary. Several commenters expressed concern regarding the recoupment process, arguing that consideration of ''all relevant facts and circumstances'' provided Treasury with too much authority and created ambiguity. Other commenters urged Treasury to establish a robust enforcement and compliance program and process and advocated for the creation of a whistleblower mechanism or public complaint process to allow public and private entities to report suspected misuses of funds. Finally, some commenters requested clarification regarding the process after a violation is identified and becomes final. One commenter also asked to allow recipients to amend reports deemed to contain ineligible expenses and inform recipients how the agency intends to resolve instances where a use was later deemed unacceptable. Another commenter asked if recouped funds could be released back to the recipient.

Commenters also expressed concern about Treasury's authority to recoup funds used in violation of the tax offset provision. Some commenters requested additional clarity around when tax cuts would trigger Treasury's recoupment authority and the duration of Treasury's authority to seek recoupment of such funds.

Treasury Response

The final rule largely preserves the process established in the interim final rule but includes several adjustments to clarify certain elements.

Like the interim final rule, the final rule provides that, after an initial determination is made that a recipient has used SLFRF funds in violation of the law, a recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. If a recipient chooses to seek reconsideration of the initial notice, the recipient must submit a request for reconsideration as provided under the final rule. If a recipient does not request reconsideration, the initial notice that the recipient received will be deemed the final notice.[386] Treasury has clarified that a recipient must invoke and exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision. Consistent with Section 602(b)(6)(A)(ii)(III) of the Social Security Act, if a state or territory is required to repay funds pursuant to the Secretary's recoupment authority, the Secretary may reduce the amount payable to the state or territory in a second tranche payment by the amount that the state or territory would be required to repay as recoupment.

In the final rule, Treasury has clarified that, if it identifies a potential

[385] Treasury will also consider the tax offset provision on an annual basis.

[386] Funds subject to recoupment cannot later be returned.

violation,[387] it may request additional information from a recipient before initiating the recoupment process and, where necessary, provide written notice to the recipient along with an explanation of such amounts potentially subject to recoupment. Furthermore, Treasury has also made clear that it retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

This process is intended to provide the recipient with an adequate opportunity to present additional information regarding its uses of funds and provides flexibility for recipients to determine the information relevant to the particular facts and circumstances. It is also flexible enough to align with other adjudication procedures in other ARPA recovery programs administered by the Office of Recovery Programs at Treasury. As discussed above, the initial notice will provide recipients with an explanation of the identified potential violation in order to provide recipients with a meaningful opportunity to respond. Such initial notice will generally include information regarding the specific use of SLFRF funds and the source of such information.[388] This process also will allow the Secretary to take into consideration the information provided by recipients, along with other relevant information, to ensure SLFRF funds are used in a manner consistent with the Social Security Act.

Finally, Treasury expects to work with recipients to support the use of SLFRF funds consistent with the law. For example, Treasury may request additional information from a recipient before initiating the recoupment process. In addition, Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.[389] These efforts may include working with recipients to identify and substitute permissible uses of SLFRF funds or amending uses of SLFRF funds to comply with applicable restrictions.

In response to comments regarding the amount of time provided to respond to an initial notice, the final rule clarifies that Treasury retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

V. Regulatory Analyses

Executive Orders 12866 and 13563

Regulatory Impact Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it is likely to have an annual effect on the economy of $100 million or more.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' intent to provide necessary relief to recipient governments adversely impacted by the COVID–19 public health emergency. Furthermore, as required by Executive Orders 12866 and 13563, Treasury has weighed the costs and benefits of this final rule and varying alternatives and has reasonably determined that the benefits of the final rule to recipients and their communities far outweigh any costs.

The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

Executive Orders 12866 and 13563

Under Executive Order 12866, OMB must determine whether this regulatory action is ''significant,'' and therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of $100 million or more. This rule is likely to have an annual effect on the economy of $100 million or more, and therefore, it is subject to review by OMB under section 3(f) of Executive Order 12866.

Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this final rule is consistent with the principles set forth in Executive Orders 12866 and 13563. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits.

Need for Regulatory Action

This final rule implements the $350 billion SLFRF program of the ARPA, which Congress passed to help states, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this final rule is needed to ensure that recipients of SLFRF funds fully

[388] Treasury may address potential violations based on information submitted from recipients, either through quarterly reports or self-reported information, and from other sources of information as Treasury deems necessary and appropriate (*e.g.,* press, information submitted from the public).

[389] Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This final rule governs the use of $350 billion in grant funds from the federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by: aiming to target relief in key areas according to the congressional mandate; offering clarity to states, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-statutory baseline, the SLFRF funds provide a combined $350 billion to state, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[390] Absent such fiscal relief, fiscal austerity among state, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession.[391]

This final rule provides benefits across several areas by implementing the four eligible use categories, as defined in statute: strengthening the response to the COVID–19 public health emergency and its negative economic impacts; replacing lost revenue to ease fiscal pressure on state, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in water, sewer, and broadband infrastructure.

These benefits are achieved in the final rule through a broadly flexible approach that sets clear guidelines on eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion within those eligible uses to direct SLFRF funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of the final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

In implementing the ARPA, Treasury has also prioritized supporting underserved communities that have been disproportionately impacted by the pandemic. The SLFRF program as implemented by the final rule provides even greater flexibility to recipients for uses of funds in underserved communities, recognizing that pre-existing health and economic disparities in these communities amplified the impact of the pandemic there. In general, investments in improving health outcomes and economic opportunities provide high economic returns, so this approach is likely to achieve substantial near-term economic and public health benefits, in addition to the longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure.

The remainder of this section clarifies how Treasury's approach to key provisions in the final rule will contribute to greater realization of benefits from the program.

Public Health and Negative Economic Impacts

The eligible use category for responding to the public health and negative economic impacts of the pandemic covers a wide range of eligible uses of funds. Treasury addresses several key uses of funds in this analysis, as well as ways that Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining targeting of the funding to entities that experienced negative impacts from the pandemic.

Government Employment: In order to bolster the government's ability to effectively administer services, the final rule allows for a broader set of eligible uses to restore and support public sector employment relative to the interim final rule. In particular, eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector by allowing funds to be used to pay for payroll and covered benefits associated with the recipient increasing its number of employees up to 7.5 percent above its pre-pandemic baseline. Eligible uses also include providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Treasury believes this expanded approach, relative to the interim final rule, provides useful flexibility to recipients, which may increase a state or local government's ability to effectively deliver services to its residents. While the interim final rule already explicitly permitted using funds to restore recipients' workforces up to pre-pandemic levels, the final rule's inclusion of an upward adjustment factor recognizes that, as the population or economy of a jurisdiction grows over time, more workers are generally needed to effectively meet responsibilities. It also provides recipients greater room to employ funds toward building back the public sector workforce after years of chronic underinvestment since the Great Recession. Treasury arrived at the 7.5 percent adjustment factor through an analysis of data from the Bureau of Labor Statistics on state and local government employment and data from the Census Bureau on population to estimate the extent of underinvestment in the public sector since the onset of the Great Recession. While Treasury considered a range of methodologies and point estimates to set the adjustment factor, a 7.5 percent factor errs on the side of recipient flexibility. Treasury believes this adjustment enhances recipients' ability to identify and meet the particularized needs of their communities. Treasury also believes that the additional enumerated eligible uses for supporting the workforce provide recipients several means to help retain current workers, decreasing turnover costs.

Identifying Eligible Populations

Treasury has provided several methods for recipients to identify households, populations, and communities eligible for services that respond to the public health and negative economic impacts of the pandemic. In general, these methods seek to provide recipients options to identify eligible populations with minimal administrative burden, while also maintaining targeting of the funds

[390] *See, e.g.,* Gabriel Chodorow-Reich et al., *Does state Fiscal Relief During Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act,* 4 American Economic Journal 118–145 (2012) *http://dx.doi.org/10.1257/pol.4.3.118.*

[391] See, *e.g.,* Fitzpatrick, *supra* note 278.

to entities impacted by the pandemic. Recipients also retain flexibility to identify and serve other populations and entities that experienced pandemic impacts, ensuring that recipients can meet the particularized needs of their local communities.

Defining Low and Moderate Income: To streamline the provision of funds relating to negative economic impacts resulting from the pandemic, Treasury has created an eligibility standard making it easier for recipients to provide assistance to low- and moderate-income populations without needing to identify and document a specific negative economic impact. Populations falling under the definition of low income are presumed to have been disproportionately impacted by the pandemic, while those falling under the definition of moderate income are presumed to have been impacted by the pandemic. In addition, the final rule recognizes categorical eligibility for certain enumerated programs and populations if a recipient chooses to implement categorical eligibility when identifying impacted and disproportionately impacted populations. Treasury considered several options for eligibility standards that would reduce administrative burdens for recipients when determining who qualifies as low and moderate income.

One option involved defining a household as low income or moderate income based only on FPG thresholds and could use levels lower than those selected. This option involved setting uniform thresholds throughout the country.

A second option took a broader approach, defining a household as low income if it has (i) income at or below 185 percent of the FPG for the size of its household or (ii) income at or below 40 percent of the AMI for its county and size of household. The option defined a household as moderate income if it has (i) income at or below 300 percent of the FPG for the size of its household or (ii) income at or below 65 percent of the AMI for its county and size of household. The combination of an FPG floor with AMI allows for a regional adjustment in areas with substantially higher costs and incomes. Finally, Treasury also considered a range of FPG and AMI thresholds above and below these levels.

Treasury chose the second option. Treasury believes that the higher FPG floor will ease administrative burdens by making more households presumptively eligible for funds meant to address negative economic impacts in a targeted manner. With respect to the low-income cutoff, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household where both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19. As such, this cutoff is likely to include more workers in industries heavily impacted by COVID–19, who may be most likely to face disproportionate impacts of the pandemic, than a lower threshold.[392] With respect to the moderate-income cutoff, many households with incomes between 200 percent and 300 percent of the FPG struggle with a lack of economic security, suggesting that 300 percent of the FPG was an appropriate cutoff for moderate income.

Treasury also considered relatively higher thresholds for both an FPG and AMI approach; however, increasing income thresholds for presumed eligibility increases the likelihood that higher-income workers, who generally experienced fewer economic impacts from the pandemic, would become presumed eligible for responsive services. Providing services to households that did not experience a negative economic impact, or experienced a relatively minimal impact, would provide much less benefit than serving households that experienced more severe impacts, diluting the benefits of the SLFRF funds.

In all, Treasury anticipates that these selected thresholds, combined with the regional adjustment, will allow resources to be targeted toward individuals and households with the greatest need while also reducing administrative burdens on recipients.

Disproportionately Impacted Populations: In the interim final rule, Treasury enumerated a broader set of eligible uses for disproportionately impacted communities, in recognition of the pre-existing health, economic, and social disparities that contributed to disproportionate pandemic impacts in certain communities and that addressing root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. To identify these communities and reduce administrative burden, Treasury allowed recipients to presume that certain populations—those in QCTs and those being served by Tribal governments—were disproportionately impacted. In the final rule, to further decrease administrative burden and enhance recipient flexibility, Treasury is allowing recipients to also presume that low-income households were disproportionately impacted. Treasury anticipates that adding low-income households as a presumed eligible population will maintain targeting of funds to populations and communities most likely to have experienced severe pandemic impacts, while providing a more flexible approach for recipients.

Identifying Impacted Classes: In the final rule, Treasury reiterated its stance in the interim final rule allowing recipients to designate a class of households or other entities as impacted or disproportionately impacted and provide responsive services. After designating a class, recipients can serve a household or entity by simply identifying that the household or entity is a member of the class. Relative to restricting services to only presumed eligible populations identified by Treasury, this decision provides vital administrative flexibility for recipients that may identify particular impacted classes in the context of their jurisdiction. Treasury anticipates that SLFRF funds will be targeted to impacted or disproportionately impacted communities, as recipients must demonstrate that the designated class experienced negative economic impacts or meaningfully more severe negative economic impacts. This approach maintains the requirement that entities served have to have experienced a negative economic impact, while simultaneously minimizing any administrative costs associated with meeting this requirement.

Additional Enumerated Uses

The interim final rule enumerated eligible uses of SLFRF funds to serve both impacted and disproportionately impacted communities. For example, enumerated eligible uses to serve impacted communities included food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness. Examples of enumerated eligible uses to serve disproportionately impacted communities included remediation of lead paint or other lead hazards and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity. In the final rule, Treasury had the option to retain, expand, or reduce enumerated eligible uses, or shift use eligibility between disproportionately impacted and impacted communities. Many

[392] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm* (last visited November 9, 2021).

public comments suggested potential expansions of uses, including shifting enumerated eligible uses for disproportionately impacted communities to serve a broader population of impacted communities. Taking these comments into account, Treasury generally took this approach, in anticipation that the benefits of the program will increase while recipient administrative costs in identifying and justifying non-enumerated uses of funds will decrease.

Specifically, Treasury added enumerated eligible uses for impacted populations including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked, on the basis that impacts of the pandemic that were broadly experienced by many communities would be addressed by these uses. Treasury also shifted some eligible uses, formerly restricted only to disproportionately impacted communities, to impacted communities. These uses included community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, and services to promote healthy childhood environments like childcare and early learning. These uses were shifted on the basis that the associated impacts of the pandemic were experienced by a broader population, and responses are, accordingly, eligible to benefit a broader population.

Additionally, the final rule clarified that investments in parks and other public outdoor recreation spaces are enumerated eligible uses for disproportionately impacted communities. In including these uses, Treasury took into account evidence on the social determinants of health, or the ways that social context, like the neighborhood built environment, impacts health outcomes. By taking a more holistic approach to public health, the final rule allows recipients to respond more broadly to factors that contributed to the pandemic's health impacts and more fully mitigate those health impacts.

To balance administrative flexibility with a maintenance of focus on impacts of the pandemic, Treasury considered, but did not include, other proposed enumerated uses that did not respond to the impacts of the pandemic or responded to impacts that were not experienced generally across the country by many jurisdictions and populations. For example, Treasury did not include pollution remediation broadly, a proposed enumerated eligible use for disproportionately impacted communities, on the basis that associated projects would only respond to disproportionate impacts of the pandemic depending on the specific issue addressed. In sum, Treasury expanded enumerated eligible uses while retaining a focus on broadly experienced impacts of the pandemic. Treasury anticipates that this will give recipients further flexibility to presume eligibility and respond to pandemic impacts without increasing administrative burden.

Capital Expenditures: In the interim final rule, Treasury permitted funds to be used for a limited number of capital expenditures mostly related to the COVID–19 public health response. This decision granted recipients some discretion to use SLFRF funds to address COVID–19 prevention and mitigation through certain investments in equipment, real property, and facilities, which Treasury recognized as critical components of the public health response. In the final rule, Treasury considered maintaining the provisions in the interim final rule or expanding allowable capital expenditures to provide recipients greater flexibility to pursue other capital investments that are responsive to the public health emergency and its negative economic impacts. While expanding allowable capital expenditures may increase the risk that recipients will undertake large expenditures that do not sufficiently address intended harms, or address harms in a less cost-efficient manner than an alternative investment (*e.g.,* a program or service), expanding allowable capital expenditures would likely help fill critical gaps in recipients' response to the pandemic and provide equipment and facilities that generate benefits beyond SLFRF's period of performance. To preserve flexibility while mitigating risks, the final rule allows recipients to undertake an expanded set of capital expenditures while requiring additional written justifications for projects with an expected total cost at or over $1 million. Treasury believes this approach balances the implementation of appropriate risk-based compliance requirements and the provision of administrative convenience for smaller capital expenditures, while generally allowing recipients the flexibility to undertake a greater variety of responsive capital expenditures.

Revenue Loss

Revenue Loss Formula: In this final rule, Treasury's approach to revenue loss allows recipients to compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury has made several adjustments in the final rule to decrease administrative burden, reducing costs for recipients, while still accurately capturing reductions in revenue due to the pandemic.

Under the interim final rule, Treasury specified that recipients calculate revenue loss on a calendar year basis. In this final rule, Treasury is providing recipients the option to calculate revenue loss on a calendar year or fiscal year basis, which will allow recipients the administrative flexibility to minimize administrative burdens based on the data available to them.

Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Recipients will have the opportunity to calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis is intended to result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis, given that recipients may have experienced offsetting changes in revenues across sources. The final rule also provides for removing the impact of tax increasing or decreasing changes, which affect the amount of revenue collected but are not ''due to'' the pandemic, from the calculation of revenue loss due to the public health emergency. Both of these components of Treasury's approach provide a more accurate representation of the effect of the pandemic on overall revenues.

Revenue Loss Standard Allowance: In addition to largely preserving the formula to calculate revenue loss from the interim final rule, Treasury also added an alternative ''standard allowance'' option for the revenue loss calculation to this final rule. Treasury's decision to elect to allow a fixed amount of loss that can be used to fund ''government services'' allows recipients the flexibility to use minimal administrative capacity on the calculation if desired. The decision also benefits recipients by allowing them to avoid expending administrative

resources to determine how unique variations in revenue interact with the revenue loss formula.

Premium Pay

Per the ARPA statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay. While the final rule provides significant flexibility to implement the statutory requirement that premium pay respond to essential workers, it requires recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold or is awarded to an individual whose annual pay is already above that threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Alternatively, a recipient need not submit written justification to Treasury if the worker receiving premium pay is eligible for overtime under the FLSA. Treasury believes this alternative, which is an addition to the final rule, will give recipients more flexibility and will simplify application of the final rule as employers, public and private, are already legally required to determine whether an employee is eligible for overtime pay under the FLSA. Treasury believes the threshold and overtime eligibility provision in the final rule strike the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The final rule also requires that workers eligible for premium pay have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

Water and Sewer Infrastructure

In the interim final rule, Treasury aligned eligible uses of funds for water and sewer infrastructure to those projects eligible to receive financial assistance through the DWSRF and CWSRF administered by the EPA.

The benefits of this approach included giving recipients an existing list that would provide them clarity as well as flexibility in identifying eligible projects, particularly given the broad range of projects eligible under the CWSRF and DWSRF. The approach also ensured that projects would conform to vetted project types from a widely used program. Treasury received comments from recipients requesting additional project categories to be considered eligible, indicating a potential cost to maintaining alignment with the CWSRF and DWSRF.

For the final rule, Treasury has expanded eligibility to include several additional project types beyond those covered by the CWSRF and DWSRF.

Treasury believes that expanded eligibility will benefit recipients by allowing them additional flexibility to pursue beneficial projects, including project categories that support the provision of drinking water and the removal, management, and treatment of wastewater and stormwater: Additional stormwater management projects, private well infrastructure, additional projects that address lead in water, and certain dam and reservoir rehabilitation projects undertaken to address the provision of drinking water. A potential cost of this approach is that uses beyond the CSWRF and DWSRF may have less public guidance available to understand project eligibilities. However, Treasury anticipates that this eligibility expansion will provide a net benefit to recipients by allowing them to pursue projects relevant to their goals that were ineligible under the interim final rule.

The expansion to allow private well infrastructure may also affect the distributional impact of SLFRF. Private wells disproportionately serve rural Americans, including low-income households, and expanding eligibility to include this use may allow SLFRF funds to benefit such households. While distributional impacts are uncertain, Treasury believes that the potential for benefits to accrue to rural and low-income households makes it important to clarify that these types of projects are eligible.

Broadband Infrastructure

In the final rule, Treasury expands eligible areas for broadband investment by requiring that recipients invest in projects designed to provide service to households and businesses with an identified need for additional broadband investment, including increasing access to high-speed broadband, increasing the affordability of broadband services, and improving the reliability of broadband service.[393] Treasury considered multiple alternatives when selecting this standard. The threshold for the interim final rule allowed benefits to accrue in a more targeted manner to the approximately 9 percent of the country with access to speeds under the 25/3 Mbps threshold.[394] However, since SLFRF funds are distributed to tens of thousands of governments across the country with a variety of broadband needs, Treasury believes that allowing recipients greater flexibility to determine locations to serve in their jurisdictions—including considering affordability and competition barriers—will lead to greater long-term public benefit. Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape.

In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds.[395] While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly—potentially in the near-term—become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

[393] Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

[394] Data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[395] *See* Federal Communications Commission, Broadband Speed Guide, available at *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited October 28, 2021).

such, projects meeting a lower threshold could not be considered ''necessary'' investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.

Further, the final rule adds a requirement that recipients address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, either by requiring service providers that provide service to households to either participate in the FCC's Affordable Connectivity Program (ACP), or a broad-based affordability program with commensurate benefits. Treasury believes that this requirement will increase the number of customers that are able to take advantage of broadband infrastructure funded by SLFRF, increasing the effectiveness of funds in connecting households and businesses to high-speed internet that is critical to work, health, and education. There is a potential that this requirement may marginally increase project costs for recipients and providers, but this impact is uncertain, given the varying business models and pricing structures of broadband projects and providers.

Labor Standards

In this Supplementary Information for the final rule, Treasury encourages recipients to ensure that capital expenditures to respond to the public health and negative economic impacts of the pandemic and water, sewer, and broadband projects use strong labor standards, including, for example, project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury believes that its encouragement of labor standards carries benefits because it will ensure that workers have access to strong employment opportunities associated with infrastructure projects, which will in turn aid the economic recovery. Treasury believes that infrastructure projects may also benefit from stronger labor standards due to the potential of these standards to ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.

Splitting Payments to Recipients

Treasury is required by statute to deliver funds to local governments in two payments separated by at least twelve months, and the interim final rule provided for split payments to a majority of states as well. As discussed above, splitting payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of states with significant remaining elevation in the unemployment rate could face heightened additional near term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of state governments, Treasury has provided funds in one payment. Treasury believes that this approach strikes an appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific states. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

Reaching Underserved Communities

Finally, the final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically underserved and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' which laid out an Administration-wide priority to support ''equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' To this end, the final rule enumerates a list of services that may be provided using SLFRF funds in disproportionately impacted communities, including low-income areas, to address the more severe impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use SLFRF funds to restore state and local workforces, where women and people of color are disproportionately represented; and requires that broadband infrastructure projects participate in programs to support affordability of broadband service. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs

This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires states to allocate SLFRF funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through states. Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that many recipients receive direct or indirect funding from federal government programs and that many have familiarity with how to administer and report on federal funds or grant funding provided by other entities. In particular, states, territories, and large localities will have received funds from the Coronavirus Relief Fund (CRF) and Treasury expects them to rely heavily on established processes developed through that program or other prior grant funding, mitigating burden on these governments. Treasury has enhanced the level of recipient reporting as compared to the CRF, incorporating feedback from the Government Accountability Office and others that additions would improve the oversight of recipients' use of funds. To balance the oversight benefits with the costs of added reporting burdens, Treasury has incorporated other mechanisms to mitigate burden. For example, Treasury is ''tiering'' reporting requirements so that recipients that receive relatively lesser amounts of SLFRF funds are required to submit less frequent reports than recipients receiving greater amounts of funds. Treasury is noting administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury has also provided options for recipients to use eligibility thresholds they are already familiar with during administration of SLFRF funds, which will enable recipients to avoid the costs of setting up new programs and reporting mechanisms to meet reporting and compliance requirements. For example, Treasury has permitted recipients to use ''categorical eligibility'' when delivering assistance to particular groups, such as impacted or disproportionately impacted households.

In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—states, cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Furthermore, Treasury has made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.[396]

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on state, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule and this final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' The APA also provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The interim final rule was issued without prior notice and comment procedures because it implemented statutory conditions on the eligible uses of SLFRF funds, and addressed the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses to help address the economic and public health emergency. See the **SUPPLEMENTARY INFORMATION** section of the May 17, 2021 interim final rule for the applicability of the requirements of 5 U.S.C. 553. In addition, under the exception discussed in that section for matters relating to agency grants, the requirements of 5 U.S.C. 553 also do not apply to this final rule. After careful consideration of the comments received, this final rule adopts the May 17, 2021 interim final rule with the revisions discussed in this **SUPPLEMENTARY INFORMATION.**

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	9,028,000
Total	54,870		54,980		236,735	11,552,619

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA

[396] *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

Rule Text

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. Revise Subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

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

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f).

§ 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of 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 part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a ''city,'' as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract;

households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: Responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID–19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021, provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID–19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID–19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

Max {*[Base Year Revenue* * (1 + *Growth Adjustment)^(*n_t*/12)] − Actual General Revenue;* 0}

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments*—(i) *Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j–19a(b)(2), 300j–19b(b)(1), 300j–24(d)(2), and 300j–25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph

(b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.* Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(2) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments*—(i) *General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(*1*) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(*2*) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(*1*) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(*2*) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in

violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of

January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Jacob Leibenluft,

Chief Recovery Officer.

[FR Doc. 2022–00292 Filed 1–26–22; 8:45 am]

BILLING CODE P