



**CITY COUNCIL AGENDA
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
OCTOBER 19, 2021, 5:30 PM**

Pursuant to the provisions of Assembly Bill 361, signed into law by Governor Newsom on September 16, 2021, and in an effort to protect public health and slow the rate of transmission of COVID-19, the City of Porterville is allowing for and encouraging electronic participation at City Council Meetings. Until further notice, Porterville City Council Meetings will be live streamed on YouTube at <https://www.youtube.com/channel/UC5KuhSrNMNL9nwHJVtnJwA>

Alternatively, this meeting will also be available via Zoom using the following information

Topic: City Council Meeting of October 19, 2021

Please use the following link below to join the webinar:

<https://us06web.zoom.us/j/87258912699?pwd=amZQVUNyWFQ4VkRIdUtCRGhYNmN0dz09>

Or via Telephone: **1-669-900-6833** Webinar ID: **872 5891 2699** Passcode: **941773**

Call to Order

Roll Call

ORAL COMMUNICATIONS

This is the opportunity to address the City Council on any matter scheduled for Closed Session. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

1 - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APNs: 302-100-015, 302-130-028, 302-130-007, and 302-130-008. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and Friant Water Authority. Under Negotiation: Terms and Price.

2 - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN: 302-110-032. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and SV Farms LLC. Under Negotiation: Terms and Price.

3 - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN: 302-130-030 and 302-130-010. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and Mark C. and Virginia

Jaggers. Under Negotiation: Terms and Price.

4 - Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis and Patrice Hildreth. Employee Organizations: Porterville Peace Officers Association, Porterville City Firefighters Association, Fire Officer Series, Management and Confidential Series, Porterville City Employees Association, Public Safety Support Unit, and all unrepresented management employees.

5 - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: Statewide Traffic Safety and Signs, Inc. v. California Professional Engineering, et al., and related cross complaints, Tulare County Superior Court Case No. 284137.

6 - Government Code Section 54956.9(d)(3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Four (4) cases in which facts are not yet known to potential plaintiff.

7 - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: One case.

6:30 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION TAKEN IN CLOSED SESSION

Pledge of Allegiance Led by Mayor Reyes

Invocation

ORAL COMMUNICATIONS

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

AB 1234 REPORTS

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Tulare County Economic Development Corp. (TCEDC) - September 22, 2021
2. Local Initiatives Navigation Center Committee (LINC) and Services Event - October 6, 2021
3. Meeting with State Senator Hurtado - October 7, 2021
4. Eastern Tule Groundwater Sustainability Agency Board Meeting - October 7, 2021

5. Tulare County Water Commission - October 11, 2021
6. COVID Ad Hoc Committee - October 15, 2021
7. Tulare County Association of Governments/ Tulare County Transportation Authority (TCAG/TCTA) - October 18, 2021
8. Tulare County Regional Transit Agency (TCRTA) - October 18, 2021

REPORTS

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

- I. City Commission and Committee Meetings
 1. Parks & Leisure Services Commission - October 7, 2021
 2. Library & Literacy Commission - October 12, 2021
 3. Arts Commission
 4. Animal Control Commission
 5. Youth Commission - October 13, 2021
 6. Transactions and Use Tax Oversight Committee (TUTOC)
- II. Staff Informational Reports
 - Water Conservation Phase III Status Update

CONSENT CALENDAR

All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar. All items removed from the Consent Calendar for further discussion will be heard at the end of Scheduled Matters.

1. **City Council Minutes of June 15, 2021**
Re: Considering approval of the City Council draft Minutes of June 15, 2021.
2. **Authorization to Advertise for Bids - Sewer Annexation Area 475**
Re: Consideration to approve staff's recommended Plans and Project Manual for the Island Annexation Sewer Project - Area 475 which is generally bound by Pioneer Avenue to the north, Henderson Avenue to the south, Indiana Street to the west, and will connect various locations to the east and west of Main Street; authorize staff to advertise for bids; and authorize the City Engineer to negotiate construction surveying services.
3. **Authorization to Purchase Self-Contained Breathing Apparatus (SCBA) Equipment**

Re: Consideration to authorize the purchase of Self-Contained Breathing Apparatus (SCBA) equipment from All-Star Fire Equipment in an amount not to exceed \$77,684.97.

4. Budget Augmentation - Digester Project

Re: Consideration to authorize the augmentation of the projects funds by an additional \$200,000 from the Wastewater Treatment Facility Reserve Funds.

5. Authorization of Agreement Renewal Between the City of Porterville and Porterville Mural Committee for the Marching Through Time Mural

Re: Consideration to authorize the Agreement renewal between the City of Porterville and Porterville Mural Committee.

6. Status and Review of Local Emergency: Drought

Re: Considering approval of the continuance of the Declaration of Local Emergency.

A Council Meeting Recess Will Occur at 8:30 p.m., or as Close to That Time as Possible

PUBLIC HEARINGS

7. Consideration of Development Ordinance Amendment - Downtown Retail South of Olive Avenue

Re: Consideration to approve a Development Ordinance amending Sections 202.01 and 202.02 of the Porterville Development Ordinance regarding the DR-S Zone District.

8. Consideration of Olive Avenue and Lotas Street Commercial Development Conditional Use Permit Modification #2

Re: Considering a modification to CUP 2016-040 concerning the commercial development anchored by Smart & Final Extra on Olive Avenue at Lotas Street.

9. Consideration of Conditional Use Permit for Chevron ExtraMile PRC 2020-027

Re: Consideration to adopt the draft Resolution approving the Conditional Use Permit (PRC 2020-027-C) for Chevron ExtraMile

10. Budget Adjustment/Citizens' Option for Public Safety (COPS) Funding

Re: Consideration to adopt a draft Resolution accepting the Citizens' Option for Public Safety grant funds and approving a budget adjustment increasing the Police Department's Patrol Division budget by \$100,000 to support said costs.

SCHEDULED MATTERS

11. Consideration of Appointments to the Parks & Leisure Services Commission

Re: Considering the appointment of individuals to the Parks & Leisure Services Commission.

12. Consideration of Appointments to the Library & Literacy Commission

Re: Considering appointment of individuals to the Library and Literacy Commission.

13. **Consideration of Appointment to the Arts Commission**
Re: Considering the appointment of Maria Menga to the Arts Commission to a term to expire in July 2023.
14. **Request for Street Closure**
Re: Consideration of request from the Porterville Military Academy to close Porter Road on Wednesday, October 27, 2021, from 5:00 PM to 9:00 PM in support of a planned school event.
15. **Proposition 68 Per Capita Grant Program (Sports Complex and Veterans Park)**
Re: Consideration to provide direction on a project for the Proposition 68 Per Capita Grant Program.
16. **American Rescue Plan Act (ARPA) Funding Proposal Request**
Re: Consideration of the request for federal ARPA funds from Self-Help Enterprises and UPHoldings.
17. **Internal City Audit Committee - Porterville Chamber of Commerce Agreement Review**
Re: Consideration of recommendations of the Internal City Audit Committee for modifications to the City's Agreement with the Porterville Chamber of Commerce.
18. **Consideration of Proposals for 2020 Census Redistricting Services for Council Member Districts**
Re: Consideration of proposals for redistricting services.
19. **New Porterville Rescue Mission Update**
Re: Consideration of the report and to provide direction as deemed appropriate.
20. **Resolution of Support for Water Infrastructure Funding Act of 2022**
Re: Consideration of a draft Resolution in support of the Water Infrastructure Funding Act of 2022.
21. **City Billboard Regulations**
Re: Reviewing City signage regulations pertaining to billboards within the City of Porterville.
22. **Status and Review of Proclamation of Local Emergency: COVID-19**
Re: Considering approval of the continuation of the Proclamation of Local Emergency due to COVID-19.

ORAL COMMUNICATIONS

OTHER MATTERS

CLOSED SESSION

Any Closed Session Items not completed prior to 6:30 p.m. will be considered at this time.

ADJOURNMENT - to the meeting of November 2, 2021

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at www.ci.porterville.ca.us.



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Water Conservation Phase III Status Update

SOURCE: Public Works

COMMENT: The City has continued to implement an active water conservation approach, both conserving and providing flexibility to the community. The City transitioned from Phase IV to Phase III of the City's Water Conservation Plan as of June 1, 2021. The Water Conservation Plan applies to all municipal water users within or outside city limits. The Phase III plan limits outdoor watering to two days per week, with "odd" addresses allowed watering on Tuesday and Saturday and "even" addresses allowed watering on Wednesday and Sunday. Outdoor watering is prohibited between the hours of 5 a.m. to 10 a.m. and 5 p.m. to 10 p.m., with no watering allowed Monday, Thursday or Friday. Watering of outdoor landscaping is prohibited during and within forty-eight (48) hours after measurable rainfall which is now defined as greater than 0.01 of an inch.

Violations of prohibited activities are considered infractions and are punishable by fines of up to \$500 for each day in which the violation occurs. Any peace officer or employee of a public agency charged with enforcing laws and authorized to do so by ordinance may issue a citation to the violator. The City will be responding to enforcement by issuing a Notice of Violation for all witnessed occurrences and staff will be processing all reported issues. Enforcement statistics for the month of September 2021 show that a total of twenty-eight (28) Notices of Violations were issued for water wasting, and thirty (30) Administrative Citations were issued.

Water production for September 2021 shows a six percent (6%) increase from the 5-year average. The monthly production for September 2021 was 425 million gallons which is a 18.43% decrease in comparison to the monthly production for September 2013 of 521 million gallons. Residential consumption for September 2021 was 163.87 gallons per capita per day (GPCD).

Compliance with individual water supplier conservation requirements is based on cumulative savings. Cumulative tracking means that conservation savings will be added together from one month to the next and compared to the amount of water used during the same months in 2013. City Staff will be evaluating conservation totals in two formats: 1) Calculate the cumulative conservation totals for production as compared to production in 2013; and 2) Calculate cumulative conservation totals in relation to GPCD, in efforts to evaluate population growth impacts on production as compared to 2013. The cumulative total of production for the City of Porterville's conservation efforts will reflect June 2015 through September 2021. Porterville's cumulative total production conservation through September 2021 is 19.93%. The cumulative total of GPCD

for the City of Porterville's conservation efforts will reflect June 2015 through September 2021. Porterville's cumulative total GPCD conservation through September 2021 is 24.5%.

Under the February 2, 2016, emergency regulation, the City of Porterville received a revised conservation standard of 28% with an additional 2% reduction for climate adjustment, making the City's conservation standard 26%. After reviewing the Water Board's Self-Certification criteria for drought impacts to water supplies, the City of Porterville Council approved maintaining a self-imposed standard of 26%. The continuation of the current conservation goals keep a standardized message that the City has worked to develop in public outreach, provides resiliency and capacity to ensure three years of supply under drought conditions, meets the minimum 20% conservation standard defined in the City's Urban Water Management Plan, and assists the City toward meeting the requirements of the Sustainable Groundwater Management Act (SGMA).

The State Water Board continues to require monthly reporting to track what agencies are doing and how they perform throughout the year. Proposed permanent regulations will require agency reporting to continue monitoring the performance of urban water conservation with a preparedness to implement conservation standards as necessary. California Governor Gavin Newsom signed into effect Executive Order N-10-21 on July 8, 2021, urging all Californians to voluntarily reduce their water use by fifteen percent (15%) compared to their 2020 levels due to extended excessive drought conditions. Water production for the City system, shows an three percent (3%) increase from September 2020 to September 2021.

RECOMMENDATION: Information Only

ATTACHMENTS:

1. Monthly Production Status September 2021
2. Monthly Production Status GPCD September 2021
3. Drought Response Phase III Flyer

Appropriated/Funded:

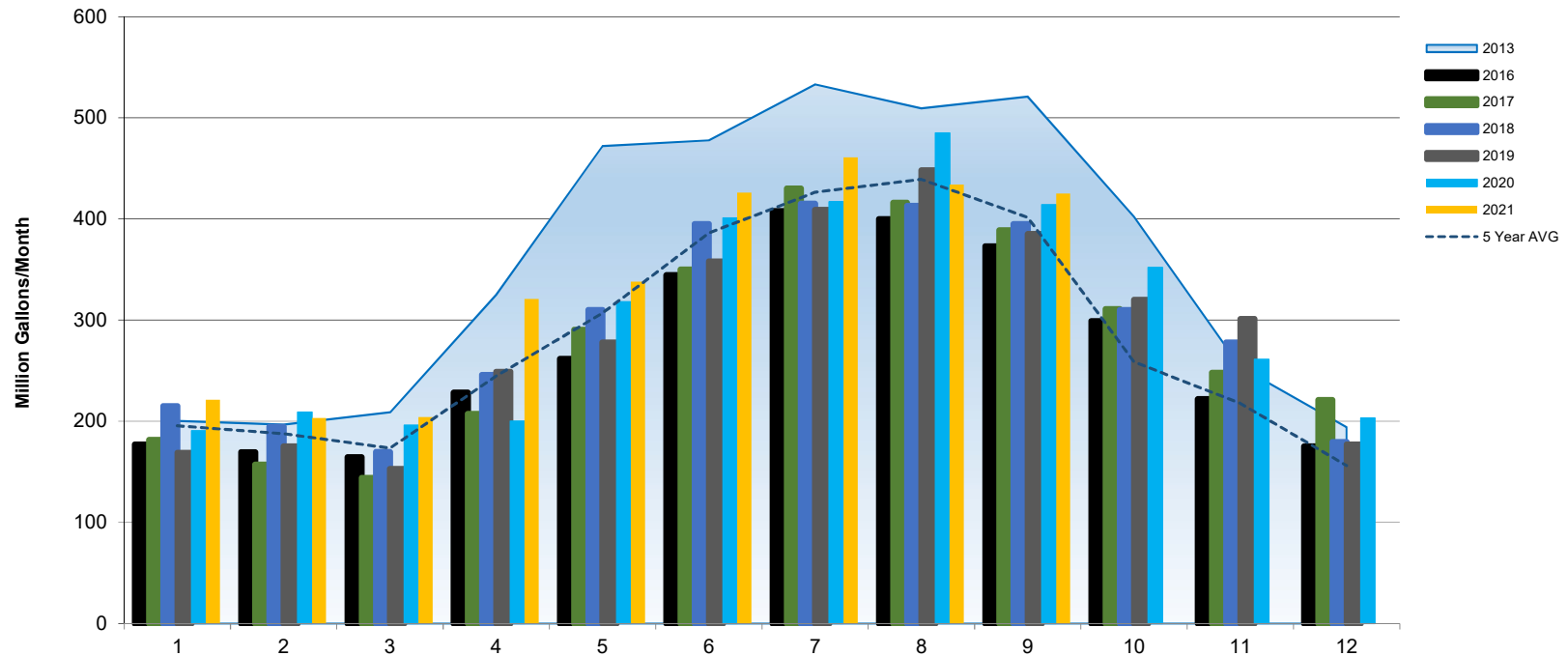
Review By:

Department Director:

Michael Knight, Public Works Director

Final Approver: John Lollis, City Manager

**Monthly Production Status & Cumulative Total June 2015 Through
September 2021 Production Comparison to 2013 & 5 Year Average**

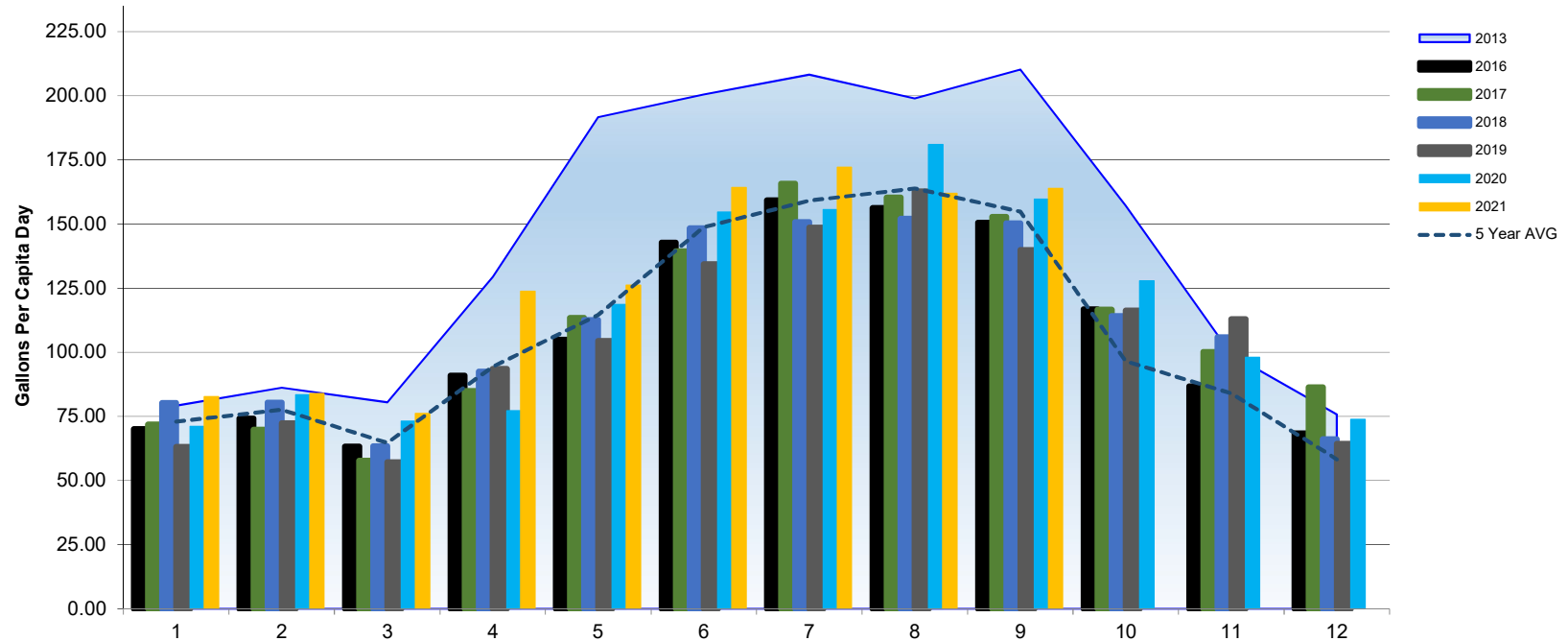


Production Cumulative Total 19.9%

	2016	2017	2018	2019	2020	2021
1	-12%	-9%	1%	-16%	-5%	11%
2	-14%	-20%	-7%	-11%	6%	3%
3	-21%	-31%	-13%	-27%	-6%	-2%
4	-30%	-36%	-29%	-23%	-38%	-1%
5	-45%	-38%	-39%	-41%	-33%	-28%
6	-28%	-27%	-26%	-25%	-16%	-11%
7	-24%	-19%	-25%	-23%	-22%	-14%
8	-21%	-18%	-24%	-12%	-5%	-15%
9	-28%	-25%	-29%	-26%	-21%	-18%
10	-26%	-23%	-27%	-20%	-13%	
11	-13%	-2%	7%	19%	3%	
12	-10%	14%	-13%	-9%	5%	

Percent Comparison to 2013 Production

**Monthly Production Status & Cumulative Total June 2015 Through
September 2021 Gallon Per Capita Day Comparison to 2013 & 5 Year Average**



GPCD

Cumulative Total 24.5%

	2016	-12%	-14%	-21%	-30%	-45%	-29%	-24%	-21%	-28%	-26%	-13%	-10%
	2017	-9%	-19%	-28%	-34%	-41%	-30%	-20%	-19%	-27%	-26%	1%	14%
	2018	1%	-7%	-21%	-29%	-41%	-26%	-28%	-24%	-29%	-27%	7%	-13%
	2019	-20%	-16%	-29%	-28%	-46%	-33%	-29%	-18%	-33%	-26%	14%	-15%
	2020	-10%	-3%	-9%	-40%	-38%	-23%	-25%	-9%	-24%	-19%	-1%	-3%
	2021	4%	-3%	-5%	-4.4%	-34%	-18%	-17%	-19%	-22%			

Percent Comparison to 2013 Production



DROUGHT RESPONSE Phase III

Mandatory Odd/Even Watering Schedule, based on address. Residents will be allowed TWO days a week to water lawns and landscapes. No watering allowed on Mondays, Thursdays, and Fridays.

Watering is prohibited between the hours of 5:00 AM to 10:00 AM and 5:00 PM to 10:00 PM.

No watering outdoor landscapes during and within 48 hours after measurable rainfall.

Excessive water runoff is prohibited.

The washing of sidewalks and driveways is prohibited.

Vehicles shall only be washed on designated watering days and with a hose equipped with a shut-off nozzle.

The operation of ornamental water features is prohibited unless the fountain uses a recycling system.

Non-compliance with Phase III water conservation regulations could result in citations with fines up to \$500.

DROUGHT RESPONSE PHASE III

The City of Porterville has adopted Phase III of its Drought Response Plan. As part of the Phase III plan, the City has restricted watering days to two days per week, based on address.

Mandatory Odd/Even Watering Schedule

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
DO NOT WATER	OK TO WATER	OK TO WATER	DO NOT WATER	DO NOT WATER	OK TO WATER	OK TO WATER
---	ODD	EVEN	---	---	ODD	EVEN

Odd Address

Even Address

ODD NUMBER ADDRESSES

If your address ends with an “odd” number, 1, 3, 5, 7, or 9, your watering days are Tuesday and Saturday *only*.

OR

EVEN NUMBER ADDRESSES

If your address ends with an “even” number, 0, 2, 4, 6, or 8, your watering days are Wednesday and Sunday *only*.

Violation Level	Citation Amount
First Violation	Warning Only
Second Violation	\$100 Fine
Third Violation	\$200 Fine
Fourth Violation	\$500 Fine

Mandatory Odd/Even Watering Schedule

Excessive water runoff prohibited

The washing of sidewalks and driveways is prohibited

Vehicles shall only be washed on designated watering days and with hoses equipped with a shut-off nozzle

Ornamental water features are prohibited unless the fountain uses a recycling system

WATERING PROHIBITED BETWEEN THE HOURS OF 5:00 – 10:00 AM 5:00 – 10:00 PM

NO WATERING ON MONDAYS, THURSDAYS, AND FRIDAYS.



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: City Council Minutes of June 15, 2021

SOURCE: Administrative Services

COMMENT: Staff has prepared the draft Minutes of June 15, 2021, for the City Council's consideration.

RECOMMENDATION: That the City Council approve the draft Minutes of June 15, 2021.

ATTACHMENTS: 1. 2021_06_15 Draft Minutes

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Deputy City Manager

Final Approver: Patrice Hildreth, Deputy City Manager

**CITY COUNCIL MINUTES
CITY HALL, 291 N. MAIN STREET
PORTERVILLE, CALIFORNIA
JUNE 15, 2021, 5:30 PM**

Call to Order 5: 30 p.m.

Roll Call: Council Member Kellie Carrillo, Council Member Milt Stowe,
Vice Mayor Martha A. Flores, Mayor Adrian Monte Reyes

ORAL COMMUNICATIONS

None

City Attorney Julia Lew reported that Mayor Reyes had a conflict on Item 1 of Closed Session and will not participate.

CITY COUNCIL CLOSED SESSION:

A. Closed Session Pursuant to:

- 1** - Government Code Section 54956.8 – Conference With Real Property Negotiators/Property: 311 N. Second Street, Porterville, CA. Agency Negotiator: John Lollis and Jason Ridenour. Negotiating Parties: City of Porterville and Thomas and Kerry De La Rosa, 2001 Living Trust. Under Negotiation: Terms and Price.
- 2** - Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis and Patrice Hildreth. Employee Organizations: Porterville Peace Officers Association, Porterville City Firefighters Association, Fire Officer Series, and All Unrepresented Management Employees.
- 3** - Government Code Section 54956.95 – Liability Claim: Claimants: Adam Shields; Jesse Ray Shields, A Minor; Violet Shields, A Minor; and Rose Shields, A Minor. Agency Claimed Against: City of Porterville.
- 4** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: Raya v. City of Porterville, Tulare County Superior Court Case No. 283063.
- 5** - Government Code Section 54956.9(d) (3) – Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation: One (1) Case Concerning Notice Of Violation No. 5026493 From The San Joaquin Valley Unified Air Pollution Control District Issued June 7, 2021; and Three (3) cases in which facts are not yet known to potential plaintiff.
- 6** - Government Code Section 54956.9(D)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of litigation: One Case.

**6:47 P.M. RECONVENE OPEN SESSION AND REPORT ON REPORTABLE ACTION
TAKEN IN CLOSED SESSION**

City Attorney Lew reported that no reportable action had taken place during Closed Session.

Pledge of Allegiance Led by Council Member Stowe

Invocation -- a member of the public came forward.

ORAL COMMUNICATIONS

- Gary Santos, Tule River Tribe, invited the Council to the groundbreaking for the USDA and Tule River Fire Department Wild Land building that is being constructed.
- Rick Grandinetti, Tule River Tribe Consultant, stated he is delighted that the pledge of allegiance and an invocation is given at a Council meeting.

Email Communications

- Pat Beck, Porterville, stated that the Friends of the Porterville Library is awaiting for the Stout House improvements to be completed and wanted an update from the Council.
- Betsy Slattery, Porterville, suggested that the rebuilt library should be named the Figueroa-Jones Memorial Library; and also stated that the children's section of the library should be named after her mother to continue her legacy.

AB 1234 REPORTS

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Eastern Tule Groundwater Sustainability Agency - June 3, 2021
Public Works Director Michael Knight reported on the approval minutes, a presentation from Community Water Center on Well Mitigation Programs, and approval to the contribution to Water Blueprint for the San Joaquin Valley Education Fund for 2021. Mr. Knight also spoke of discussion items that took place regarding the ETGSA Land Subsidence Management Zone Plan Draft, GSA-to-GSA Transfers, and sub-basin and split legal parcel.
2. City Internal Audit Committee - June 7, 2021
Vice Mayor Flores reported on those in attendance, provided a review of the charge of the committee, a review of the City's Auditors Contract, a review of the 2015 Certificates of Participation Refinancing, spoke of the Agreement between the City and the Chamber of Commerce, and the development of a committee work program and scheduling of future meetings.
3. Library Facility Planning Committee - June 10, 2021
Council Member Carrillo stated that Committee Member Vikki Cervantes reported on the progress on the community survey and focus groups regarding the future library; provided an update on current and upcoming library services available to the public; and spoke of a virtual tour of the Mitchell Park Library.
4. Tulare County Water Commission Meeting - June 14, 2021 – no report was provided.

REPORTS

This is the time for all committee/commission/board reports; subcommittee reports; and staff informational items.

- I. City Commission and Committee Meetings

1. Parks & Leisure Services Commission - June 3, 2021 – no report was given.
2. Library & Literacy Commission – no report was given.
3. Arts Commission - May 25, 2021 – no report was given.
4. Animal Control Commission – no report was given.
5. Youth Commission – no report was given.
6. Transactions And Use Tax Oversight Committee (TUTOC) - May 26, 2021 - Deputy City Manager Patrice Hildreth stated the committee met had no concerns regarding the city's budget.

II. Staff Informational Reports

Water Conservation Phase I\IV Status Update

CONSENT CALENDAR

COUNCIL ACTION: MOVED by Vice Mayor Martha A. Flores, SECONDED by Council Member Milt Stowe that the City Council approve Items Nos 1-14; and the correction of a typographical error on Item No. 9 from Addendum No. 2 to Addendum No. 1. The motion carried unanimously.

1. PURCHASE OF COMMUNICATIONS EQUIPMENT FOR BATTALION CHIEF COMMAND VEHICLES

Recommendation: That the City Council authorize the purchase of a secondary radio system for three command vehicles at a cost not to exceed \$17,336.82 from Cooks Communications.

Documentation: M.O. 01-061521

Disposition: Approved.

2. AUTHORIZATION TO REPAIR REFUSE TRUCK

Recommendation: That the City Council:

1. Authorize the refuse truck repair by E.M. Tharp, Inc. at a cost not to exceed \$8,731.65 (inclusive of all parts, taxes, labor, including a 10% contingency); and
2. Authorize payment of said repair upon satisfactory completion.

Documentation: M.O. 02-061521

Disposition: Approved.

3. AUTHORIZATION TO ADVERTISE FOR BIDS - PUBLIC SAFETY BUILDING STORAGE

Recommendation: That City Council:

1. Approve staff's recommended Plans and Project Manual;
2. Authorize a consultant services contract with Wilson Fire Protection for \$5,269; and

3. Authorize staff to advertise for bids on this project.

Documentation: M.O. 03-061521

Disposition: Approved.

4. ACCEPTANCE OF THREE COMPRESSED NATURAL GAS (CNG)
REFUSE TRUCKS

Recommendation: That City Council:

1. Accept the project as complete; and
2. Authorize the filing of the Notice of Completion by the City Clerks Office.

Documentation: M.O. 04-061521

Disposition: Approved.

5. RECLAMATION AREA LEASE AGREEMENT - REDUCTION OF
ACREAGE

Recommendation: That the City Council:

1. Approve Amendment No. 3 to the Agreement between the City of Porterville and Rick Perigo Roadsiding, which includes the new acreage total of 619.4 acres and new annual rental payment of \$102,201 through the expiration of the Reclamation Lease Agreement on October 31, 2024.

Documentation: M.O. 05-061521

Disposition: Approved.

6. AUTHORIZATION OF AGREEMENT RENEWAL BETWEEN THE
CITY OF PORTERVILLE AND PORTERVILLE UNIFIED SCHOOL
DISTRICT FOR THE YOUTH EXPERIENCING SUCCESS (YES)
PROGRAM

Recommendation: That the City Council authorize the Agreement renewal between the City of Porterville and Porterville Unified School District for the Youth Experiencing Success Program for an additional three years.

Documentation: M.O. 06-061521

Disposition: Approved.

7. COOPERATIVE AGREEMENT WITH CALIFORNIA HIGHWAY
PATROL FOR USE OF THE POLICE FIRING RANGE

Recommendation: That the City Council:

1. Approve the Agreement for the period of July 1, 2021 through June 30, 2024; and
2. Authorize the Chief of Police to execute the agreement on behalf of the City of Porterville.

Documentation: M.O. 07-061521

Disposition: Approved.

8. AUTHORIZATION OF SERVICE AGREEMENT WITH VIA MOBILITY AND CALSTART FOR FEDERAL TRANSIT ADMINISTRATION HELPING OBTAIN PROSPERITY FOR EVERYONE PROGRAM (HOPE) PLANNING GRANT

Recommendation: That the City Council:

1. Approve Service Agreement with Via Mobility, LLC for mobility-as-a-service planning at a total cost of \$137,500;
2. Approve a Service Agreement with CalStart for project management, reporting, and microgrid analysis and planning at a total cost of \$269,500; and
3. Authorize City Manager and City Attorney to execute said Agreements.

Documentation: M.O. 08-061521

Disposition: Approved.

9. ADDENDUM NO. 2 TO 4CREEKS VILLA STREET RECONSTRUCTION SERVICE AGREEMENT

Recommendation: That the City Council:

1. Authorize the Mayor to execute Addendum No. 1 to 4Creeks' Service Agreement at an agreed upon fee of \$59,750 for the services described herein; and
2. Authorize progress payments up to 100% of the fee amount and authorize a ten percent (10%) contingency to cover unforeseen costs.

Documentation: M.O. 09-061521

Disposition: Approved and amended by the Council to change the title of the item to "Addendum No. 1".

10. FIRSTNET SERVICE CONTRACT FOR FIRE DEPARTMENT

Recommendation: That the City Council authorize the Fire Department's involvement in FirstNet, including the one-time purchase of devices in the amount of \$9,639.87 and a monthly service fee of \$520, for emergency communications.

Documentation: M.O. 10-061521

Disposition: Approved.

11. APPROVE MEMORANDUM OF UNDERSTANDING WITH THE TULARE COUNTY REGIONAL TRANSIT AGENCY FOR ADMINISTRATIVE SERVICES

Recommendation: That the City Council:

1. Approve the draft Memorandum of Understanding (MOU) with the Tulare County Regional Transit Agency for Administrative Services; and
2. Authorize the City Manager and City Attorney to execute said MOU.

Documentation: M.O. 11-061521

Disposition: Approved.

12. PARKS AND LEISURE SERVICES COMMISSION MEETINGS

Recommendation: That the City Council approve the Parks and Leisure Services Commission's request to not meet during the months of July and August 2021, with the Commission being available to meet if necessary.

Documentation: M.O. 12-061521

Disposition: Approved.

13. APPROVAL OF RESOLUTION AUTHORIZING THE FILING OF REGIONAL SURFACE TRANSPORTATION PROGRAM EXCHANGE PROGRAM FUND CLAIM FOR THE YEAR 2020-2021

Recommendation: That the City Council authorize and direct the Finance Director to sign and submit the FY 2020-2021 Regional Surface Transportation Program Exchange Program fund claim to the Tulare County Association of Governments on behalf of the City in the amount of \$676,015.

Documentation: Resolution No. 21-2021

Disposition: Approved.

14. STATUS AND REVIEW OF LOCAL EMERGENCY: DROUGHT

Recommendation: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

Documentation: M.O. 13-061521

Disposition: Approved.

PUBLIC HEARINGS

15. ADOPTION OF FISCAL YEAR 2021-2022 BUDGET

Recommendation: That the City Council conduct the Public Hearing and consider for adoption the proposed 2021-2022 Fiscal Year Budget, including any modifications and for the time period as designated by Council.

Deputy City Manager Patrice Hildreth introduced the item and presented the staff report.

The Public Hearing opened at 7:18 p.m. and closed at 7:18 p.m. when no one came forward.

COUNCIL ACTION: MOVED by Council Member Milt Stowe, SECONDED by Council Member Kellie Carrillo that the City Council approve the General Fund Budget; and the Budgets for the Special revenue, Enterprise, Internal Service, and Capital Project Funds. The motion carried unanimously.

Documentation: Resolution No. 22-2021, Resolution No. 23-2021

Disposition: Approved.

16. CONSIDERATION OF CONDUIT FINANCING FOR THE FINCA
SERENA AFFORDABLE HOUSING PROJECT

Recommendation: That the City Council:

1. Conduct the Public Hearing under the requirements of TEFRA and the Internal Revenue Code of 1986, as amended (the “Code”).
2. Adopt the draft Resolution approving the issuance of the Bonds by the CMFA for the benefit of UP Holdings California, LLC, an Illinois limited liability company (the “Sponsor”), on behalf of an entity to be created by the Sponsor or an affiliate of the Sponsor (the “Borrower”), to provide for the financing of the Project, such adoption is solely for the purposes of satisfying the requirements of TEFRA, the Code and the California Government Code Section 6500 (and following).

Deputy City Manager Patrice Hildreth introduced the item and presented the staff report.

COUNCIL ACTION: MOVED by Vice Mayor Martha A. Flores, SECONDED by Council Member Milt Stowe that the City Council approve the draft Resolution approving the issuance of the Bonds by the California Municipal Finance Authority (CMFA) for the benefit of Up Holding California, LLC. The motion carried unanimously.

Documentation: Resolution No. 24-2021

Disposition: Approved.

SCHEDULED MATTERS

17. CONSIDERATION OF COMMUNITY DEVELOPMENT BLOCK
GRANT – CV NON-PROFIT GRANT APPLICATION FOR CENTRAL
CALIFORNIA FAMILY CRISIS CENTER INC.

Recommendation: That the City Council:
1. Consider the CDBG-CV grant request in the amount of \$175,000 for Central California Family Crisis Center under the terms and conditions identified in items 1 through 3 above; and
2. Authorize the Mayor and City Manager to sign all documents and agreements necessary to complete the project.

Deputy City Manager Patrice Hildreth introduced the item and Interim Economic and Housing Development Manager Claudia Calderon presented the staff report.

COUNCIL ACTION: MOVED by Vice Mayor Martha A. Flores, SECONDED by Council Member Milt Stowe that the City Council approve the CDBG-CV grant request in the amount of \$175,000 for the Central California Crisis Center. The motion carried unanimously.

Documentation: M.O. 14-061521

Disposition: Approved.

18. RECEIPT OF LETTER OF RESIGNATION FROM COUNCIL MEMBER PEÑALOZA AND CONSIDERATION OF OPTIONS TO FILL VACANCY FOR DISTRICT I

Recommendation: That the City Council provide direction on the process to fill the Council seat to be vacated by Council Member Daniel Peñaloza, for a term to expire in November 2022.

Deputy City Manager Patrice Hildreth introduced the item and presented the staff report.

Council gave direction for staff to solicit for Request for Appointments with the deadline for submittal to be on June 24, 2021 at 5:00 p.m. and to schedule a Special City Council Meeting for June 29, 2021 to review submitted applications with the possibility of appointing an applicant to the vacant council member seat.

Documentation: None

Disposition: Direction provided

19. STATUS AND REVIEW OF PROCLAMATION OF LOCAL EMERGENCY: COVID-19

Recommendation: That the City Council:
1. Receive the report of status and review of the Proclamation of Local Emergency;
2. Determine the need exists to continue said Declaration; and
3. Take action and/or provide direction as deemed necessary.

Deputy City Manager Patrice Hildreth introduced the item and presented the staff report.

COUNCIL ACTION: MOVED by Council Member Milt Stowe, SECONDED by Vice Mayor Martha A. Flores that the City Council give direction for staff to reach out to local businesses who are currently operating with outside dining

permits to determine if they would like to continue said program which would end January 2, 2022; direct staff to inquire if the Porterville College Foundation will host their weekly Saturday Swap Meet at the fairgrounds; and to approve the continuance of the Proclamation of Local Emergency.

Documentation: M.O. 15-061521

Disposition: Approved.

Council recessed at 8:00 p.m. for ten minutes.

Council adjourned to a Joint Meeting of the City Council, Porterville Public Improvement Corporation, and Public Financing Authority.

JOINT MEETING OF THE
PORTERVILLE CITY COUNCIL, PORTERVILLE PUBLIC IMPROVEMENT
CORPORATION
AND PORTERVILLE PUBLIC FINANCING AUTHORITY
291 N. MAIN STREET, PORTERVILLE, CA 93257
TUESDAY, JUNE 15, 2021

Roll Call: Council Member/Director Carrillo; Council Member/Director Stowe, Vice Mayor/Vice President Flores; and Mayor/President Reyes

WRITTEN COMMUNICATION

None

ORAL COMMUNICATIONS

None

JOINT SCHEDULED MATTERS

20. REFINANCING OF THE 2015 CERTIFICATES OF PARTICIPATION
- Recommendation: That the City Council, also meeting as the Board of Directors for the Porterville Public Improvement Corporation and Porterville Public Financing Authority, consider and approve the refinancing of the 2015 Certificates of Participation, and authorize the Mayor (Chair) and City Manager (Executive Director) to sign all draft resolutions, agreements, and documents as may be required.

Deputy City Manager Patrice Hildreth introduced the item and presented the staff report.

COUNCIL ACTION: MOVED by Council Member Milt Stowe, SECONDED by Vice Mayor Martha A. Flores that the City Council, also meeting as the Board of Directors for the Porterville Public Improvement Corporation and the Porterville Financing Authority, approve the Refinancing of the 2015 Certificates of Participation. The motion carried unanimously.

Documentation: Resolution No. 25-2021, PIC Resolution No. 2021-01, and PFA
Resolution No. 2021-01

Disposition: Approved.

Council adjourned to a meeting of the Porterville City Council at 8:15 p.m.

ORAL COMMUNICATIONS

- Rich Tree, Porterville, wanted to thank the Council for approving the MOU between the Tulare County Regional Transit Agency and the City of Porterville and looks forward to working with the City and staff once again.

OTHER MATTERS

- Council Member Carrillo wanted to thank the Tule River Council Member Gary Santos for attending the meeting on behalf of the tribe and shared the recent passing of Tribal Elder Nicola Larsen and thanked the Council and city staff for their condolences and prayers that were expressed.
- Council Member Stowe wanted to give his condolences to the City Manager and his family on their recent loss, thanked Tribal Council Member Gary Santos for attending, and congratulated Rich Tree on his new endeavor.
- Vice Mayor Flores expressed her condolences for Tribal Elder Nicola Larsen; stated that she would like to bring an item for discussion at a future meeting regarding the City's sign ordinance; and stated that Jovita Casteneda invited a bilingual member of Council to attend the La Casa de Jovita Reception Event and she stated that she would be attending the event in the capacity of a Council Member.
- Mayor Reyes spoke of the recently losses and expressed to Council Member Carrillo how grateful and welcomed the prayer received by Tribal Elder Nicola Larsen, on the night she was seated as a newly elected Council Member. Mayor Reyes also mentioned his attendance of the Flag Day Celebration and requested that an item be placed on a future agenda regarding code enforcement of recreational vehicles and boats in residential areas.
- Deputy City Manager Patrice Hildreth congratulated Rich Tree and thanked him for his service to our community and wish him all the best in his new position. Ms. Hildreth also stated that the city would be activating its cooling centers as the temperatures continued to rise.

CLOSED SESSION

None.

ADJOURNMENT

Adjourned at 8:31 p.m. to the Special City Council Meeting of July 6, 2021

Fernando Gabriel-Moraga, Deputy City Clerk

SEAL

Adrian Monte Reyes, Mayor



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Authorization to Advertise for Bids - Sewer Annexation Area 475

SOURCE: Engineering and Project Management

COMMENT: City staff has completed the construction plans and specifications (i.e. Project Manual) for the Island Annexation Sewer Project - Area 475. Annexation Area 475 is generally bound by Pioneer Avenue to the north, Henderson Avenue to the south, Indiana Street to the west, and will connect various locations to the east and west of Main Street.

The proposed project includes 7,550 lineal feet (1.43 miles) of 8" and 6" diameter sewer mains, twenty-six (26) sewer manholes and 102 sewer laterals. Construction sequencing will be essential throughout the project and specified as such, so as to maintain access and minimize the inconvenience within the neighborhoods affected by this project.

On April 28, 2021, staff conducted a “community information meeting” with the residents of Area 475. Staff discussed the possibility of forming a sewer utility district and various sewer connection options as completed for the prior project areas.

The Plans and Project Manual are available for City Council’s review. The Engineer’s estimate of probable cost for construction is \$2,167,022.00. An additional \$216,702.20 is necessary for construction contingency (10%). It is anticipated that an additional \$173,361.76 is required for construction staking, construction management, quality control and inspection services (8%) for a total estimated project cost of \$2,557,085.96.

Refinancing of the Sewer Revenue Bonds, better known to staff as Certificate of Participation (COP) funds, is the mechanism for funding this project and subsequent project areas. The stated funding source was approved in the 2021-2022 Fiscal Year budget.

RECOMMENDATION: That City Council:

1. Approve staff’s recommended Plans and Project Manual;
2. Authorize staff to advertise for bids on the project;
3. Authorize the City Engineer to negotiate construction

surveying services with one of the firms as approved by Council
MO #02-100714.

ATTACHMENTS: 1. Locator Map
 2. Engineers Estimate - Sewer Annexation Project - 475

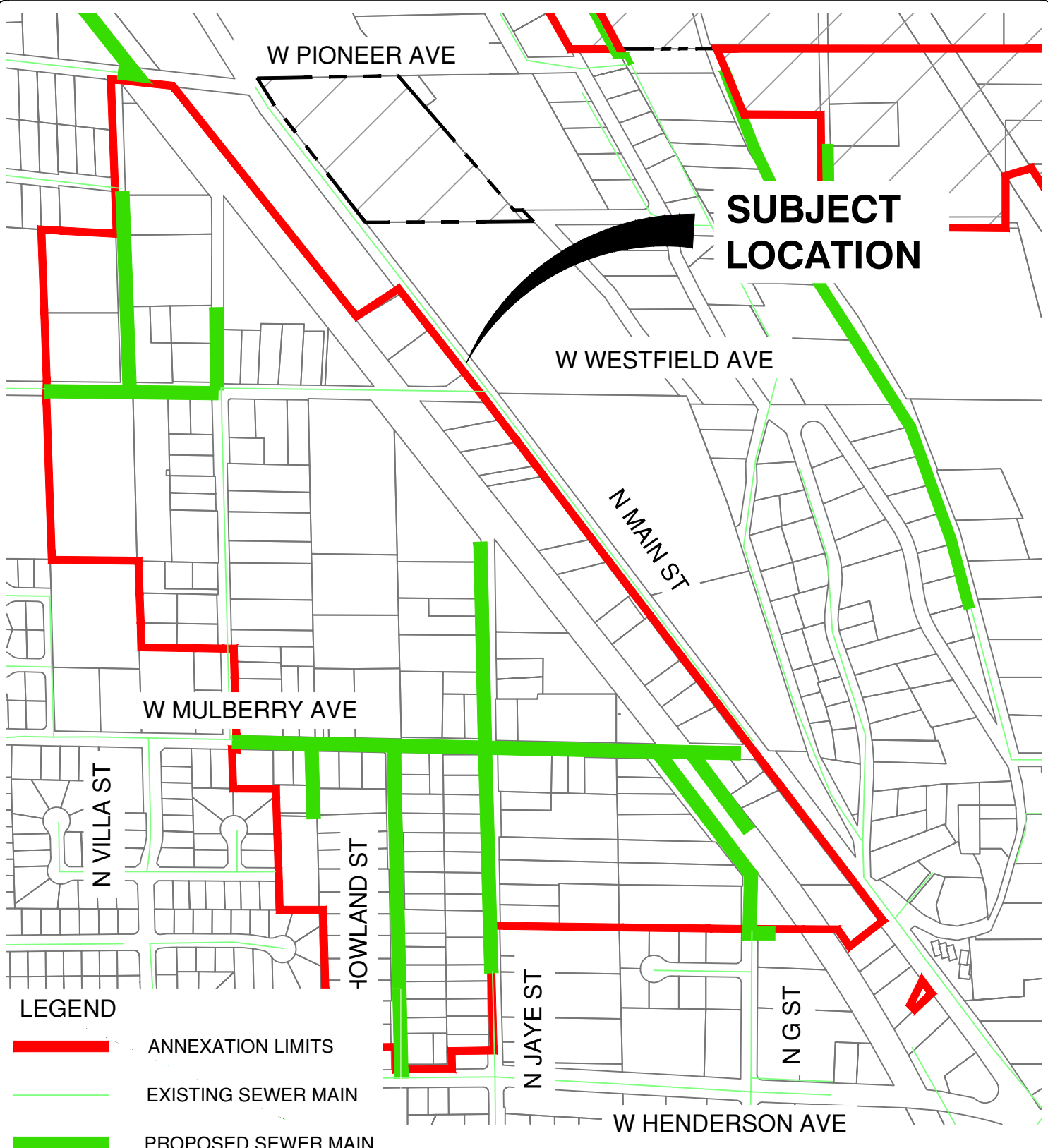
Appropriated/Funded:

Review By:

Department Director:

Javier Sanchez, Engineering & Project Management Director

Final Approver: John Lollis, City Manager



LEGEND

- ANNEXATION LIMITS
- EXISTING SEWER MAIN
- PROPOSED SEWER MAIN



CITY OF PORTERVILLE
ENGINEERING DIVISION
291 NORTH MAIN STREET
PORTERVILLE, CA 93257
(559) 782-7462

SEWER ANNEXATION
NUMBER 475D

DRAWN BY	CAL
CHECKED BY	
SCALE	1" = 500'-0"
DATE	10/2/2019

SHEET
1
OF
1

ENGINEER'S OPINION OF PROBABLE IMPROVEMENT COSTS

10/14/2021

Project: Sewer Annexation Project - 475
 Project Number: 89-96104

BASE BID PART : SEWER ANNEXATION 475	ITEM NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE (in figures)	AMOUNT (in figures)
	1	Mobilization, Demobilization, and Cleanup	1	LS	\$ 100,000.00	\$ 100,000.00
	2	Furnish Utility Locating	1	LS	\$ 60,000.00	\$ 60,000.00
	3	Prepare and Implement a Traffic Control Plan	1	LS	\$ 40,000.00	\$ 40,000.00
	4	Furnish and Install 8" SDR 35 PVC Sewer Pipe	6954	LF	\$ 100.00	\$ 695,400.00
	5	Furnish and Install 6" SDR 35 PVC Sewer Pipe	593	LF	\$ 90.00	\$ 53,370.00
	6	Furnish and Install 48" Manhole	24	EA	\$ 7,000.00	\$ 168,000.00
	7	Make Connection to Existing Manhole	3	EA	\$ 3,000.00	\$ 9,000.00
	8	Make Connection to Existing 8" Stub	1	EA	\$ 2,000.00	\$ 2,000.00
	9	Remove existing cleanout. Furnish and install 48" Manhole and connect to Existing Sewer Main	2	EA	\$ 5,000.00	\$ 10,000.00
	10	Furnish and install Villa Street 4" Sewer Lateral on New Sewer Main	5	EA	\$ 2,500.00	\$ 12,500.00
	11	Furnish and install Westfield Avenue 4" Sewer Lateral on New Sewer Main	6	EA	\$ 2,500.00	\$ 15,000.00
	12	Furnish and install Howland Street 4" Sewer Lateral on New Sewer Main	2	EA	\$ 2,500.00	\$ 5,000.00
	13	Furnish and install Mulberry Avenue 4" Sewer Lateral on New Sewer Main	23	EA	\$ 2,500.00	\$ 57,500.00
	14	Furnish and install Mulberry Easement 4" Sewer Lateral on New Sewer Main	2	EA	\$ 2,500.00	\$ 5,000.00
	15	Furnish and install Woods Street 4" Sewer Lateral on Existing Sewer Main	26	EA	\$ 2,500.00	\$ 65,000.00
	16	Furnish and install Jaye Street 4" Sewer Lateral on New Sewer Main	29	EA	\$ 2,500.00	\$ 72,500.00
	17	Furnish and install Jaye Street 6" Sewer Lateral on New Sewer Main	2	EA	\$ 3,000.00	\$ 6,000.00
	18	Furnish and install G Street 4" Sewer Lateral on New Sewer Main	6	EA	\$ 2,500.00	\$ 15,000.00
	19	Furnish and install G Street 6" Sewer Lateral on New Sewer Main	1	EA	\$ 3,000.00	\$ 3,000.00
	21	Furnish AC Pavement Saw Cutting and Removal	10215	LF	\$ 10.00	\$ 102,150.00
	22	Replace 3" Asphalt Concrete / 6" Aggregate Base (Min.)	10215	LF	\$ 40.00	\$ 408,600.00
	23	Remove and Replace Existing Concrete Improvements as required for Sewer Installation	1	LS	\$ 20,000.00	\$ 20,000.00
	24	Reset and Tie Out Street Monuments	1	LS	\$ 10,000.00	\$ 10,000.00
	25	Furnish and Install Sheeting and Shoring	1	LS	\$ 10,000.00	\$ 10,000.00
	26	Prepare and Implement SWPPP	1	LS	\$ 10,000.00	\$ 10,000.00
	27	Perform Acceptance Testing	1	LS	\$ 15,000.00	\$ 15,000.00
	CONSTRUCTION BASE BID PART:					\$ 1,970,020.00
	10% Construction Contingency					\$ 197,002.00
	SUBTOTAL ESTIMATED PROJECT					\$ 2,167,022.00



Project Manager _____ Date _____

Daniel Cervantes _____

City Engineer _____ Date _____

Javier Sanchez Jr. _____
 Engineering and Project Management Director _____ Date _____



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Authorization to Purchase Self-Contained Breathing Apparatus (SCBA) Equipment

SOURCE: Fire

COMMENT: At its meetings on May 5, 2020 and October 6, 2020, the City Council approved the Fire Department's purchase of Self-Contained Breathing Apparatus (SCBA) units, in order to update the equipment used for structure fire response. The City received an Assistance to Firefighters Grant which funded the purchase of twenty-five (25) such units, and staff was able to purchase an additional four units using equipment replacement savings. At this time, additional equipment replacement funds have been set aside to allow the purchase of an additional eight units, bringing the Department total of SCBA units to thirty-seven (37), with an associated ninety-six (96) air tanks. This purchase of SCBA units and tanks will allow all backup engines to maintain the same equipment as the front-line engines, in the event the backup engines are needed, such as a large fire event or in the event of engine failure.

The Fire Department requested three bids and received two responses.

All-Star Fire Equipment Inc.: \$77,684.97

Municipal Emergency Services: \$79,371.61

Northern Safety & Industrial: Non-responsive

All-Star Fire Equipment Inc. was the lowest responsive quote, at a total cost of \$77,684.97. It is proposed that this expenditure be paid from the Fire Department's Equipment Replacement funds.

RECOMMENDATION: That the City Council authorize the purchase of SCBA equipment from All-Star Fire Equipment in an amount not to exceed \$77,684.97.

ATTACHMENTS:

1. All-Star Fire Equipment Inc. Quote
2. Municipal Emergency Services Quote

Appropriated/Funded:

Review By:

Department Director:

Dave LaPere, Fire Chief

Final Approver: John Lollis, City Manager



Sales Quote

12328 Lower Azusa Road
Arcadia, California 91006
Phone 626-652-0900 Fax 626-652-0920

September 27, 2021

2021 Budget Quote

To: Porterville FD
Attn: Mike Hildreth
E-Mail: mhildreth@ci.porterville.ca.us

Quote Valid till 12-31-21

Per your request, we are pleased to quote on the following.

Qty		Unit	Description	Price	Extension
8		Ea	Scott - p/n X8814025305304 / Air-Pak X3 Pro (2018 Edition) - 4500 psi, CGA Cylinder Connection, Standard Harness, QD Regulator with Rectus Fitting, Universal EBSS, PASS with Pak-Tracker, RIC-UAC (Less Cylinder, Spare Harness, Mask, Amp & Case)	\$6,573.40	\$52,587.20
16		Ea	Scott - p/n 804722-01 / Cylinder, 4500 psig 45 Minute, Cylinder with CGA Valve Assembly	\$1,157.52	\$18,520.32
			Terms: Net 30		
			FOB: Destination (Free Shipping on complete order Only)		
			Delivery: 4-6 Weeks ARO or Sooner		
				Subtotal	\$71,107.52
				7.750%	\$5,510.83
				S & H	\$0.00
				Total	\$76,618.35

Rene Reyes
rener@allstarfire.com



4343 Viewridge Ave.
Suite A
San Diego, CA 92123

Quote

Date 09/27/2021
Quote # QT1510795
Expires 10/12/2021
Sales Rep Blackburn, Michael
PO # TBD
Shipping Method FedEx Ground

Bill To

PORTERVILLE FIRE DEPARTMENT
40 W CLEVELAND AVE
PORTERVILLE CA 93257-3649
United States

Ship To

PORTERVILLE FIRE DEPARTMENT
40 W CLEVELAND AVE
PORTERVILLE CA 93257-3649
United States

Item	Alt. Item #	Units	Description	QTY	Unit Sales Pri...	Amount
X8814025305304			Air-Pak X3 Pro SCBA (2018 Edition) with CGA Cylinder Connection, 4.5, Standard Harness with Parachute Buckles, Standard Belt with No Escape Rope, E-Z Flo Regulator with Quick Connect Hose (Rectus fittings), Universal EBSS Accessory Hose, No Airline Connection, No Spare Harness Kit, Pak-Tracker, No Case, Packaged 2 SCBA Per Box (Black)	8	6,716.10	53,728.80
804722-01			CYL&VLV ASSY,CARB,45MIN,4500	16	1,182.66	18,922.56

Subtotal 72,651.36
Shipping Cost (FedEx Ground) 0.00
Tax Total 6,720.25
Total \$79,371.61

This Quotation is subject to any applicable sales tax and shipping & handling charges that may apply. Tax and shipping charges are considered estimated and will be recalculated at the time of shipment to ensure they take into account the most current local tax information.

All returns must be processed within 30 days of receipt and require a return authorization number and are subject to a restocking fee.

Custom orders are not returnable. Effective tax rate will be applicable at the time of invoice.



QT1510795



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Budget Augmentation - Digester Project

SOURCE: Engineering and Project Management

COMMENT: At its meeting on September 1, 2020, the City Council authorized an expenditure amount of \$2,477,475.00 for the repair of Digesters No. 2 and No. 3, as both experienced structural damage of their steel dome covers. Also, the project consisted of the replacement of the heat exchanger and the digester gas flare. During construction, it became apparent that additional funds would be needed in order to account for unforeseen construction costs. The project is about sixty percent (60%) complete. However, once the digester cover for Digester No. 3 was removed. It was found that the skirt for the digester cover was not 2 ½ feet as shown on the as-built drawings. The actual depth was closer to 7 feet. This change caused a change order to remove the existing additional sealant. It also caused an additional amount of coating that was not accounted for. The work for Digester No. 3 is about to be completed as well as the work for the heat exchanger. Work is commencing on the digester flare and preparations for the cover removal of Digester No. 2 are proceeding. However, the additional coating that was not shown on the plans and other miscellaneous items during this project would exceed the contingency that is allowed on the project.

The additional coating plus any other unforeseen costs that would be associated with the remainder of the project exceeds the authorized amount. Staff recommends that additional funding in the amount of \$200,000 is appropriated to cover the costs of the additional coating and unforeseen costs for the remainder of the project.

Funding for the augmentation of the project is from WWTF Reserve funds

RECOMMENDATION: That City Council authorize the augmentation of the project's funds by an additional \$200,000 from WWTF Reserve funds.

ATTACHMENTS: 1. Locator Map

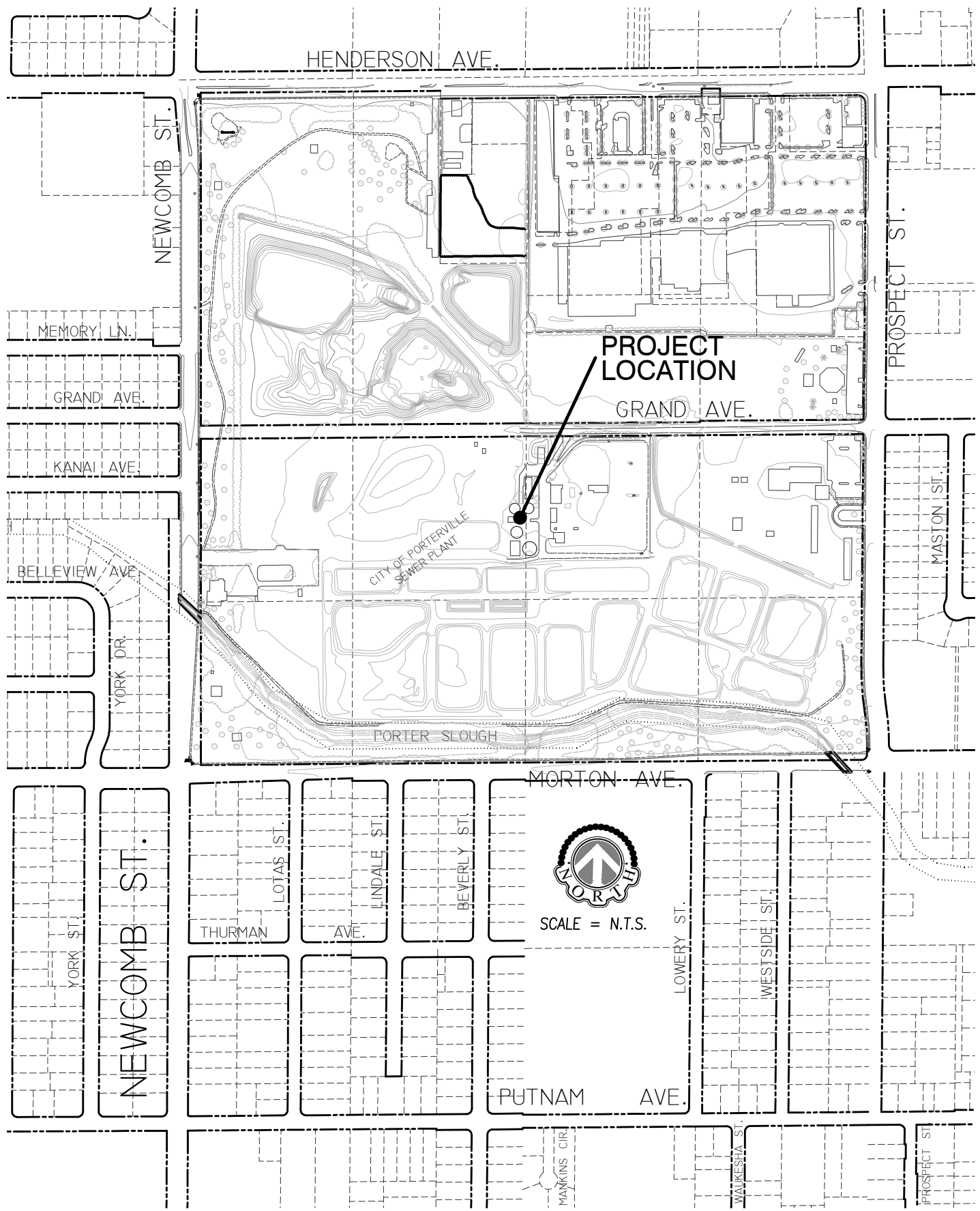
Appropriated/Funded:

Review By:

Department Director:

Javier Sanchez, Engineering & Project Management Director

Final Approver: John Lollis, City Manager



CITY OF PORTERVILLE
ENGINEERING DIVISION
291 NORTH MAIN STREET
PORTERVILLE, CA. 93257
(559) 782-7462

WWTF REPAIR OF DIGESTER #2 AND #3 PROJECT

OWNER	-
APN	-
AREA	-
ACRES	-
SCALE	N.T.S.
DATE	-
DRAWN BY	-
CHECKED BY	-



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Authorization of Agreement Renewal Between the City of Porterville and Porterville Mural Committee for the Marching Through Time Mural

SOURCE: Parks and Leisure Services

COMMENT: In November 2011, the City was dedicated the Marching Through Time Mural in Centennial Park from the Porterville Mural Committee ("PMC"). The mural depicts the time honored tradition of music excellence within the City of Porterville. A ten-year maintenance Agreement went into effect at that time between the City of Porterville and PMC.

PMC obtained and maintained insurance throughout the construction of the mural. Once the construction of the mural was complete and was accepted by the City, the City accepted insurance coverage for the mural in an amount and form that it deemed sufficient. PMC is requesting the Agreement be renewed for an additional ten (10) years. The City shall continue to obtain and maintain throughout the Agreement term liability and property damage insurance.

Both parties agree not to alter, damage, obstruct or remove the mural without prior written notification of at least sixty (60) days. Any repairs, costs and expense will be PMC's responsibility. PMC agrees that it will keep the property walls clean and free of graffiti. PMC further agrees to immediate repairs within reasonable time for any damages or graffiti to the mural so that the mural remains in good condition. This includes PMC adding a protective coating as needed that will aid in preservation efforts.

RECOMMENDATION: That the City Council authorize the Agreement renewal between the City of Porterville and Porterville Mural Committee for the Marching Through Time Mural in Centennial Park for an additional ten (10) years.

ATTACHMENTS:

1. Centennial Park Mural
2. Draft Mural Agreement

Appropriated/Funded:

Review By:

Department Director:

Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager



MARCHING THROUGH TIME MURAL MAINTENANCE AGREEMENT
BETWEEN CITY OF PORTERVILLE AND PORTERVILLE MURAL COMMITTEE

Recognizing the value to the community, the following agreement has been adopted by the City of Porterville ("City") and the Porterville Mural Committee ("Committee"). This Agreement establishes policies regarding the maintenance and repairs of the "Marching Through Time" mural located in Centennial Park.

A. TERM

The term of this Agreement shall be for a period of ten (10) years commencing November 4, 2021, and ending November 4, 2031. This Agreement may be extended for an additional ten (10) years under the terms and conditions below commencing on the expiration date with mutual agreement of both parties.

B. INSURANCE

City shall obtain and maintain throughout the term hereof, public liability and property damage insurance with a combined single limit of no less than \$1,000,000 per occurrence for injury or death to a person or for property damage.

C. RESPONSIBILITIES

1. Both parties agree to preserve the integrity of the wall and agree not to alter, damage, obstruct or remove the mural without written notification sixty (60) days prior. Committee shall apply a protective coating as needed that will aid in preservation efforts.
2. Any repairs, costs and expense will be the Committee's responsibility. The Committee agrees that it will keep the property walls clean and free of graffiti. The Committee further agrees to make immediate repairs within reasonable time for any damages or graffiti to the mural so that the mural remains in good condition.

D. MODIFICATION AND ASSIGNMENT

This Agreement may be modified at any time by written agreement of the parties. Written modifications shall require prior approval by the City Council and the Porterville Mural Committee, unless authority for such modifications has been expressly delegated to others acting on their behalf. Assignment of responsibilities under this Agreement by any of the parties shall be effective only upon prior written consent of the other party, which shall not be unreasonably withheld.

E. NO GRANT OF AGENCY

Except as the parties may specify in writing, neither party shall have authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party shall have any authority, express or implied, pursuant to this Agreement, to bind the other party to any obligation whatsoever. If either party breaches this Agreement, the other party may terminate the Agreement by given

written notice of any alleged breach and the party receiving notice shall have ten (10) days from the date of such notice in which to cure the breach before the Agreement is terminated. In addition to termination as provided above, either party may terminate this Agreement without regard to cause upon ninety (90) day notice to the other party.

F. INDEMNIFICATION PROVISION

Each party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and its respective officers, agents, employees, and volunteers from any and all claims, actions, and losses related to the sole acts or omissions of the Indemnifying Party, in its performance of this Agreement. This provision shall survive the term of the Agreement.

The individuals signing below have the authority to commit the party they represent to the terms of this Agreement, and do so commit by signing.

PORTERVILLE MURAL
COMMITTEE

CITY OF PORTERVILLE

Authorized Representative

Adrian Monte-Reyes, Mayor

ATTEST:

APPROVED AS TO FORM

John D. Lollis, City Clerk

Julia M. Lew, City Attorney



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Status and Review of Local Emergency: Drought

SOURCE: City Manager's Office

COMMENT: At its meeting of May 5, 2015, the City Council took action to approve a Resolution Declaring a Drought Emergency in the City of Porterville. At its meeting of October 5, 2021, the Council reviewed the status of existence of local emergency, and acted to continue its Resolution of local emergency.

Governor Brown issued Executive Order B-29-15 on Wednesday, April 1, 2015, which established drought-related mandates and restrictions in addition to those already stipulated in previous Executive Orders B-26-14 and B-28-14. Of significance, the Governor directed the State Water Resources Control Board to impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016, in comparison to the amount used in 2013, and with consideration given to per capita usage as a basis. The Governor further directed the Board to impose additional restrictions on commercial, industrial, and institutional properties with significant landscaping (cemeteries, golf courses, parks, schools, etc.), to also achieve a 25% reduction in potable water usage. Also of significance, the Board was directed to prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or micro-spray systems.

On November 13, 2015, Governor Brown issued Executive Order B-36-15, which extends emergency conservation regulations through October 2016, if drought conditions persist through January 2016. On February 2, 2016, the State Water Resources Control Board adopted extended emergency water conservation regulations, to be in effect March 1 through October 31, 2016. The City of Porterville benefited somewhat from the extended regulations as the City's water conservation rate has been reduced from 32% to 26%, due to new water connections that have been made and population served (4%), as well as a new climate adjustment factor that was considered (2%).

On May 9, 2016, Governor Brown issued Executive Order B-37-16 ("Making Water Conservation a California Way of Life"), which directs the State Water Resources Control Board to establish new regulations making permanent the emergency conservation regulations. On May 18, 2016, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the percentage reduction-based water conservation standard with a localized "stress test" approach that mandates urban water suppliers act immediately to ensure at least a three-year supply of water to their customers

under continued drought conditions.

On April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the drought state of emergency in most of California, with the exception of Fresno, Kings, Tulare and Tuolumne counties where emergency water supply and reliability projects are continuing toward addressing diminishing groundwater supplies. The Order maintains monthly reporting requirements and prohibitions on wasteful practices.

On May 31, 2018, Governor Brown signed both AB 1668 (Friedman) and SB 606 (Hertzberg), which set permanent overall targets for indoor and outdoor water consumption. The legislation sets an initial limit for indoor water use of 55 gallons per-person per-day in 2022, reducing to 52.5 gallons per-person per-day in 2025, and finally to 50 gallons per-person per-day in 2030. The amount of residential outdoor use is yet-to-be determined, but will allow for varying regional climates. In addition, a standard for water loss due to leak rates in water system pipes will be established. As an urban water provider, the City of Porterville will need to submit its plan for compliance for approval by the State Water Resources Control Board.

On March 5, 2021, Secretary Vilsack of the United States Department of Agriculture federally-designated Tulare County as a primary natural disaster area due to ongoing drought conditions. On April 21, 2021, Governor Newsom issued a State of Emergency Proclamation due to drought conditions, including Tulare County. On April 27, 2021, the Tulare County Board of Supervisors adopted a Resolution Proclaiming a Local Emergency due to severe drought conditions.

Initially within the city of Porterville, twenty-six (26) residences within the city were determined to have dry wells, for which City staff submitted a Mutual Aid Request to Tulare County OES to initiate the household tank program for identified properties within the city where wells are dry and challenged for permanent connection. The State has committed funding for non-profit agencies to continue drought-related activities, which Self-Help Enterprises has continued the household tank program locally, through State Cleanup and Abatement Account (CAA) emergency funds.

Representatives for the City, County, State (CalOES, DDW, DWR, and SWB) and non-profit partners have continued to meet in support of the long-term permanent water connection project for the entire East Porterville area and the estimated 1,800 expected future connections. DWR identified 423 residential units in the East Porterville area (381 of which are in the City's Urban Development Boundary), that were served by the County's Household Tank Program and desired by the State to be connected to the City's water distribution system as soon as possible. DWR has completed a significant City waterline extension project to permanently connect those 423 residential units to the City's water system (considered Phase I of the project). To provide initial source water for the DWR extension project, CalOES desired to expeditiously connect the new well on Olive Avenue to the City's water system instead of being first

equipped as a filling station. Given the new well has an estimated water production value of 800 gallons per minute, as well as a SWB assumed 1.5 gallons per minute per residence, the new well could effectively serve up to 500 single-family residential units. The City indicated its significant interest that the E. Vandalia Avenue area and its eighty (80) residential units be included in the water connection project, to which the State was agreeable.

Given CalOES has paid for the development of the new well, and its connection to the City's water system, the City will be required under "Drought Redundancy and Resiliency Provisions" to make available to the State up to three million gallons of water per month without charge for emergency purposes.

To proceed with the connection of the new well to the City's water system and the 500 East Porterville and E. Vandalia Avenue residential units, the City Council approved modifications to the Draft Agreement between the City and County at its meeting on April 5, 2016, which the County Board of Supervisors subsequently approved at their meeting on May 10, 2016.

A Memorandum of Understanding between the State, County, and City on the East Porterville permanent water connection project was approved by the Council during a Special Meeting on Tuesday, June 21, 2016, and approved by the Board of Supervisors on Tuesday, June 28, 2016. With the approval of the MOU, the State began the permanent connection of approximately forty (40) homes that are located along existing City water mains. Subsequently, the State officially requested that the City approve the connection of an additional thirty (30) residences as part of the first immediate connections, for up to a total of seventy (70), which the Council approved at its meeting on August 2, 2016.

In regards to the new well's development and connection to the City's water distribution system, the Board of Supervisors awarded the contract for equipping and connecting the new well at their meeting of Tuesday, August 16, 2016, and construction activities commenced the week of October 10, 2016. County staff had previously indicated that the well would be in service and connected to the City's system no later than December 2016, however, the well was operational and connected to the City's water distribution as of Friday, February 17, 2017. Given the delay in the well's completion and connection, DWR requested that the Council consider allowing the connection of residences as they become prepared for connection, to which the Council was receptive, and a Draft MOU Amendment was approved by the Council at its meeting on December 6, 2016, and subsequently approved by the Board of Supervisors at its meeting on December 20, 2016. City staff continued to work with County staff toward the transfer of the well's ownership from the County to the City, which at its meeting on April 20, 2021, the Council approved the draft Transfer Agreement subject to the City Attorney's final form.

As of Friday, March 31, 2017, the date the State established as the final day for property owners to complete the registration process to participate in the State-funded connection program opportunity, of the 1,017 eligible developed

residential properties identified by the State for connection, 722 completed the required Extra-Territorial Services Agreement, leaving 295 developed residential properties non-responsive to this unique connection program, 23 of which were reported as having either dry or diminishing capacity wells. On February 6, 2018, the final residential connection was made of the approximate eligible 800 residences in East Porterville to the City's water system.

City staff continues to coordinate with Self-Help Enterprises and State representatives toward the extension of water mains to serve all residential properties within City limits and the city's periphery that are currently participating in the County's Household Tank Program. The two main areas of focus are N. Cobb Street (northwest of State Route 65 and Pioneer Avenue), and S. Cloverleaf Street (southeast of State Route 65 and Olive Avenue). The State has maintained its commitment to grant-fund the necessary infrastructure and connection fees, providing an official funding letter to the City on January 18, 2018, which commits up to \$2.81 million in funding until December 31, 2019. The authorization to advertise for bids for the water connection project was approved by the Council at its July 17th meeting, after which DWR reviewed the bid package for compliance and approved in December the package for advertisement. Council authorized award of the construction contract for approximately \$1.82 million at its meeting on January 15, 2019. City staff conducted a pre-construction public outreach meeting with the affected residents on the status of the project on Thursday, April 4, 2019. Council authorized the agreement with Self-Help Enterprises Inc. to provide the private residential connections at its meeting on July 2, 2019, and construction work began on the project. At its meeting on October 1, 2019, the Council accepted the public works segment of the project in the installation of water mains as complete, with Self-Help and CSET continuing to collaborate on the completion of the individual private connections and abandonment of private wells. City staff has recently been made aware that there may be a couple of additional residences whose wells are dry that are located along existing City water mains or may require further extension of water mains. Staff is coordinating with State staff on addressing these new isolated needs.

County OES and the State Division of Drinking Water (DDW) have reported to the City that the Central Mutual Water Company, located south of the city and south of Gibbons Avenue, has had its well run dry and desires an immediate emergency connection to the City's water system to serve the 41 connections currently without water. DDW is wishing to support a financial application to upgrade the small water system to City standards (new water lines, meters ,etc.), and to sponsor an Urban Development Boundary (UDB) Amendment application to Tulare County Local Agency Formation Commission (LAFCO), given this area is currently outside the City's UDB but within the City's Urban Area Boundary (UAB). Given several private wells have run dry in this area, DDW is also attempting to sponsor their connection to the City's water system. For source water capacity for the connections, DWR will include these new connections within the East Porterville water connection capacity development projects. At its Special meeting on August 30th, the City Council directed staff to proceed with the immediate emergency connection of the Central water

system, with the permanent connection of the system contingent upon an Agreement with DDW to the sponsorship conditions they have offered. At its meeting on October 1, 2019, the Council directed staff to proceed with the amendment of the UDB to facilitate annexation, which a public meeting with the affected residents was conducted on Wednesday, October 9, 2019. At its meeting on April 21, 2020, the Council conducted a Public Hearing and approved Resolutions of approval of the environmental determination and amendment to the UDB to facilitate annexation. At its meeting on June 1, 2021, the Council approved the State Water Board funding agreement for the development of a City-owned production well, distribution mains and water meters to serve each customer, as well as fire hydrants. On July 20, 2021, the City received notification from the State Water Board that the Akin/Central Water Consolidation Project funding agreement had been formally approved and executed.

DDW has also reported to the City that the Del Oro East Plano water system, located on Paul Street (southeast of the intersection of Plano Street and Worth Avenue), is experiencing problems with its existing well and have implemented severe water restrictions. The East Plano water system serves fourteen (14) residences and approximately 45 people. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW would need to either pay appropriate fees and/or develop a capacity development project. The Council is aware that the Del Oro Grandview Gardens water system (north of W. North Grand Avenue) is also experiencing significant issues, and DDW may seek their future consolidation with the City's water system as well.

DDW has further reported to the City that the Beverly Grand Mutual Water Company water system, located north of West North Grand Avenue, is experiencing problems with its existing well and water quality issues, and desires its connection to the City's system to serve the 31 residences the system serves. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW has agreed to pay appropriate fees toward developing a capacity development project, which at its meeting of October 3, 2017, the Council approved a purchase agreement with Smee Homes, Inc. for the acquisition of property along the Tule River for the development of a new municipal well. At its meeting of October 1, 2019, the Council approved proceeding with the consolidation of the Beverly Grand water system.

RECOMMENDATION: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

ATTACHMENTS: 1. City of Porterville Resolution Declaring Local Drought Emergency: May 5, 2015
2. United States Department of Agriculture Drought Natural

- Disaster Area Designation: March 5, 2021
3. State of California State of Emergency Proclamation: April 21, 2021
 4. County of Tulare Drought Local Emergency Resolution: April 27, 2021
 5. State Water Resources Control Board Funding Agreement: Akin/Central Water Consolidation Project

Appropriated/Funded:

Review By:

Department Director:

John Lollis, City Manager

Final Approver: John Lollis, City Manager

RESOLUTION NO. 49-2015

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PORTERVILLE DECLARING A DROUGHT EMERGENCY
WITHIN THE CITY OF PORTERVILLE

WHEREAS: in response to the ongoing severe drought, the State Water Resources Control Board approved an emergency regulation to ensure water agencies, their customers, and state residents increase water conservation in urban settings or face possible fines or other enforcement; and

WHEREAS: as we enter the fourth year of severe drought, long-term forecasts indicate no relief of the current drought conditions, and suggest a warmer-than-average summer, resulting in increased domestic demand for water; and

WHEREAS: public and private potable water supplies continue to be threatened due to decreasing supplies of groundwater caused by the precipitation deficit and an extended state of groundwater overdraft; and

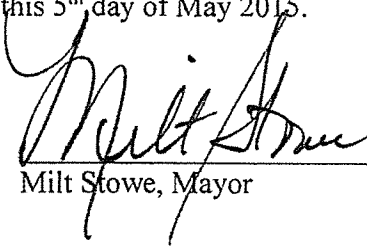
WHEREAS: the long-term ramifications of the current drought will have a significant impact on the city of Porterville and potentially pose a danger to the health and welfare of its residents; and

NOW, THEREFORE, BE IT RESOLVED: that the City Council of the City of Porterville does hereby proclaim that, due to drought conditions, a Local Emergency now exists in the city of Porterville and shall remain in effect for the duration of the emergency; and

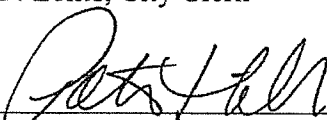
BE IT FURTHER RESOLVED: that the City Council of the City of Porterville requests the Governor and California Department of Water Resources make available California Disaster Assistance Act funding for the State of Local Emergency proclaimed on May 5, 2015, and seek all available forms of Federal assistance, to include a Presidential Declaration of Emergency and Individual Assistance and Public Assistance programs as applicable; and

BE IT FURTHER RESOLVED: that a copy of this resolution be forwarded to the State Director of the Office of Emergency Services.

PASSED, APPROVED, AND ADOPTED this 5th day of May 2015.


Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk


By: Patrice Hildreth, Chief Deputy City Clerk



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

March 5, 2021

The Honorable Gavin Newsom
Governor
State of California
Sacramento, California 95814

Dear Governor Newsom:

In accordance with 7 CFR 759.5(a), I am designating 50 California counties as primary natural disaster areas due to a recent drought.

According to the U.S. Drought Monitor (see <http://droughtmonitor.unl.edu/>), these counties suffered from a drought intensity value during the growing season of 1) D2 Drought-Severe for 8 or more consecutive weeks or 2) D3 Drought-Extreme or D4 Drought-Exceptional.

In accordance with section 321(a) of the Consolidated Farm and Rural Development Act, additional areas of your state and adjacent states are named as contiguous disaster counties. Enclosed you will find documentation that provides a detailed list of all primary and contiguous counties impacted by this disaster.

A Secretarial disaster designation makes farm operators in primary counties and those counties contiguous to such primary counties eligible to be considered for certain assistance from the Farm Service Agency (FSA), provided eligibility requirements are met. This assistance includes FSA emergency loans. Farmers in eligible counties have 8 months from the date of a Secretarial disaster declaration to apply for emergency loans. FSA considers each emergency loan application on its own merits, taking into account the extent of production losses on the farm and the security and repayment ability of the operator.

Local FSA offices can provide affected farmers with further information.

Sincerely,

A handwritten signature in blue ink, reading "Tom J. Vilsack", is positioned above the printed name of the Secretary.

Thomas J. Vilsack
Secretary

Enclosure

Disaster Designation Areas for California and Contiguous States

Primary Counties:

California	(50)			
Alameda	Glenn	Marin	Riverside	Solano
Alpine	Humboldt	Mariposa	Sacramento	Sonoma
Amador	Imperial	Mendocino	San Bernardino	Stanislaus
Butte	Inyo	Merced	San Francisco	Sutter
Calaveras	Kern	Modoc	San Joaquin	Tehama
Colusa	Kings	Mono	San Mateo	Trinity
Contra Costa	Lake	Napa	Santa Clara	Tulare
Del Norte	Lassen	Nevada	Shasta	Tuolumne
El Dorado	Los Angeles	Placer	Sierra	Yolo
Fresno	Madera	Plumas	Siskiyou	Yuba

Contiguous Counties:

California	(8)		
Monterey	San Benito	San Luis Obispo	Santa Cruz
Orange	San Diego	Santa Barbara	Ventura

In addition, in accordance with section 321(a) of the Consolidated Farm and Rural Development Act, counties in adjacent states are named as contiguous disaster areas. Those states, counties, and numbers are:

Contiguous Counties in Adjacent States:

Arizona	(3)		
La Paz	Mohave	Yuma	
Nevada	(8)		
Clark	Esmeralda	Mineral	Washoe
Douglas	Lyon	Nye	Carson City
Oregon	(5)		
Curry	Josephine	Lake	
Jackson	Klamath		

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

State of Emergency Proclamation

WHEREAS climate change is intensifying the impacts of droughts on our communities, environment and economy, and California must therefore improve drought resiliency and prepare to respond to more frequent, prolonged, and intense dry periods; and

WHEREAS much of the West is experiencing severe to exceptional drought and California is in a second consecutive year of dry conditions, resulting in drought or near-drought throughout many portions of the State; and

WHEREAS these drought conditions can result in degraded water quality, fallowing of productive farmland, setbacks to vulnerable and rural communities through job losses and longer-lasting recoveries, significant impacts to tribal, commercial, and recreational salmon fisheries, constraints on access to traditional lifeways, loss of aquatic and terrestrial biodiversity, and ecosystem impacts; and

WHEREAS drought conditions vary across the State and some watersheds, including the Russian River and Klamath Basin, are extremely dry and are facing substantial water supply and ecosystem challenges; and

WHEREAS it is necessary to expeditiously mitigate the effects of the drought conditions within the Russian River Watershed, located within Mendocino and Sonoma counties, to ensure the protection of health, safety, and the environment; and

WHEREAS experience in the last drought has demonstrated the value of preparing earlier for potential sustained dry conditions, the need to improve our monitoring and forecasting capabilities, and many other lessons that are captured in the Administration's *Report to the Legislature on the 2012-2016 Drought*; and

WHEREAS the State and its many partners have strengthened drought resilience since the last drought including state investments in water management systems, implementation of the Sustainable Groundwater Management Act, establishment of the Safe and Affordable Fund for Equity and Resilience Program, development of the Administration's *Water Resilience Portfolio*, and continued water conservation by Californians whose current statewide urban water use is 16% lower than at the beginning of the last drought; and

WHEREAS state agencies have been actively responding to current drought conditions and preparing for the possibility of a third dry year including through convenings of the interagency drought team, which was established at my direction, to organize, focus, and track changing conditions, coordinate state agency responses, and work closely with partners across the State; and

WHEREAS under the provisions of Government Code section 8558(b), I find that the conditions caused by the drought conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the drought conditions; and

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of, the drought conditions within the Russian River Watershed, and under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Proclamation would prevent, hinder, or delay the mitigation of the effects of the drought conditions of the Russian River Watershed, located within Mendocino and Sonoma counties.

NOW THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed.

IT IS HEREBY ORDERED THAT:

1. To further the success of California's water conservation efforts and increase our drought preparedness, state agencies shall partner with local water districts and utilities to make all Californians aware of drought, and encourage actions to reduce water usage by promoting the Department of Water Resources' Save Our Water campaign (<https://saveourwater.com>) and other water conservation programs.
2. To continue coordination with partners across the State for the potential of prolonged drought impacts, the Department of Water Resources, the State Water Resources Control Board (Water Board), the Department of Fish and Wildlife, and the Department of Food and Agriculture shall work with regional and local governments, including groundwater sustainability agencies, to identify watersheds, communities, public water systems, and ecosystems that may require coordinated state and local actions to address issues stemming from continued dry conditions, to ensure that we can respond to water shortages and protect people, natural resources and economic activity.
3. To continue partnership and coordination with Californian Native American tribes, state agencies shall engage in consultation, collaboration, and communication with California Native American tribes to assist them in necessary preparation and response to drought conditions on tribal lands and potential impacts to cultural and traditional resources within ancestral lands.
4. To prioritize drought response and preparedness resources, the Department of Water Resources, the Water Board, the Department of Fish and Wildlife and the Department of Food and Agriculture, in consultation with the Department of Finance, shall:
 - a. Accelerate funding for water supply enhancement, water conservation, or species conservation projects.
 - b. Identify unspent funds that can be repurposed to enable projects to address drought impacts to people, ecosystems, and economic activities.
 - c. Recommend additional financial support for water resilience infrastructure projects and actions for potential inclusion in the upcoming May Revision.

5. To increase resilience of our water supplies during drought conditions, the Department of Water Resources shall:
 - a. Work with counties to encourage reporting of household water shortages, such as dry residential wells, on the website the Department maintains for that purpose, to enable tracking of drought impacts.
 - b. Work with counties, and groundwater sustainability agencies as appropriate, to help ensure that well drillers submit required groundwater well logs for newly constructed and deepened wells in a timely manner.
 - c. Work with agricultural water suppliers and agricultural water users to provide technical assistance, including implementation of efficient water management practices and use of technology such as the California Irrigation Management Information System.
 - d. Work with urban and agricultural water suppliers to encourage timely submittal by water districts and public posting of urban water management and water shortage contingency plans and agricultural water management and drought plans.
 - e. Accelerate updating the land subsidence data it is providing to support implementation of the Sustainable Groundwater Management Act.
6. To increase resilience of our water systems during drought conditions, the Water Board shall:
 - a. Use its authority, provide technical assistance, and where feasible provide financial assistance, to support regular reporting of drinking water supply well levels and reservoir water levels where the Water Board determines that there is risk of supply failure because of lowering groundwater levels or reservoir levels that may fall below public water system intakes.
 - b. Prioritize the permitting of public water systems that anticipate the need to activate additional supply wells where water quality is a concern and treatment installation needs to proceed to relieve a system's potential supply concerns.
 - c. Provide annual water demand data, information on water right priority, and other communications on water availability on its website.
 - d. Identify watersheds where current diversion data is insufficient to evaluate supply impacts caused by dry conditions, and take actions to ensure prompt submittal of missing data in those watersheds.
7. To address the acutely dry conditions in the Russian River Watershed, the Water Board shall consider:
 - a. Modifying requirements for reservoir releases or diversion limitations in that watershed to ensure adequate, minimal water supplies for critical purposes.
 - b. Adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water.

For purposes of carrying out this directive, Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division are suspended in the counties of Mendocino and Sonoma to the extent necessary to address the impacts of the drought in the Russian River Watershed. The Water Board shall identify the projects

eligible for the suspensions pursuant to this paragraph and maintain on its websites a list of the activities or approvals for which these provisions are suspended.

8. To ensure that equipment and services necessary for drought response in the Russian River Watershed can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to procurement, state contracts, and fleet assets, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended to the extent necessary to address the effects of the drought in the Russian River Watershed, located within Mendocino and Sonoma counties. Approval of the Department of Finance is required prior to the execution of any contract entered into pursuant to this provision.
9. To increase the resilience of our natural habitats to protect vulnerable species during drought conditions, the Department of Fish and Wildlife shall:
 - a. Evaluate and take actions to protect terrestrial and aquatic species and, wherever possible, work with water users and other parties on voluntary measures to protect species.
 - b. Work to improve State hatcheries and increase water use efficiency on State wildlife areas and ecological reserves to maintain habitat for vulnerable species.
 - c. Respond to human-wildlife interactions related to ongoing dry conditions and increase public messaging and awareness.
 - d. Work with commercial and recreational salmon fishing and tribal representatives to anticipate and develop strategies to mitigate and respond to salmon fishery impacts, with particular emphasis on addressing impacts to salmon fisheries in the Klamath Basin.
10. To support our agricultural economy and food security during drought conditions, the Department of Food and Agriculture shall:
 - a. Provide technical assistance to support conservation planning, on-farm water and energy conservation practices and technologies, including augmenting the State Water Efficiency and Enhancement Program.
 - b. Conduct an economic analysis of drought impacts to agriculture, including land use, jobs, and rural food economies, expanding on existing research done in the last drought to include thorough regional analysis especially in the Central Valley, and in the implementation of the Sustainable Groundwater Management Act and alternative land uses for fallowed land.
 - c. Maintain a web page with drought resources for farmers and ranchers, including the United States Department of Agriculture and other federal and state resources.
 - d. Work with federal agencies to assist Klamath Basin farmers and ranchers contending with reduced water supplies.
11. To ensure the potential impacts of drought on communities are anticipated and proactively addressed, the Department of Water Resources, in coordination with the Water Board, shall develop groundwater management principles and strategies to monitor, analyze, and minimize impacts to drinking water wells.
12. To provide critical information on the different drought conditions across the State, the Department of Water Resources, in consultation with the Department of Fish and Wildlife, the Department of Food and Agriculture,

and the Water Board, shall develop a California Drought Monitor by December 31, 2021, as recommended in the Administration's Report to the Legislature on the 2012-2016 Drought.

13. To prepare for potential salinity issues in the Delta, the Department of Water Resources, in consultation with the Water Board, the Department of Fish and Wildlife, the Delta Stewardship Council, and the Central Valley Flood Protection Board, shall initiate actions necessary to prepare for and address potential Delta salinity issues during prolonged drought conditions.

14. To prepare for potential impacts of drought conditions on species, the Water Board and the Department of Fish and Wildlife shall work with federal agency partners to manage temperature conditions for the preservation of fish in the Sacramento River downstream of Shasta Dam while balancing water supply needs.

This Proclamation is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 21st day of April 2021



GAVIN NEWSOM
Governor of California

ATTEST:

DR. SHIRLEY WEBER
Secretary of State

RESOLUTION PROCLAIMING A LOCAL EMERGENCY BY THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF A)
LOCAL EMERGENCY DUE TO)
SEVERE DROUGHT CONDITIONS)

RESOLUTION NO. 2021-0290

WHEREAS, California's most recent drought spanning from approximately 2012 to 2018 required the proclamation of a Local Emergency by the County of Tulare from February 2014 to November 2019, as well as a Governor's State of Emergency and the combined resources of multiple local, state, and federal agencies, commercial entities, and non-profit organizations to mitigate; and

WHEREAS, over 3,000 failed or dry wells – including private domestic, community, and agricultural wells – were reported to Tulare County from 2014 to 2017 as a result of the prior drought, causing significant health, safety, and economic issues for Tulare County residents and businesses; and

WHEREAS, well over \$100 million in emergency relief and permanent infrastructure projects were expended to mitigate the effects of the prior drought; and

WHEREAS, a hydrological year ("water year") runs from October 1 to September 30 of the following year; and

WHEREAS, the current water year beginning October 1, 2020 is, to date, the third-driest on record, with potential to become the driest on record without significant additional precipitation which is unlikely to occur during the traditionally dry months; and

WHEREAS, the United States Drought Monitor shows that 94.51% of Tulare County is currently experiencing "Extreme Drought" (D3) conditions and the remaining 5.49% is in "Severe Drought" (D2) conditions, and the County of Tulare anticipates that these conditions will progress to "Exceptional Drought" (D4) conditions as occurred in the prior drought based on the current Southern Sierra snowpack measured at only 15% of historical average for April 1st, drastically reduced surface water allocations on the State Water Project and Central Valley Project, and correspondingly low water levels in local reservoirs; and

WHEREAS, surface water supply constraints create a demonstrable and unsustainable increase in demand for groundwater which is likely to cause additional dry wells for community water systems, private domestic wells, and agricultural wells, creating economic hardships and conditions of extreme peril to the health and safety of individuals within Tulare County requiring the combined forces of all levels of government to mitigate; and

WHEREAS, California Government Code section 8630 empowers the Board of Supervisors to proclaim the existence or threatened existence of a local emergency; and

WHEREAS, Section 1-15-1005 of the Tulare County Ordinance Code defines "emergency" to include "the actual or threatened existence of conditions of disaster or of

extreme peril to the safety of persons and property within [Tulare] County caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, ... which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of [Tulare] County, requiring the combined forces of other political subdivisions to combat"; and

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists throughout said Tulare County due to drought which has created conditions of disaster and extreme peril to the safety of persons and property within the County, and that such conditions are or are likely to be beyond the control of the services, personnel, equipment, and/or facilities of this County, thus requiring the combined forces of other political subdivisions to combat; and

IT IS FURTHER PROCLAIMED that this local emergency is proclaimed pursuant to the California Emergency Services Act, California Government Code §8550 et seq.; and

IT IS REQUESTED that the Governor of the State of California find and proclaim Tulare County to be in a State of Emergency, and make available any and all material and financial support and resources necessary to combat the conditions of disaster, including but not limited to California Disaster Assistance Act funding for emergency protective measures and increased funding to relevant programs of the State Water Resources Control Board and Department of Water Resources; and

IT IS FURTHER REQUESTED that the Governor waive and all regulations and statutes that may hinder response to this emergency; and

IT IS PROCLAIMED AND ORDERED that during the existence of said local emergency, the powers, functions, and duties of the emergency organization of Tulare County shall be those prescribed by State law, by ordinances and resolutions of Tulare County, and by the Tulare County Operational Area Emergency Operations Plan, as approved by the Board of Supervisors.

UPON MOTION OF SUPERVISOR MICARI, SECONDED BY SUPERVISOR TOWNSEND, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD APRIL 27, 2021, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND

NOES: NONE

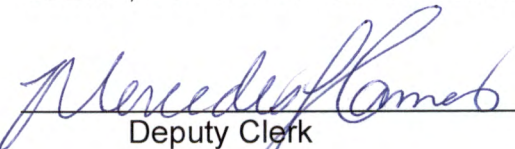
ABSTAIN: NONE

ABSENT: NONE

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS



BY:


Deputy Clerk



DRINKING WATER CONSTRUCTION LOAN

AGREEMENT NO. SWRCB0000000000D2002017

by and between

CITY OF PORTERVILLE ("Recipient")

and

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")



AKIN/CENTRAL WATER CONSOLIDATION PROJECT
5410010-018C AND 5400655-001C ("Project")

- Section 116760 et seq. of the Health and Safety Code and Resolution Nos. 2019-0065 and 2020-0022.

PROJECT FUNDING AMOUNT: \$4,787,664
PRINCIPAL FORGIVENESS COMPONENT: \$4,787,664

ESTIMATED REASONABLE PROJECT COST: \$4,787,664
ELIGIBLE WORK START DATE: JULY 1, 2016
ELIGIBLE CONSTRUCTION START DATE: SEPTEMBER 22, 2020
CONSTRUCTION COMPLETION DATE: OCTOBER 1, 2023
FINAL REIMBURSEMENT REQUEST DATE: APRIL 1, 2024
RECORDS RETENTION END DATE: OCTOBER 1, 2059

1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
 - Exhibit A – Scope of Work and Schedule
 - Exhibit B – Specific Funding Provisions
 - Exhibit C – GENERAL TERMS AND CONDITIONS 2019-NOV
 - Exhibit D – Special Conditions
2. The following documents are also incorporated by reference:
 - the Drinking Water System Permit No. 03-12-06P-004;
 - the Davis-Bacon requirements found at:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/2020_dwsrf_governmental_entities.pdf
3. Party Contacts during the term of this Agreement are:

State Water Board		City of Porterville	
Section:	Division of Financial Assistance		
Name:	Pete Stamas, Project Manager	Name:	Monte Reyes, Mayor
Address:	1001 I Street, 16th Floor	Address:	291 North Main Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Porterville, CA 93257
Phone:	(916) 552-9983	Phone:	(559) 782-7499
Fax:		Fax:	
Email:	Pete.Stamas@waterboards.ca.gov	Email:	montereyes@portervilleca.gov

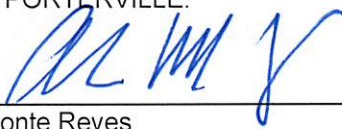
Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division's Deputy Director.

4. Conditions precedent to this Agreement are set forth as follows:
 - (a) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
 - (b) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
 - (c) The Recipient must deliver to the Division a resolution certifying that its decision-making body reviewed and considered the Mitigated Negative Declaration filed by the State Water Board for the Akin Water Company Water Supply Project together with the Mitigation Monitoring and Reporting Program and reached its own conclusions on whether and how to approve the Project, pursuant to Section 15050 (b) of the CEQA Guidelines.
5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
 - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
 - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
- (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.

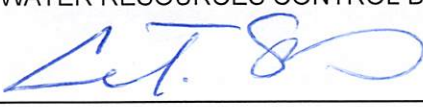
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF PORTERVILLE:

By: 
Name: Monte Reyes
Title: Mayor

Date: 6/1/2021

STATE WATER RESOURCES CONTROL BOARD:

By: 
Name: Leslie Laudon
Title: Deputy Director *for*
Division of Financial Assistance

Date: 7/15/21

EXHIBIT A – SCOPE OF WORK AND SCHEDULE

A.1. PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient and has a Useful Life of at least 40 years. The funding under this Agreement shall be used to provide the residents of two small disadvantaged communities currently served by Akin Water Company (Akin WC) and Central Mutual Water Company (Central MWC) with a sustainable source of safe drinking water.

A.2. SCOPE OF WORK.

The Recipient agrees to do the following: consolidate with Akin WC and Central MWC. Recipient also agrees to construct a new production well, estimated to produce between 1,300 and 1,800 gallons per minute, to provide the needed source capacity for the consolidation of Akin WC, the consolidation of Central MWC, as well as satisfy the remainder of East Porterville residents' capacity needs.

The Recipient agrees to do the following for the Akin WC service area: construct approximately 1,500 feet of 8-inch waterline to provide water service to each customer currently served by Akin WC; install approximately three new fire hydrants and twenty-six new service laterals and meters; and destroy Akin WC's two existing wells.

The Recipient agrees to do the following for the Central MWC service area: construct approximately 1,400 feet of 6-inch waterline to provide water service to each customer currently served by Central MWC; install approximately four new fire hydrants and thirty-four new service laterals and meters; and destroy Central MWC's existing well.

Upon Completion of Construction, the Recipient must expeditiously initiate Project operations.

A.3 SIGNAGE

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may include another agency's required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board."

A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient

must complete and submit all work in time to be approved by the Division prior to the Project Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	ADDITIONAL SUBMITTAL(S) TO DIVISION		
1.	Final Plans and Specifications		September 1, 2021
2.	Final Budget Approval Package		February 1, 2022
3.	Completion of Construction	October 1, 2023	
B.	REPORTS		
1.	Progress Reports		Quarterly
2.	Final Inspection and Certification		October 1, 2023
3.	Project Completion Report		December 1, 2023
4.	As Needed Reports		TBD
EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	REIMBURSEMENTS		
1.	Reimbursement Requests		Quarterly
2.	Final Reimbursement Request	April 1, 2024	

The Recipient must award the prime construction contract and begin construction timely. The Recipient must deliver any request for extension of the Completion of Construction Date no less than 90 days prior to the Completion of Construction Date.

A.5 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- 2) A description of compliance with environmental requirements;
- 3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- 4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.6 SPECIAL REPORTS.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold reimbursements under this Agreement or other agreements, and begin administrative proceedings.

(c) The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

A.7 FINAL PROJECT INSPECTION AND CERTIFICATION.

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.

EXHIBIT B – FUNDING AMOUNTS

B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.2 RECIPIENT CONTRIBUTIONS.

(a) The loan component of this Agreement is forgiven. The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is Zero dollars and no cents (\$0.00).

(b) The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

(c) If the Recipient recovers funds from any responsible parties, the Recipient shall immediately notify the Division. The amount of this Agreement may be reduced to reflect the recovered funds.

B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

B.4 BUDGET COSTS

Budget costs are contained in the Summary Project Cost Table below:

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT
Construction	\$3,194,720	\$3,194,720
Pre-Purchased Material/Equipment	\$0	\$0
Purchase of Land	\$0	\$0
Contingency	\$638,944	\$638,944
Allowances (Soft Costs)	\$954,000	\$954,000
TOTAL	\$4,787,664	\$4,787,664

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Reasonable indirect costs may be allowable upon approval by the Division.

B.5 LINE ITEM ADJUSTMENTS.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary

Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.6 REIMBURSEMENT PROCEDURE.

(a) Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred costs as specified below through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of reimbursement. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
6. The Recipient shall not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

(b) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

(c) Except as follows, construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient. The Deputy Director of the Division may authorize the disbursement of up to ten percent (10%) of Project Funds for the reimbursement of eligible construction costs and pre-purchased materials prior to Division approval of the final budget form submitted by the Recipient. All other construction costs are not eligible for reimbursement until after this the Division has approved the final budget form submitted by the Recipient. Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement by the Final Reimbursement Request Date, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is incorporated by reference and is posted at
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html

EXHIBIT D – SPECIAL CONDITIONS

1. Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:

- Work Completion
- Work Completion Date

2. Each capitalized term used in this Agreement has the following meaning:

- "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
- "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
- "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
- "District Office" means District Office of the Division of Drinking Water of the State Water Board.
- "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
- "Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.
- "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
- "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
- "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
 - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
 - b) Failure to operate the System or the Project without the Division's approval;
- "Final Budget Approval" means the Division-approved final budget for the Project, as set forth in Exhibit B.
- "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.
- "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
- "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
- "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all

reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

- "Reimbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B.
- "Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.
- "System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the City of Porterville, or its successor agency, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.
- "Useful Life" means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.

3. Acknowledgements.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part under the Drinking Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

4. Rates and Charges. The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
5. [RESERVED]
6. [RESERVED].

7. Environmental/Technical Special Conditions

Technical:

1. The Recipient shall submit its professional engineering services contract to the Division prior to disbursement of funds for costs incurred under such contract.
2. The Recipient shall not solicit bids, award a contract, or commence construction activities until final plans and specifications are approved by the Division of Drinking Water Tulare District Office Engineer and the Project Manager.
3. The Recipient must submit final consolidation agreements with Akin WC and Central MWC, in a form satisfactory to the Division, and receive written approval from the Project Manager to proceed before Project Funds may be disbursed for any Project Costs under the Agreement.
4. Upon completion of the Project the Recipient shall submit a water supply permit amendment request for review to the Division of Drinking Water Tulare District Office.

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
 - a. The Mitigation Monitoring and Reporting Program adopted by the State Water Board on June 16, 2016 for the Project. The Recipient shall implement all mitigation measures therein.
 - b. The letter dated February 12, 2020, from Patricia Cole of the United States Fish and Wildlife Service, San Joaquin Valley Division to Douglas E. Eberhardt of the United States Environmental Protection Agency, including, but not limited to, the following:
 - i. Implement Avoidance and Minimization Measures and Best Management Practices prior to and during construction activities to minimize and avoid effects to the San Joaquin kit fox.
 - c. The Mitigation Monitoring and Reporting Program adopted by the City of Porterville on April 21, 2020 for the Central Mutual Water Company Consolidation Project. The Recipient shall implement all mitigation measures therein.
2. In the Recipient's Quarterly Reports submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
3. In the Recipient's Project Completion Report submitted pursuant to this Agreement, the Recipient shall include a discussion of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of Recipient's compliance.
8. [RESERVED].
9. Appointment of Receiver/Custodian. Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.
10. [RESERVED].
11. Damages for Breach of Federal Conditions. In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

12. [RESERVED].

13. Operation and Maintenance. The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

14. Insurance. The Recipient will procure and maintain or cause to be maintained insurance on the System and Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System or Project) as are usually covered in connection with systems similar to the System or Project. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program. In the event of any damage to or destruction of the System or Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System or Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System and Project must be free and clear of all claims and liens. Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

15. Notice Events. Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- a. The Recipient must notify the Division within 24 hours by phone at (916) 327-9978 and by email to DrinkingWaterSRF@waterboards.ca.gov of any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- b. The Recipient must notify the Division promptly of the occurrence of any of the following events:
 - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
 - iii. Loss, theft, damage, or impairment to Project;
 - iv. Events of Default, except as otherwise set forth in this section;

- v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
- vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
- vii. Consideration of dissolution, or disincorporation;
- viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
- xii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xiii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xiv. Any event requiring notice to the Division pursuant to any other provision of this Agreement.
- xv. Completion of work on the Project.
- xvi. The Recipient must promptly notify the Division and Party Contacts of cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- xvii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- xviii. The Recipient must promptly notify the Division and Party Contacts of Completion of Construction, and Project Completion;
- xix. The Recipient must promptly notify the Division and Party Contacts of the award of the prime construction contract for the Project; and the Recipient must promptly notify the Division and Party Contacts of Initiation of construction of the Project.

xx. The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption.

xxi. [RESERVED].

16. Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project. The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.
17. State Cross-Cutters. Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:
- a) The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
 - b) Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
 - c) Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
 - d) Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
 - e) Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
 - f) Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
 - g) Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
 - h) Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
 - i) Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
 - j) Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
 - k) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
18. Financial Management Systems. The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been

used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

19. Access and Inspection. In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.
20. Fraud, Waste, and Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to reimbursement requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.
21. Disputes. The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
22. Additional Representations and Warranties. The Recipient makes the following representations and warranties:
 - a. [RESERVED].
 - b. The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application, a material fact that makes the statements in its application not misleading.
 - c. The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
 - d. The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

- e. Except as set forth in this paragraph, there are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.
 - f. There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
 - g. The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
 - h. Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements or other financial documentation, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.
 - i. The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
 - j. The Recipient has no conflicting or material obligations, except as set forth in this paragraph.
 - k. The Recipient legally possesses all real property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as set forth in this paragraph.
 - l. The Recipient and its principals, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized.
 - m. The Recipient possesses all water rights necessary for this Project.
23. Federal SRF Requirements. The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:
- a. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the

Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

- b. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 2 of this Agreement in all construction contracts and subcontracts.
- c. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- d. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- e. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- f. [RESERVED]
- g. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- h. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- i. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- j. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- k. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- l. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- m. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- n. The Recipient certifies to the best of its knowledge and belief that:
 - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.
 - iii. The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.
- o. The Recipient must comply with the following federal non-discrimination requirements:
 - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - iii. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - iv. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - v. 40 CFR Part 7, as it relates to the foregoing.
 - vi. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech
 - vii. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).

- p. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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.

"(b) 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, creed, color, or national origin.

"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(f) 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 cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- q. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises as set forth in this Agreement.
- r. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- s. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- t. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- u. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- v. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- w. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- x. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- y. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.
- z. The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- aa. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- bb. The Recipient certifies that no Project Funds will be used on:
 - i. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - ii. Telecommunications or video surveillance services produced by such entities;
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
 - iv. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Development Ordinance Amendment - Downtown Retail South of Olive Avenue

SOURCE: Community Development

COMMENT: The DR-N (Downtown Retail – North of Olive Avenue) and DR-S (Downtown Retail – South of Olive Avenue) zone districts were created to acknowledge and promote the historic differences in development patterns along Main Street north and south of Olive Avenue. Generally, while both zones allow many of the same types of uses, the DR-S zone also encourages uses that are more intensive. Currently, the DR-N use does not allow any type of automobile-service uses, while the DR-S zone allows “Automobile/vehicle service and repair, minor” subject to a Conditional Use Permit. Of the 112 total parcels within the DR-S zone, two contain existing minor auto repair facilities; however, there are also seven facilities that qualify as “Automobile/vehicle service and repair, minor” and one within the category of “Automobile/vehicle service and repair, carwash.” Those eight facilities are nonconforming due to having been “grandfathered” in at the time the Development Ordinance was adopted. Nonconforming uses are subject to a different set of development and use rules by virtue of the fact that they are not strictly allowed in the zone in which they reside.

To account for the relatively large presence of nonconforming automobile repair-related uses within the DR-S zone, the draft Ordinance would amend Porterville Municipal Code (PMC) Section 202.01 to clarify the intent of the DR-S zone district and PMC Section 202.02 to categorize “Automobile/vehicle service and repair, minor,” “Automobile/vehicle service and repair, major,” and “Automobile/vehicle service and repair, carwash” as permitted uses in the DR-S zone district.

Pursuant to State and local environmental regulations, the proposed modifications serve to provide greater clarity to uses as identified in the Porterville 2030 General Plan, and the proposed Ordinance is an implementation measure of the policies, goals and objectives of the Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that no additional environmental review is necessary beyond the environmental review already considered for the General Plan and the Development Ordinance.

RECOMMENDATION: That the City Council:

1. Finds that the proposed ordinance amendments serve to implement the policies, goals and objectives of the General Plan and that no additional environmental review is necessary beyond that already considered for the General Plan and the Development Ordinance; and
2. Introduces and waives the first reading of the draft Ordinance.

ATTACHMENTS:

1. Draft Ordinance
2. DR-S Zone Map

Appropriated/Funded:

Review By:

Department Director:

Jason Ridenour, Community Development Director

Final Approver: John Lollis, City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING SECTIONS 202.01 AND 202.02 OF THE PORTERVILLE DEVELOPMENT
ORDINANCE REGARDING THE DR-S ZONE DISTRICT

WHEREAS: On October 19, 2021 the City Council at its regularly scheduled meeting, held a public hearing to consider amendments to the Porterville Development Ordinance;

WHEREAS: The purpose of the proposed amendments is to recognize and accommodate an historic pattern of development within the Main Street corridor south of Olive Avenue, to bring a number of existing, economically-productive uses into conformance with the Development Ordinance, and to allow for future development of similar uses along the southern portion of Main Street;

WHEREAS: Pursuant to State and local environmental regulations, the proposed modifications serve to provide greater clarity to uses as identified in the Porterville 2030 General Plan, and the proposed ordinance is an implementation measure of the policies, goals and objectives of the Plan. The Environmental Coordinator made a determination on the basis of substantial evidence that no additional environmental review is necessary beyond the environmental review already considered for the General Plan and the Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Porterville as follows:

SECTION 1: Section 202.01, Purpose, of Chapter 21 of the Porterville Municipal Code is hereby amended as follows:

SECTION 202.01, Purpose

The specific purposes of the Downtown Districts are to:

- A. Maintain a thriving, vibrant Downtown compatible with surrounding land uses.
- B. Foster the location of cultural and civic uses and public open space to maintain Downtown as the civic core of the City.
- C. Provide for a range of commercial and retail services that add to a diversified economic base.
- D. Allow mixed uses to create a more vibrant community and offer additional opportunities for housing for residents requiring convenient access to community services and less dependency on auto transportation.
- E. Ensure that development is visually attractive and pedestrian friendly.
- F. Preserve and enhance the pedestrian-oriented environment of the Downtown area.
- G. Ensure that potential development and redevelopment is integrated into the Downtown and supports the vitality of the area.

Additional purposes of each district within the Downtown Districts:

DR-N Downtown Retail - North of Olive Avenue. Maintain the pedestrian- and transit-oriented environment of retail, restaurants, services, and government offices in the heart of

Porterville's Downtown, focused on Main Street. Maintain the traditional Downtown character, with buildings built immediately adjacent to the sidewalk, active commercial uses on the ground floor, ample on-street parking, and a visually attractive streetscape with trees, historic street lights, benches, and other pedestrian amenities.

DR-S Downtown Retail - South of Olive Avenue. Create an attractive commercial corridor that provides a welcoming gateway at the southern entrance to Downtown **while offering a broader mix of service-oriented establishments characteristic of historic development in the area.** Buildings should line the street, with street trees along the entire length of the street, and small landscaped front yards between the buildings and the sidewalk.

DR-D Downtown Retail - D Street Corridor. Provide for a mix of medium-scale retail and service uses in a manner compatible with the Downtown pedestrian environment. Buildings should line the street, with deep landscaped front yards and rows of trees.

D-MX Downtown Mixed-Use. Create a mixed-use area that attracts businesses and residents to locate Downtown, and provides a transition area between commercial areas and residential neighborhoods. Allow a mix of commercial, service, office, and residential uses that do not adversely impact one another in a significant way. Create an attractive streetscape of buildings that line the street, with landscaping and trees tailored to the width and the existing design character of the street.

D-PO Downtown Professional Office. Encourage the adaptive re-use of existing buildings with office and professional uses, and infill of new office buildings, in order to provide convenient services to local residents and businesses, complement nearby retail development, and maintain the historic residential character of the area. Maintain the pattern of small lots, historic residential building forms, landscaped front yards, and street trees in planter strips.

D-PS Downtown Public and Semi-Public. Provide areas for larger-scale public facilities that serve the community, with a focus on integrating development into the Downtown. Encourage land uses and design features that enhance the vitality, character and quality of life of the Downtown and surrounding residential areas. Ensure that the traditional block pattern of Downtown is maintained. Incorporate public streets and pedestrian walkways that connect these larger scale projects to Downtown streets and walkways. Design streets with attractive landscaped front yards and street trees, consistent with the character of existing and adjoining streets.

DRM-2 Downtown Medium Density Residential. Encourage a variety of housing types, such as small-lot single-family homes, detached zero lot line developments, duplexes, townhouses, and garden apartments with a maximum residential density of 16.5 units per acre in the Downtown area. Encourage housing in Downtown to provide opportunities for residents to live in close proximity to community services and retail establishments, and to help support the vitality of Downtown businesses. Maintain the existing character of buildings that front the street, landscaped front yards, and street trees.

DRM-3 Downtown High Density Residential. Facilitate the development of attached homes, two- to four-plexes, and apartment or condominium buildings with a maximum residential density of 33.0 units per acre in Downtown, to create a more vibrant community and offer additional opportunities for housing for residents requiring convenient access to community services and less dependency on auto transportation. Maintain the existing character of buildings that front the street, landscaped front yards, and street trees.

D-GC Downtown General Commercial. Provide areas for retail, service, and heavier commercial uses that meet local and community needs in a manner complimentary to the adjacent Downtown pedestrian-oriented environment.

SECTION 2: Section 202.02, Land Use Regulations – Downtown Districts, of Chapter 21 of the Porterville Municipal Code is hereby amended as follows:

Use Classification	DR-N	DR-S	DR-D	D-MX	DRM-2	DRM-3	D-PO	D-GC	D-PS	Additional Regulations
Residential use classifications:										
Single-family dwelling:	See sub-classifications below									
Attached	P(1)	-	-	-	P	P	-	-	-	
Multi-family residential	P(1)	P(2)	-	P	P	P	P(1)	-	-	Section 201.04(b)
Family day care home:	See sub-classifications below									
Small	P	P	-	P	P	P	P	-	-	
Large	-	-	-	P	P	P	-	-	-	Section 301.07, "Family Daycare Home, Large"
Group residential	-	-	-	P(3)	P	P	-	-	-	
Mixed use development				C						Section 203.04, "Supplemental Regulations"
Residential care facilities, limited	P	P	-	P	P	P	P	-	-	
Single room occupancy hotels	-	-	-	C(1)	-	-	-	-	-	Section 301.18, "Single Room Occupancy Hotels"
Public and semi-public use classifications:										
Clubs and lodges	C(4)	P	P	P	-	-	P(5)	P	-	Section 301.02, "Alcoholic Beverage Sales"
Colleges and trade schools, public or private	C(5)	C	C	C	-	-	C	C	P	
Community center	-	-	-	C	-	-	-	-	P	
Cultural institutions	C(5)	C	C	C	-	-	P	C	P	
Day care centers	C	C	C	C	C	C	P	-	C	
Elderly and long term care	-	-	-	-	P	P	P	-	-	

Government offices	P	P	P	-	-	-	P	-	P	
Instructional services	P(5)	P	P	P	-	-	P	P	P	
Park and recreation facilities, public	P	P	P	P	P	P	P	P	P	
Religious facilities	-	-	-	C	C	C	-	-	-	
Residential care facilities, general	-	-	-	-	C	C	-	-	-	Section 301.15, "Residential Care Facilities, General"
Schools, public or private	P(4)	P	P	P	-	-	-	-	P	
Social service facilities	-	-	-	C	C	C	-	-	-	Section 301.19, "Social Service Facilities"
Commercial use classifications:										
Animal care, sales, and services:	See sub-classifications below									
Kennels	-	-	C	-	-	-	-	C	-	
Pet stores	M(6)	P(6)	P(6)	M(6)	-	-	-	P(6)	-	
Veterinary services, small	-	-	C	-	-	-	-	P	-	
Artists' studios	P	P	P	P	-	-	-	P	-	
Automobile/vehicle sales and services:	See sub-classifications below									
Automobile/vehicle rentals	-	-	-	-	-	-	-	P	-	
Automobile/vehicle sales and leasing	-	C	C(7)	-	-	-	-	P	-	
Automobile/vehicle service and repair, major	-	P	C	-	-	-	-	C	-	Section 301.04, "Automobile/Vehicle Service And Repair, Major And Minor"
Automobile/vehicle service and repair, minor	-	C(7) P	C(7)	-	-	-	-	P	-	Section 301.04, "Automobile/Vehicle Service And Repair, Major And Minor"
Automobile/vehicle service and repair, washing	-	P	-	-	-	-	-	C	-	Section 301.05, "Auto Service Stations And Car Washing"
Service station	-	-	-	-	-	-	-	C	-	Section 301.05, "Auto Service Stations And Car Washing"
Banks and financial institutions:	See sub-classifications below									
Banks and credit unions	P(8)	P(8)	P	P(8)	-	-	P(8)	P	-	
Bed and breakfasts	-	-	-	P(3)	-	P(3)	P(3)	-	-	
Building materials and services	-	-	-	-	-	-	-	P(9)	-	
Business services	P(10)	P(10)	P(10)	P(10)	-	-	P	P	-	
Cannabis dispensary	P	P	P	P	-	-	-	P	-	Municipal Code chapter 15, article VII
Commercial entertainment and recreation:	See sub-classifications below									
Cinema/theaters	C	C	C	C	-	-	-	C	-	Section 301.02, "Alcoholic Beverage Sales"

[illegible]

Recycling collection facility	-	C	-	-	-	-	-	C	C	Section 301.14, "Recycling Facilities"
Reverse vending machine	-	P	P	P	-	-	-	P	P	Section 301.14, "Recycling Facilities"
Transportation, communication, and utilities use classifications:										
Communication facilities:	See sub-classifications below									
Antenna and transmission towers, camouflage facilities	P(14)	P(14)	P(14)	P(14)	-	-	P(14)	P(14)	P(14)	Section 301.20, "Telecommunication Facilities"
Antenna and transmission towers, non-camouflage facilities	C(14)	C(14)	C(14)	C(14)	-	-	C(14)	C(14)	C(14)	Section 301.20, "Telecommunication Facilities"
Broadcasting facility	-	M	M	M	-	-	-	M	-	Section 301.20, "Telecommunication Facilities"
Call center	-	-	-	-	-	-	P(5)	P(5)	P	
Recording studio	-	-	P(6)	P(6)	-	-	-	P(6)	-	
Transportation passenger terminals	P(15)	P(15)	P(15)	-	-	-	-	-	-	
Utilities, minor	P	P	P	P	P	P	P	P	P	
Other applicable types:										
Accessory uses and structures	P	P	P	P	P	P	P	P	P	Section 301.01, "Accessory Uses And Structures"
Home occupations	P	P	P	P	P	P	-	-	-	Section 301.09, "Home Occupations"
Second dwelling unit	-	-	-	-	P	P	-	-	-	Section 301.16, "Second Dwelling Units"
Nonconforming use	Chapter 307, "Nonconforming Uses, Structures, And Lots"									
Temporary use	Section 301.21, "Temporary Uses"									

SECTION 3: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

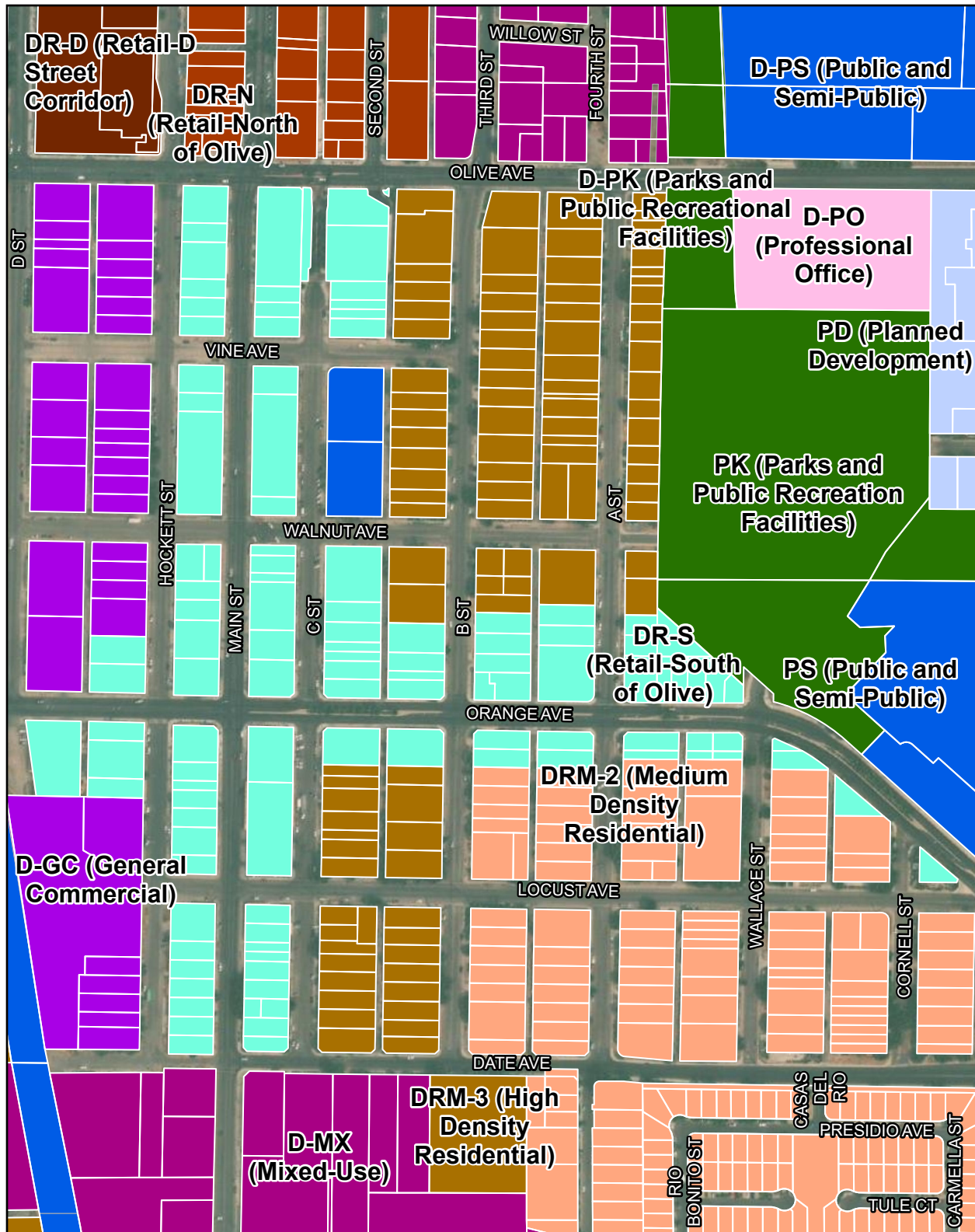
PASSED, APPROVED, AND ADOPTED this 2nd day of November, 2021.

Adrian Monte Reyes, Mayor

ATTEST:
John D. Lollis, City Clerk

By _____
Patrice Hildreth, Chief Deputy City Clerk

DR-S Zoning



1 in = 400 feet





CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Olive Avenue and Lotas Street Commercial Development Conditional Use Permit Modification #2

SOURCE: Community Development

BACKGROUND: In May 2021, the Project Review Committee reviewed an application to develop a Goodwill discount store and distribution facility at the southeast corner of Olive Avenue and Lotas Street. The proposed development includes changes to the configuration of the 60,650± square foot Olive & Lotas Commercial Development site as approved within Conditional Use Permit (CUP) 2016-040 (Resolution 21-2017) on April 18, 2017. The requested modifications to the approved site plan will require a corresponding amendment to the CUP.

COMMENT: The land use designation of the project site is CG (General and Service Commercial). The proposed project is located within one of three parcels of the greater commercial development at the southeast corner of Olive Avenue and Lotas Street, and as such is surrounded by commercial development and zoning on all sides. However, the CUP as a whole addresses the entire area bounded by Olive Avenue, Lotas Street, Slaughter Avenue, and Beverly Street. Land uses surrounding the greater commercial center are primarily commercial to the north and west of the property with RS-2 (Low Density Residential) to the south and east of the project.

The proposed project is part of the three-phase Olive & Lotas Commercial Development. Phase 1 consists of the eastern half of the development area and is anchored by Smart & Final Extra!. Phase 2 consists of the northwestern quarter of the area and is approved for development of a drive thru coffee shop (Human Bean). The Goodwill project would implement the first portion of Phase 3 of the development.

The approved layout of Phase 3 contains two retail buildings with a total area of 20,437± square feet. At this time, Goodwill is proposing to construct a 15,750± square foot store and distribution facility in the eastern portion of Phase 3 (adjacent to Smart & Final Extra!) while leaving an area for future development of a 3,200± square foot commercial pad at the western end of the area adjacent to W. Lotas Street. The proposal would reduce the overall square footage of Phase 3 by approximately 1,480 square feet.

In addition, the CUP will modify the Phase 2 parking area to allow for driveway access and parking connections to Phase 3. The revisions to the shared areas will provide better compatibility between both parcels and are mutually agreed upon both parties in the development of their respective parcels.

The proposed site plan meets City parking standards, and the building design, as proposed, is consistent with the Development Code Section 203.04 for commercial centers and provides a welcome addition to the existing development.

ANALYSIS:

The colors and finish of the proposed development will be consistent with the existing design elements of the commercial center in color tones and materials. Signs installed will be compatible with the Olive & Lotas Master Sign Program. Additionally, landscaping in accordance with the General Plan and Development Ordinance will be installed along the buildings and throughout the parking lot.

The Development Ordinance requires commercial centers to include outdoor seating areas and pedestrian connectivity in their design criteria. An outdoor seating area will be developed north of the Goodwill building as a part of the proposed project, consistent with the original CUP, and will feature seating areas with supplemental landscaping. The buildings will be connected with pedestrian walkways providing access between the public rights-of-way, the proposed project, and the overall commercial development.

The proposed configuration of the site also provides compatibility to the adjacent Phase 2 lot, which, at such time Phase 2 develops, will provide future connection of the parking areas and ensures proper circulation patterns throughout the commercial development. As a component of the Parcel Map associated with the original project, an easement was recorded on all three parcels requiring cross access, shared parking, and associated interconnectivity between parcels. The requested modification would not change the requirements of the recorded easements.

**ENVIRONMENTAL
REVIEW:**

As required for the original entitlement, an Initial Study was prepared pursuant to the California Environmental Quality Act (CEQA), resulting in the approval of a Mitigated Negative Declaration (IS/MND) to the initial project via Resolution No. 19-2017. No further environmental analysis is required for the requested modification.

RECOMMENDATION:

That the City Council adopt the draft Resolution approving Modification #2 to Conditional Use Permit 2016-040 (Resolution 21-2017) subject to conditions of approval.

ATTACHMENTS:

1. Draft Resolution
2. Locator Map

3. Site Plan
4. Reso 21-2017 Conditional Use Permit
5. Reso 98-2020 CUP Modification 1

Appropriated/Funded:

Review By:

Department Director:

Jason Ridenour, Community Development Director

Final Approver: John Lollis, City Manager

RESOLUTION NO. __-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF MODIFICATION #2 TO
CONDITIONAL USE PERMIT 2016-040 TO ACCOMMODATE THE ADDITION OF A
GOODWILL STORE AND DISTRIBUTION FACILITY IN THE OLIVE AND LOTAS
COMMERCIAL DEVELOPMENT

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of October 19, 2021, conducted a public hearing to consider Modification No. 2 to Conditional Use Permit 2016-040 (Resolution 21-2017) which approved the 60,650± square foot Olive and Lotas Commercial Development. The project is proposing to modify the approved site plan of the commercial development to accommodate a retail store and distribution facility; and

WHEREAS: An initial study was prepared for the Olive and Lotas Commercial Development pursuant to the California Environmental Quality Act (CEQA), resulting in the approval of a Mitigated Negative Declaration (IS/MND) via Resolution No. 19-2017. The proposed modifications fall within the scope of the environmental review as originally conducted and no further analysis is required; and

WHEREAS: The City Council has made the following findings in its review of the circumstance of the project:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted. The project supports and complies with the following General Plan guiding policies:

LU-G-1: Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.

LU-G-11: Foster strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

LU-G-21: Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.

ED-G-7 Create an image for Porterville that will attract and retain economic activity.

The project is consistent with the goals, policies, and land use designation of the Porterville 2030 General Plan, which designated the site as General and Service Commercial as supported by the current CG (General and Service Commercial) zoning.

2. That the location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the General Plan and with any other applicable plan adopted by the City Council.

- a. The proposed project will comply with all standards of the Development Ordinance
 - b. All structures on the site are consistent with the Porterville Development Ordinance (PDO) for commercial centers which includes building entrances, four-sided architecture, pad development, lighting, and pedestrian pathways.
 - c. The project will not be detrimental to the health, safety, comfort, convenience, and general welfare and will be compatible with surrounding land uses. The project complies with the CG (General and Service Commercial) designation of the City's Development Ordinance, with all applicable City codes, zoning provisions and regulations.
 - d. The location of the project and the conditions under which it will be operated or remained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. The project is conditioned to operate in compliance with the PDO Section 306.08 Maintenance.
3. That the project, as proposed, complies with all design standards of the Porterville Development Ordinance, as well as maintaining compatibility with the architectural style of the Commercial Center. Building permit review will assure all such standards are met.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Modification #2 to Conditional Use Permit (Resolution 21-2017) subject to the following conditions:

1. Unless otherwise expressly modified, all conditions of approval within the Olive and Lotas Conditional Use Permit (Resolution 21-2017) and Modification #1 (Resolution 98-2020) are to remain valid and are still in effect.
2. An outdoor seating area shall be provided north of the Goodwill building, where it is centrally located within the development. This outdoor space shall have ample seating areas with supplemental landscaping.
3. The developer/applicant shall ensure pedestrian walkways, building entrances, and gathering areas, are adequately shaded from the summer sun through such techniques as the careful placement of trees and landscaping, trellis structures, projecting canopies, covered walkways, arcades, porticos, building orientation, and similar styles.
4. The designated loading and service areas shall be screened from adjacent public streets to avoid direct visibility. Screening devices used shall consist of walls and/or berms with supplemental landscaping and planting materials.
5. Applicant shall demonstrate to the satisfaction of the Director of Engineering & Project Management that turning movements for loading and service vehicles can be accommodated via existing and/or proposed drive approaches on W. Slaughter Avenue. Applicant shall be responsible for redesign and reconstruction of drive approaches and corresponding raised landscaped areas as necessary to fulfill this condition.
6. Landscaping shall be provided in accordance with Sections 303 and 304.10(i) of the Development Code and Chapter 25, Article I, Division 6 of the Municipal Code. In particular, landscaping shall be provided along all building facades that face onto a customer parking lot; such facades shall have one or more landscape planters installed along a minimum twenty percent of the building face. The minimum width of the planter shall be three feet.

7. Upon approval of the Modification #2, any future changes or additions in operation which will substantially alter the conditions or nature of the subject site will require approval by the City Council.
8. At all times, the commercial development shall be operated and maintained to comply with State Laws, the City of Porterville Zoning Ordinance, adopted Building Codes and all other applicable laws and ordinances.

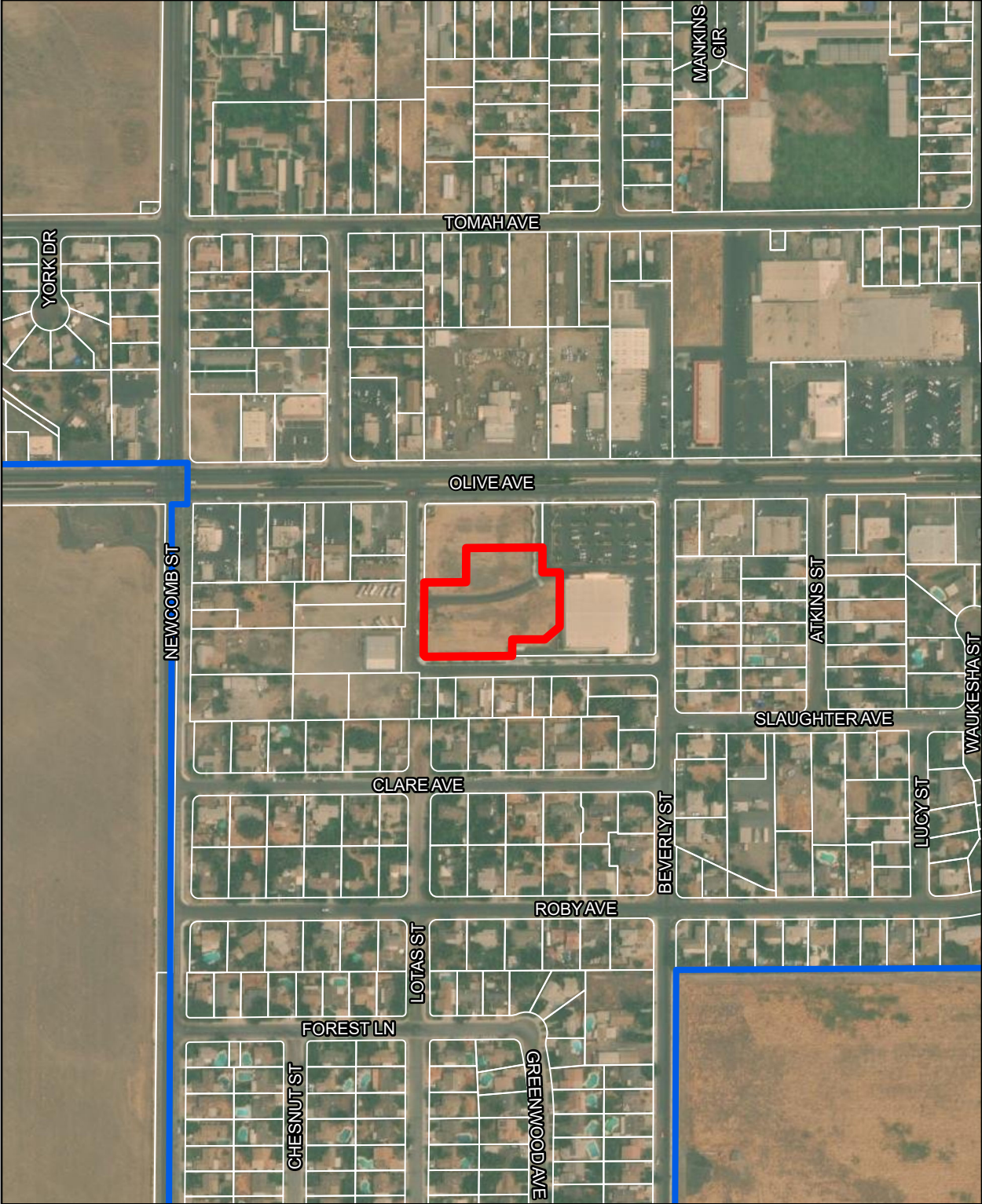
PASSED, APPROVED AND ADOPTED this 19th day of October, 2021.

Adrian Monte Reyes, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk

**Locator Map
PRC 2021-021**

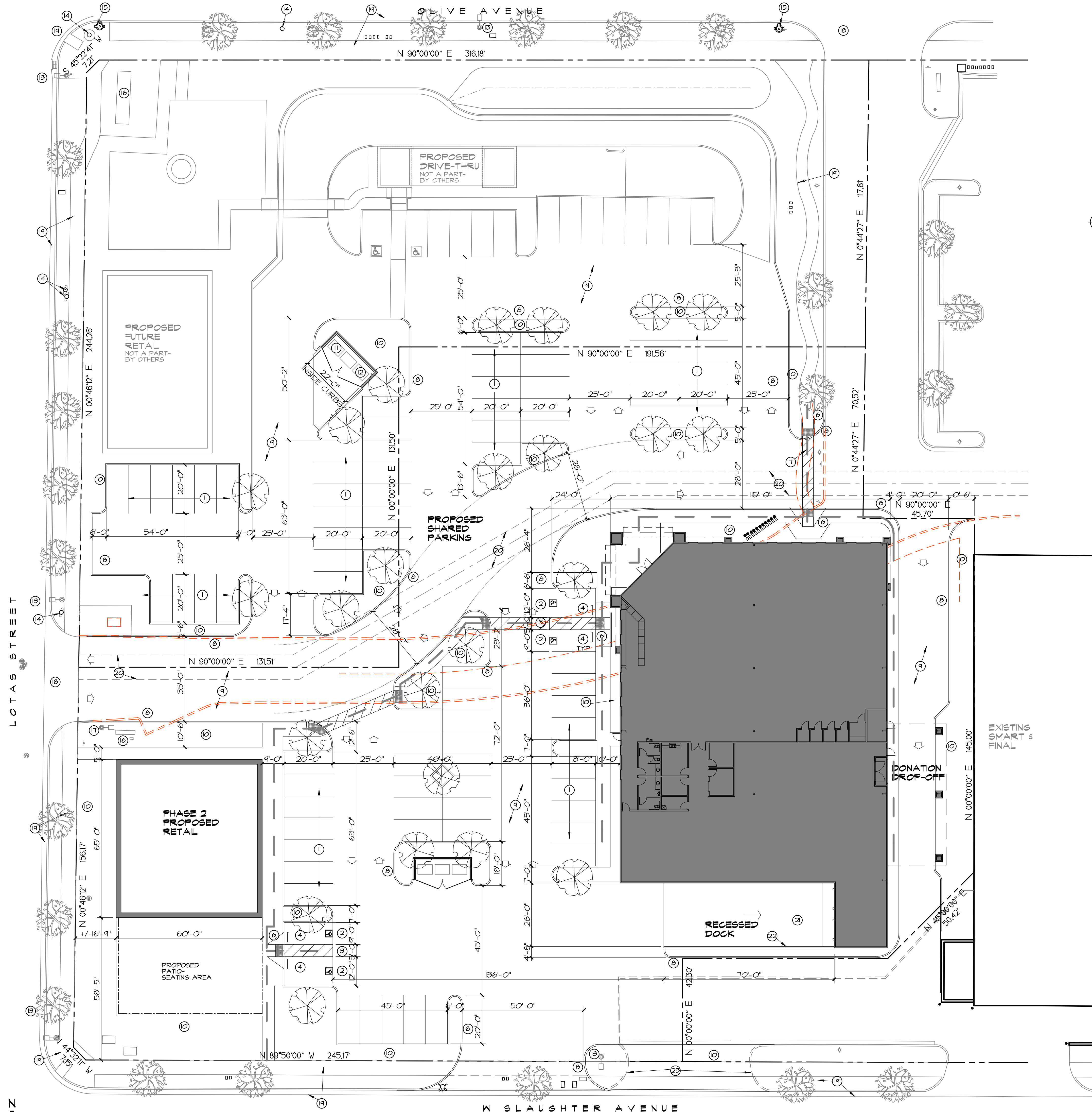


**Goodwill
@ Olive & Lotas**

-  Project Location
-  City Limits

1 in = 400 feet



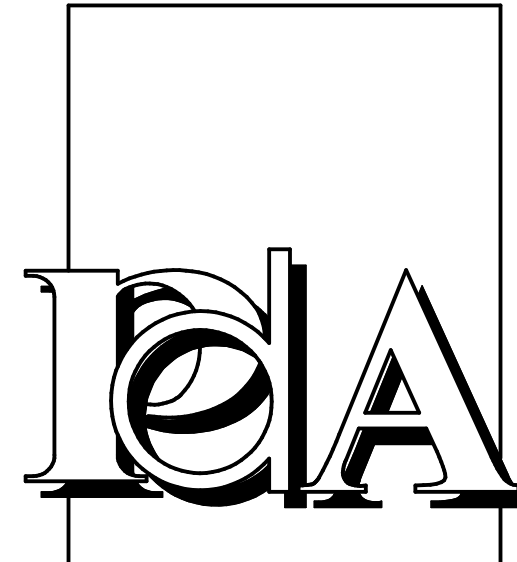


VICINITY MAP

PROJECT ANALYSIS	
ASSESSOR'S PARCEL NUMBER:	254-070-048
PARCEL AREA:	1.93 AC
ZONE:	C6 (GENERAL AND SERVICE COMMERCIAL)
ADJACENT PROPERTIES:	VACANT C6 NORTH: RETAIL/COMMERCIAL C6 (SMART AND FINAL) EAST: LOW DENSITY RESIDENTIAL RS-2 SOUTH: EXISTING COMMERCIAL/RETAIL C6 WEST:
SITE DRAINAGE:	SURFACE TO EXISTING STREETS
SEWAGE DISPOSAL:	CITY OF PORTERVILLE
WATER SERVICE:	CITY OF PORTERVILLE
GAS SERVICE:	SO CAL GAS
ELECTRICAL SERVICE:	SO CAL EDISON
SOLID WASTE DISPOSAL:	TBD
CONSTRUCTION TYPE:	V-B
FIRE SPRINKLERS:	YES
OCCUPANCY (RETAIL/WAREHOUSE):	M, S-I (NON-SEPARATED)
BUILDING HEIGHT:	27'-0" (60'-0" MAX)
NUMBER OF STORIES:	1 STORY
ALLOWABLE AREA (PER BUILDING) BASE ALLOWABLE PER CBC TABLE 506.2:	36,000 SF (M/ S-I OCCUPANCIES)
PHASE 1 BUILDING AREAS	
RETAIL AREAS:	8,500 SF
OFFICE/STAFF AREAS:	1,050 SF
WAREHOUSE AREAS:	6,200 SF
TOTAL BUILDING AREA:	15,750 SF
PHASE 2 BUILDING AREA	
RETAIL AREA:	3,200 SF
PROPOSED ON-SITE PARKING REQUIRED	
RETAIL/OFFICE (4,500 SF/ 200):	48 SPACES
WAREHOUSE (2,640 SF/ 1000):	6 SPACES
PHASE 2 RETAIL (3,200 SF/ 200):	16 SPACES
DRIVE-THRU - BY OTHERS (11,025 SF/ 75):	15 SPACES
FUTURE RETAIL - BY OTHERS (3,300 SF/ 200):	17 SPACES
TOTAL PARKING REQUIRED:	98 SPACES
PROPOSED ON-SITE PARKING PROVIDED	
STANDARD OFF-STREET (4x8):	92 SPACES
ACCESSIBLE (4x8) / (12x14) WITH 5' AISLE:	6 SPACES
TOTAL PARKING PROVIDED:	98 SPACES

KEYNOTES

- 1'-0" WIDE x 20'-0" DEEP PARKING STALL PER CITY OF PORTERVILLE STANDARDS
- 12'-0" x 20'-0" VAN OR 9'-0" x 20'-0" ACCESSIBLE PARKING STALL WITH 3'-0" x 3'-0" PAINTED STALL SIGN AND 10" 50 IN POLE MOUNTED PARKING SIGN DISPLAYING THE INTERNATIONAL SYMBOL OF ACCESSIBILITY WITH AN ADDITIONAL SIGN OR LANGUAGE STATING "MINIMUM FINE \$250.00" INCLUDE SIGN MOUNTED BELOW STATING "VAN ACCESSIBLE" WHERE APPROPRIATE PER CBC - 80" MINIMUM HEIGHT TO THE BOTTOM OF ALL POLE SIGNS
- 5'-0" MINIMUM WIDE ACCESSIBLE AISLE FOR VAN/VEHICLE ACCESS WITH THE WORDS "NO PARKING" IN 12" HIGH CONTRASTING LETTERS- SLOPE NOT TO EXCEED 2% IN ANY DIRECTION
- CONCRETE WHEEL STOPS TO PREVENT VEHICLES FROM OVERHANGING ACCESSIBLE CURB RAMPS
- 4'-0" WIDE MINIMUM CONCRETE WALKWAY OR AREA WITH SLOPE NOT TO EXCEED 5% IN THE DIRECTION OF TRAVEL AND CROSS SLOPE NOT TO EXCEED 2%
- CURB RAMP WITH 3'-0" BORDER OF TRUNCATED DOME TILES AT FLUSH CONDITION BETWEEN CONCRETE WALKWAY AND VEHICULAR AREA FOR ACCESSIBLE PATH OF TRAVEL TO AND FROM PUBLIC WAY AND/OR ACCESSIBLE PARKING STALLS AND AISLES
- DASHED LINE DENOTES ACCESSIBLE PATH OF TRAVEL TO PUBLIC WAY, ACCESSIBLE PARKING SPACES, AND TRASH ENCLOSURE. MAXIMUM SLOPE DOES NOT EXCEED 120' AND CROSS SLOPE DOES NOT EXCEED 150' - SEE CIVIL DRAWINGS FOR ACTUAL SLOPES AND GRADE CHANGES
- NEW 6" CONCRETE CURB - SEE GRADING PLAN FOR ADDITIONAL INFORMATION
- A.G. PAVING PER SOILS REPORT RECOMMENDATIONS- PAVING SECTION SHALL ALSO MEET MINIMUM CITY OF PORTERVILLE STANDARDS
- NEW OR EXISTING LANDSCAPE AREA WITH AUTOMATIC IRRIGATION, SHRUBS, GROUND-COVER, AND TREES PER CITY OF PORTERVILLE STANDARDS
- PROPOSED CONCRETE BLOCK TRASH ENCLOSURE ON CONCRETE PAD PER CITY OF PORTERVILLE STANDARDS
- APPROXIMATE LOCATION OF BUILDING OCCUPANT'S EXTERIOR RECYCLING STORAGE BIN(S) PER CALIFORNIA GREEN CODE SECTION 5.410I- VERIFY FINAL LOCATION WITH OCCUPANT
- APPROXIMATE LOCATION OF EXISTING STREET LIGHT TO REMAIN
- APPROXIMATE LOCATION OF EXISTING POWER POLE
- APPROXIMATE LOCATION OF FIRE HYDRANT
- APPROXIMATE LOCATION OF EXISTING PYLON OR MONUMENT SIGN
- APPROXIMATE LOCATION OF EXISTING ON-SITE LIGHT STANDARD AND POLE
- EXISTING SHARED CONCRETE DRIVE APPROACH TO REMAIN
- EXISTING CURB, GUTTER, LANDSCAPE AREA, AND SIDEWALK TO REMAIN
- EXISTING 10'-0" WIDE WATER EASEMENT TO THE CITY OF PORTERVILLE- THIS PLAN PROPOSES THE RELOCATION OF THE EXISTING WATER LINE AND EASEMENT
- RECESSED LOADING DOCK FOR (2) TRUCK & TRAILER COMBOS
- 7'-4" HIGH CMU SCREEN WALL AT LOADING DOCK PER CITY OF PORTERVILLE
- REMOVE EXISTING DRIVE APPROACH AND REPLACE WITH CURB, GUTTER, SIDEWALK, AND LANDSCAPING TO MATCH AND TIE INTO THE EXISTING IMPROVEMENTS PER CITY OF PORTERVILLE STANDARDS



PAUL DHANENS • ARCHITECT

ARCHITECT

LICENSED ARCHITECT
PAUL DHANENS
NO. C-23843
RENEWAL
STATE OF CALIFORNIA

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BAKERSFIELD, CALIFORNIA 93301
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NOTICE TO CONTRACTORS
Written dimensions on these drawings shall take precedence over stated dimensions. Contractor shall verify and be responsible for confirming all dimensions and shall notify the architect immediately of any discrepancies or field variations discovered.

PROJECT

GOODWILL

OLIVE AVENUE
PORTERVILLE, CA

DATE	ISSUED FOR
5-14-21	SITE PLAN REVIEW
4-21-21	
NO.	REVISIONS
1	
2	
3	
4	
PROPOSED SITE PLAN	
FILE NAME: 2693A1-0	
SHEET	
A-1.0	

RESOLUTION NO. 21-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A CONDITIONAL USE
PERMIT (PRC 2016-040-C) TO ALLOW THE DEVELOPMENT OF AN APPROXIMATELY
60,650± SQUARE FOOT DEVELOPMENT AND TYPE 21 OFF-SALE ALCOHOL LICENSE
FOR THE OLIVE AND LOTAS COMMERCIAL DEVELOPMENT

WHEREAS: On November 16, 2016, the Project Review Committee met with the applicant to discuss a proposed 60,650± square foot commercial development including a Tentative Parcel Map (2016-040-P), Conditional Use Permit (2016-040-C) and Master Sign Program; and

WHEREAS: The City Council of the City of Porterville at its scheduled meeting of April 18, 2017, conducted a public hearing to consider the Olive and Lotas Commercial Development Project; and

WHEREAS: An Initial Study was prepared pursuant to the California Environmental Quality Act (CEQA), resulting in approval of a Mitigated Negative Declaration (IS/MND) via Resolution No. 19-2017; and

WHEREAS: Tentative Parcel Map 2016-040-P was approved via Resolution No. 20-2017 to divide a 6.12± acre site into three parcels: Parcel 1- 2.65± acres; Parcel 2- 1.25± acres; Parcel 3- 1.87± acres and identified the proposed phasing of the development; and

WHEREAS: The applicant has requested a conditional use permit (CUP 2016-040-C) to allow for the establishment of a commercial use greater than 50,000 square feet and the sale of alcohol under a Type 21 Off-Sale license; and

WHEREAS: Master Sign Program 2017-001 proposes for cohesive and creative signage for the entire development; and

WHEREAS: The City Council considered the following findings in its review of the circumstances for this project:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted. The project supports and complies with the following General Plan guiding policies:

LU-G-1: Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.

LU-G-2 Ensure that new development pays for the public facilities and infrastructure improvements required to meet the demands resulting from that growth.

LU-G-11 Foster strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

LU-G-21 Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.

ED-G-7 Create an image for Porterville that will attract and retain economic activity.

The project is consistent with the goals, policies, and land use designation of the Porterville 2030 General Plan, which designates the site as General and Service Commercial as supported by the current CG (General and Service Commercial) zoning.

2. That the location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the General Plan and with any other applicable plan adopted by the City Council.
 - a. The proposed project will comply with all standards of the Development Ordinance.
 - b. All structures on the site are consistent with the Porterville Development Ordinance (PDO) for commercial centers which includes building entrances, four-sided architecture, pad development, lighting and pedestrian pathways.
 - c. The project will not be detrimental to the health, safety, comfort, convenience, and general welfare and will be compatible with surrounding land uses. The project complies with the CG (General and Service Commercial) designation of the City's Development Ordinance, with all applicable City codes, zoning provisions and regulations. The project is conditioned in a manner to preserve the public safety, health and welfare to prevent the development from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit.
 - d. The location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. The project is conditioned to operate in compliance with the PDO Section 306.08 Maintenance.

- e. There are adequate public services, including, but not limited to, fire protection, water supply, sewage disposal, and police protection to serve the project.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Conditional Use Permit PRC 2016-040-C subject to the following conditions:

1. The project shall comply with comments presented in the Project Review Committee (PRC) letter dated December 22, 2016.
2. The proposed project includes more than four establishments in a three-phase development and is required to provide adequate design criteria for commercial centers. As Parcels 1, 2 and 3 develop, they shall develop in a manner consistent with the approved elevations including but not limited to color, materials and theme.
 - The applicant has identified neutral materials and paints for the exterior elevations such as stone veneer, cultured stone country ledgerstone “caramel” for the base of the columns and north elevation frontage as identified on Exhibit A-1, and neutral paint/finish such as Dunn Edwards “boutique beige”, “weather board”, “autumn bark”.
 - Four-sided architecture as identified in Exhibit A will be required of Parcels 2 and 3 as they develop. Approved Elevations on parcel 1 (Exhibit A-1) show larger than normal entry ways, projections, varying building heights and wall mounted painted metal trellises.
 - As Parcel 2 develops, the Corner Plaza (as identified in Exhibit A-2) shall provide unique decorative paving materials, adequate seating areas and shade with attractive landscaping including trees or raised planters.
 - Lighting throughout the commercial development shall be consistent. The applicant has identified goose neck lighting and metal trellises on the exterior of the anchor tenant on parcel 1 (as identified in Exhibit A-1), the project is conditioned to also provide this style of lighting on Parcels 2 and 3 as they develop to provide interesting compositions for outdoor lighting as well as a safe, secure environment.
 - The major tenant has designed a larger than normal entry way to provide shade as customers leave the building, similar entry ways are shown on Exhibit B for Shop Building A, Shop Building B, Major ‘B’, and Shop Building ‘C’.
 - Pedestrian areas, such as walkways, building entrances, and gathering areas, are adequately shaded from the summer sun through such techniques as the careful placement of trees and landscaping, trellis structures, projecting canopies, covered walkways, arcades, porticos, building orientation, and similar techniques.
3. As provided no drive-thru or drive-thru facilities are identified. If drive-thru facilities are later proposed, an amendment to the Conditional Use Permit would be required.

4. The entire development shall include continuous walkways within new commercial districts so they can connect to one another.
5. No alcohol advertising shall be displayed and/or viewed from the outside of the building.
6. The location of alcohol related merchandising shall remain as shown on the Fixture Plan (Exhibit C).
7. Outdoor retail sales and display shall not be permitted without Zoning Administrator approval and is subject to PDO Section 301.12.
8. Signage including Temporary Signs in the project area shall be reviewed with the approved Master Sign Program for the Olive and Lotas Commercial Development. Any signage not identified in the Master Sign Program shall adhere to Porterville Municipal Code Chapter 3 Article IV Signs.
9. Existing frontage improvements were evaluated and determined that a portion of the improvements are non-compliant. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full parcel frontage, except where they exist and are determined to be in good condition and in compliance with current accessibility standards in the opinion of the City Engineer (Ordinance No. 1306).

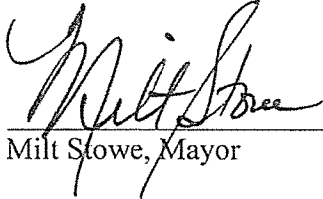
Developer/applicant shall construct curb and gutter, 6' parkway and 6' sidewalk along the frontage of the property on S. Lotas Street, W. Slaughter Avenue, and S. Beverly Street. Developer/applicant shall construct 8' parkway and 8' sidewalk along the frontage of W. Olive Avenue. Existing driveways that are not a function of the facility shall be removed and replaced with curb, gutter and sidewalk. The developer/applicant shall remove and replace the non-compliant curb return at the intersection of Olive Avenue and S. Beverly Street, S. Beverly Street and W. Slaughter Avenue, W. Slaughter Avenue and S. Lotas Street, and S. Lotas Street and Olive Avenue per City standards 20' curb return (existing 15'± radius at Lotas Street and Olive Avenue can be maintained to prevent relocation of existing power pole). The developer/applicant shall be responsible for any and all street paveouts required to tie proposed improvements into existing street sections.

10. The developer/applicant shall dedicate a 6' right-of-way on Olive Avenue to allow for an 8' parkway and 8' sidewalk. The developer/applicant shall dedicate a 5' right-of-way on S. Beverly Street and W. Slaughter Avenue to allow for a 6' parkway and 6' sidewalk. The developer/applicant shall dedicate a 10' right-of-way on S. Lotas Street to allow for a 6' parkway and 6' sidewalk. Additionally, the developer/applicant shall dedicate the required property for accessible ramp(s).
11. The developer/applicant shall design the parking lot stall layout such that parked cars will not back into the onsite drive aisle that connects off of W. Olive Avenue and S. Lotas Street
12. The developer/applicant shall maintain existing traffic circulation and vehicular movements

along all perimeter streets.

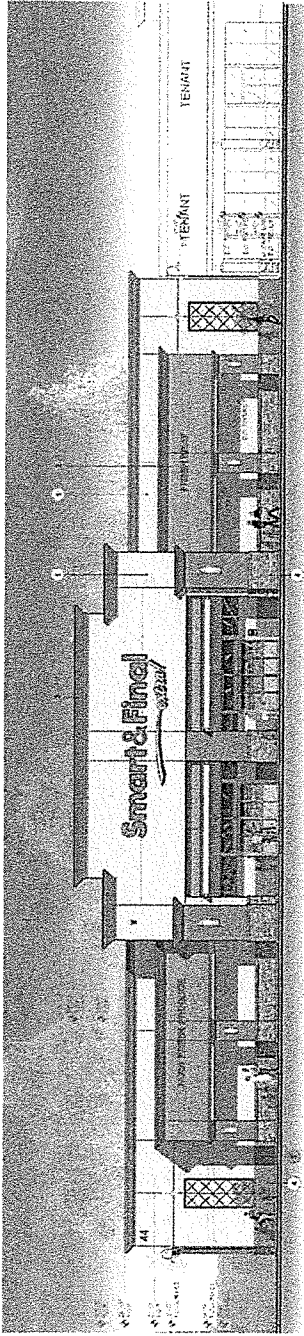
13. The developer/applicant shall install a lighted crosswalk across Olive Avenue, along the west side of Olive Avenue and S. Beverly Street.

PASSED, APPROVED AND ADOPTED this 18th day of April, 2017.

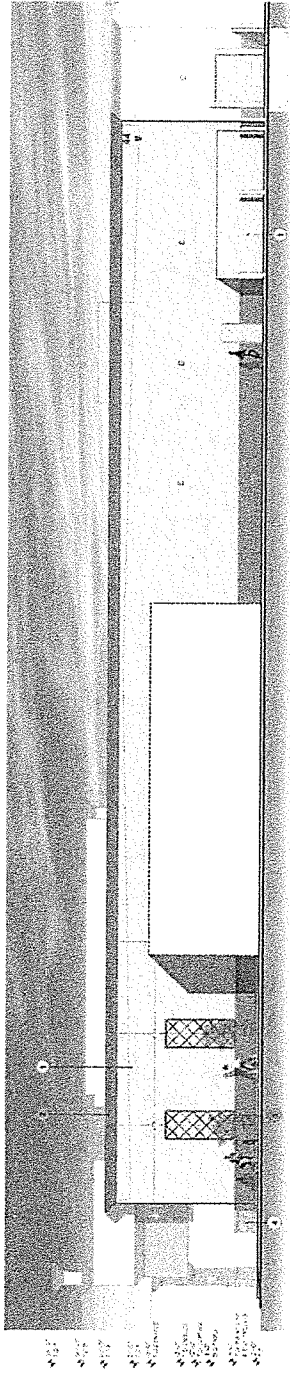
By: 
Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk

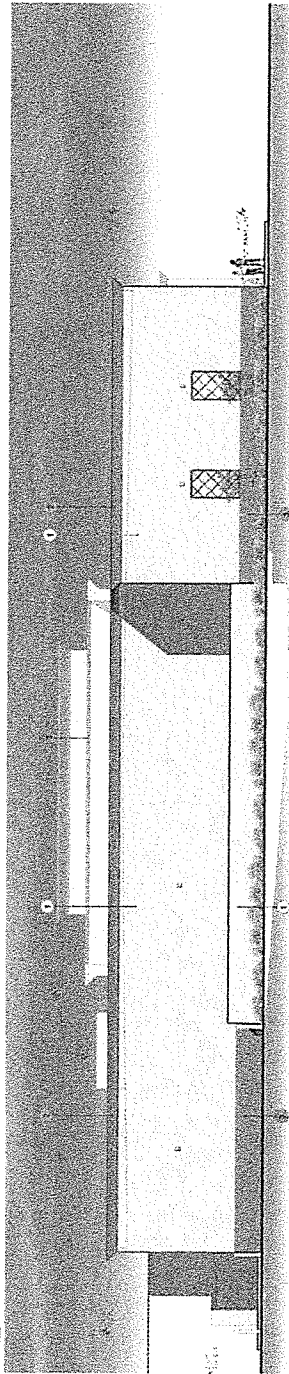
By: 
Patrice Hildreth, Chief Deputy City Clerk



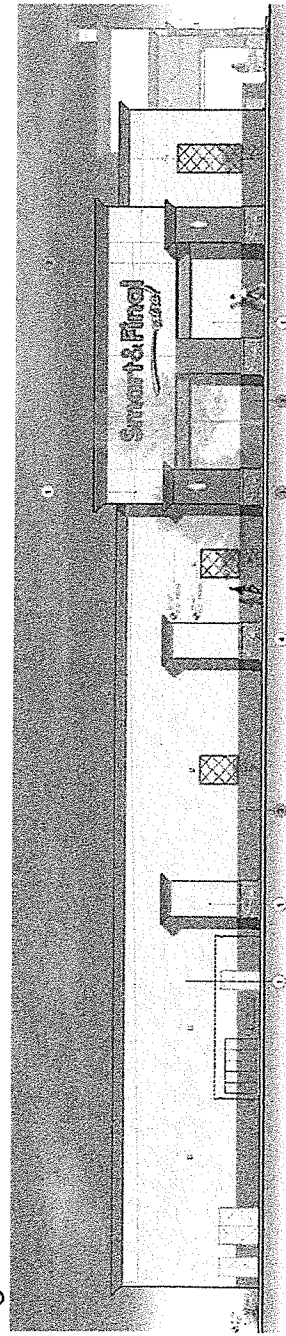
1 FRONT (SOUTH) ELEVATION



2 RIGHT SIDE (EAST) ELEVATION



3 REAR (NORTH) ELEVATION



4 LEFT SIDE (WEST) ELEVATION

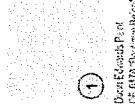
LEGEND



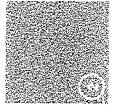
Curved Beam Light



Square Light
X12 and X13 rectangular areas
Titled Normal Annual



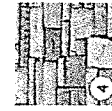
Dark Exterior Panel
CE 0100 Boutique Bag



Dark Exterior Panel
CE 0222 "Nude" Bag



Dark Exterior Panel
CEA 014 "Nude" Bag



Dark Exterior Panel
CEA 014 "Nude" Bag

Curved Beam Light
Curved Beam Light



ARCHITECT
DATE
DATE
DATE
DATE

Smart & Final
OWNER
SMART & FINAL
1000 S. MAIN STREET
PORTERVILLE, CA 93257
TEL: 559.335.1111

2017
NEW BUILDING
FOR
Smart & Final
#796
PORTERVILLE
LOCATION
41 S. Main Street
Porterville, CA 93257
DRAWN BY
J. HARRIS

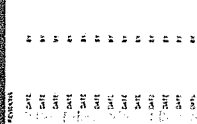
ARCHITECT
DATE
DATE
DATE
DATE

PROJECT ARCHITECT
PROJECT MANAGER
DESIGNER
DRAWING NO.
SHEET NO.

COURTNEY ARCHITECTS

100 S. Main Street
Porterville, CA 93257
TEL: 559.335.1111
WWW.COURTNEYARCHITECTS.COM

A3.0



Smart & Final

620 CITIZEN DRIVE
CONVERSE, CA 95620
TEL: (925) 467-7200
FAX: (925) 467-7206

2017
SITE DEVELOPMENT
FOR
SMART & FINAL
RETAIL CENTER
PORTERVILLE

LOCAL
SEC of Ohio Avenue
and S. Louis Street
Portland, CA 93257

1407

0106. 4498

SITE PLAN

PROJECT NUMBER: 16
PROJECT NAME: 1
OWNER: 1
DATE: 1
DRAWING SCALE: 1

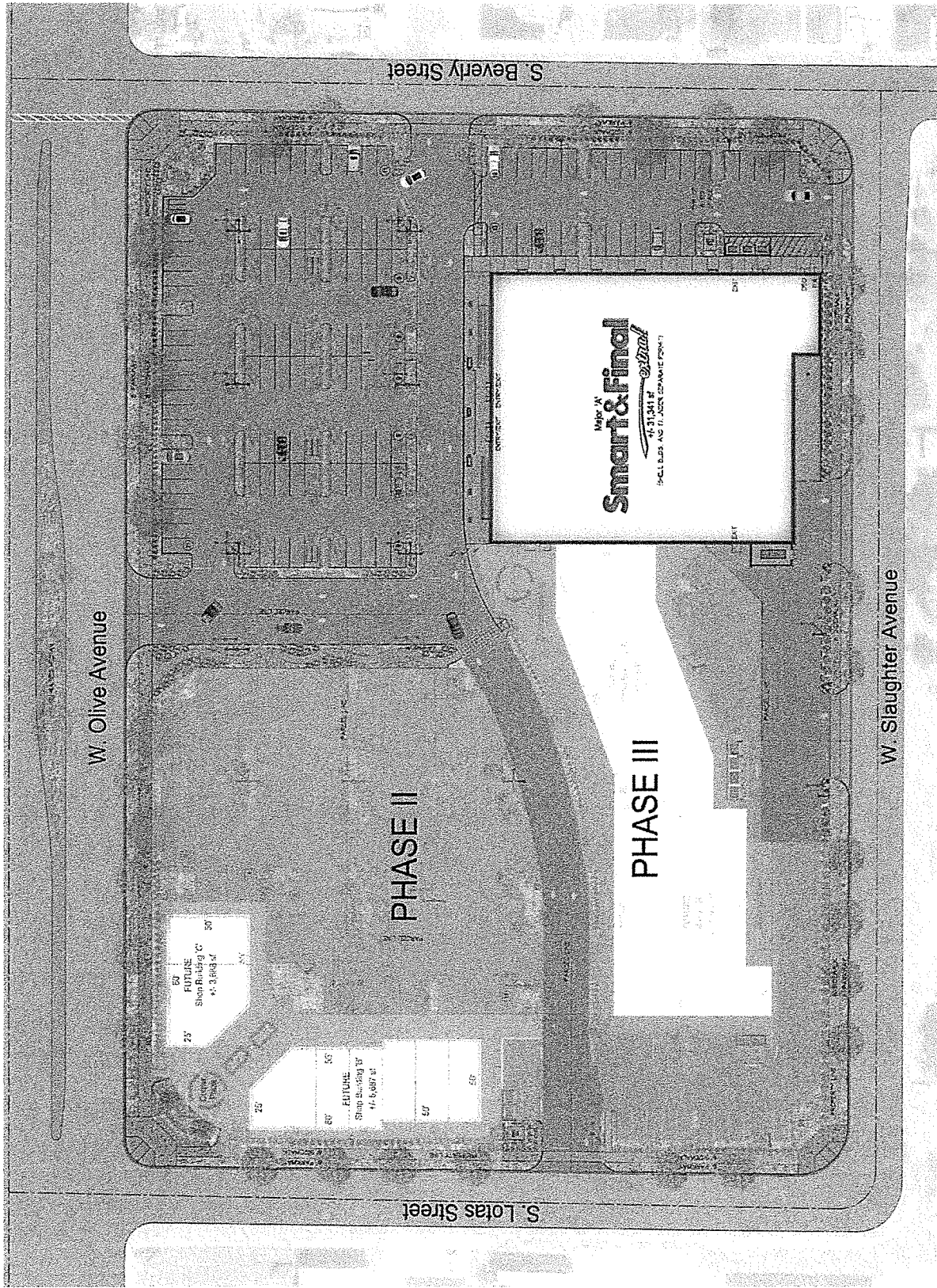
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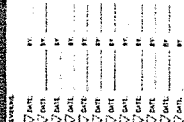
Concentration of Inhibitor (M)	Rate of Polymerization (M/min)
0.0	1.0
0.1	0.8
0.2	0.6
0.3	0.4
0.4	0.3
0.5	0.25
0.6	0.2
0.7	0.2
0.8	0.2
0.9	0.2
1.0	0.2

with 100 µg/ml of gentamicin for 24 h and
red blood cells (RBCs) were washed
with 100 µg/ml of gentamicin for 24 h
before being used.

[illegible]

SD.1





Smart & Final

500 CHATEL DRIVE
CARMICHAEL, CA 95023
TEL: (415) 869-7025
FAX: (415) 869-7036

Education
1964-66, W.C.W. Olive Avenue
and S. Beverly Street
Orlando, CA 93257

**BUILDING
ELEVATIONS -
PHASE II & III**

17026 FRANK
ALDO R.
27044 WYMAN
12111 CHRYSTIE

COURTNEY+LE
ARCHITECTS

10 South 10th Avenue
Denver, Colorado 80202
Tel: 303-733-1200 Fax: 303-733-1201

[illegible]

EL-2

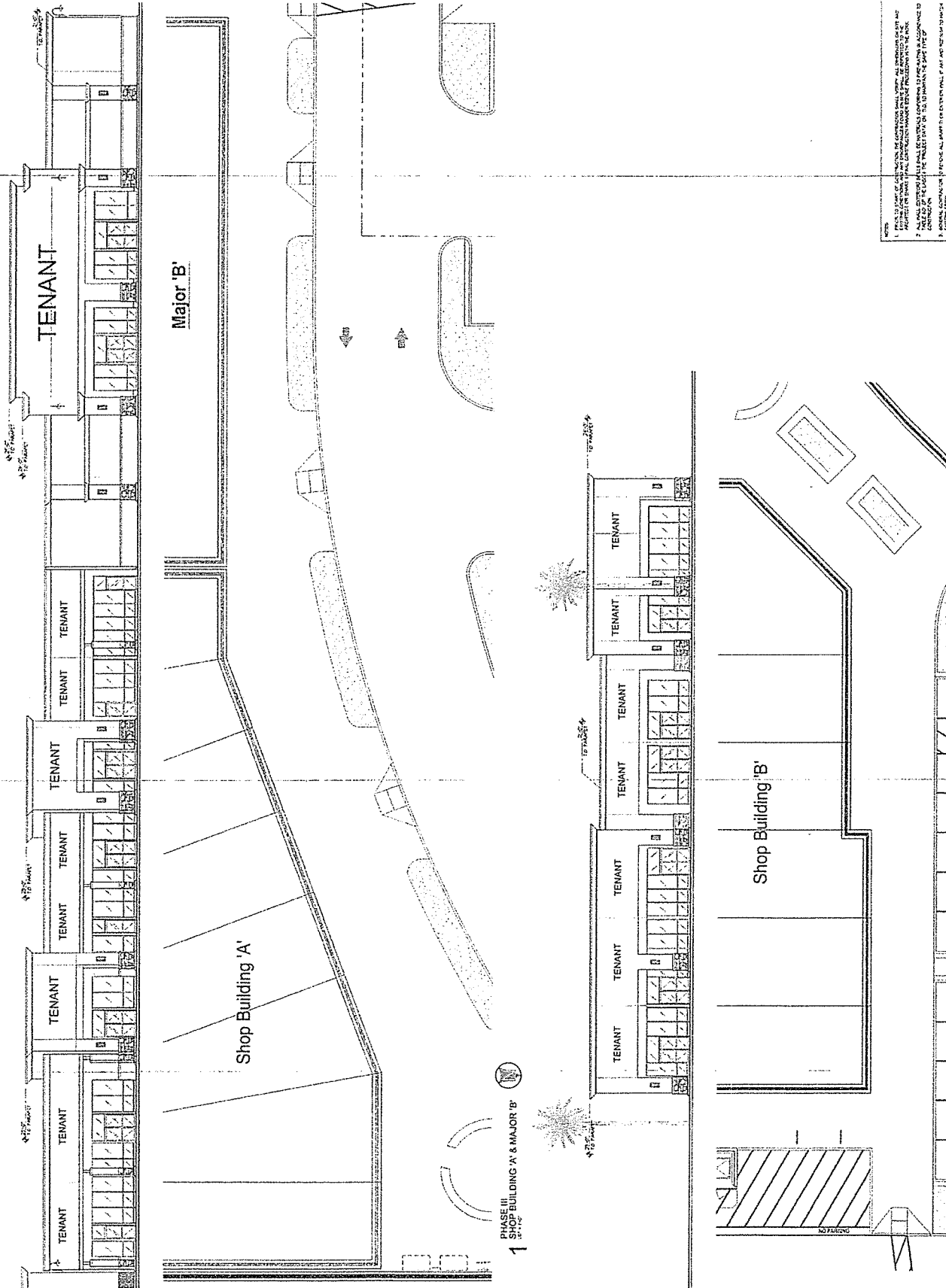


Exhibit A-2

PHASE II
SHOP BUILDING 'E'



1071 (429.174)
 CDSBPV, CA
 TEL: (310) 840-2100
 FAX: (310) 840-2106

REC of Chas. A. Jones
755 S. Lotus Street
Vancouver, CA 93257

[illegible]

COURTNEY+LE
ARCHITECTS

1. *Phylogenetic relationships*
2. *Phylogenetic relationships*
3. *Phylogenetic relationships*
4. *Phylogenetic relationships*
5. *Phylogenetic relationships*
6. *Phylogenetic relationships*
7. *Phylogenetic relationships*
8. *Phylogenetic relationships*
9. *Phylogenetic relationships*
10. *Phylogenetic relationships*

A11.0

McGriff

A **LEGEND** **PLEASE PRINT**
NOTE: TEAL WITH GREEN-INK IS NOT USED

REGISTRATION \$100 MAIL
BUDGET: \$1000000 4/15/00 MAIL
COLUMBIA PUBLISHING MAIL

PHOTOS

PHOTOGRAPH SLID
COVER SCHEDULE
CREDITABLE
PUBLISHING PANELS
EXTENDING CRY MAIL
FREE LITHOGRAPH
FO PLAIN DESIGN
NOTE DTD
KEYED NOTES
TO FREIGHT DEAN

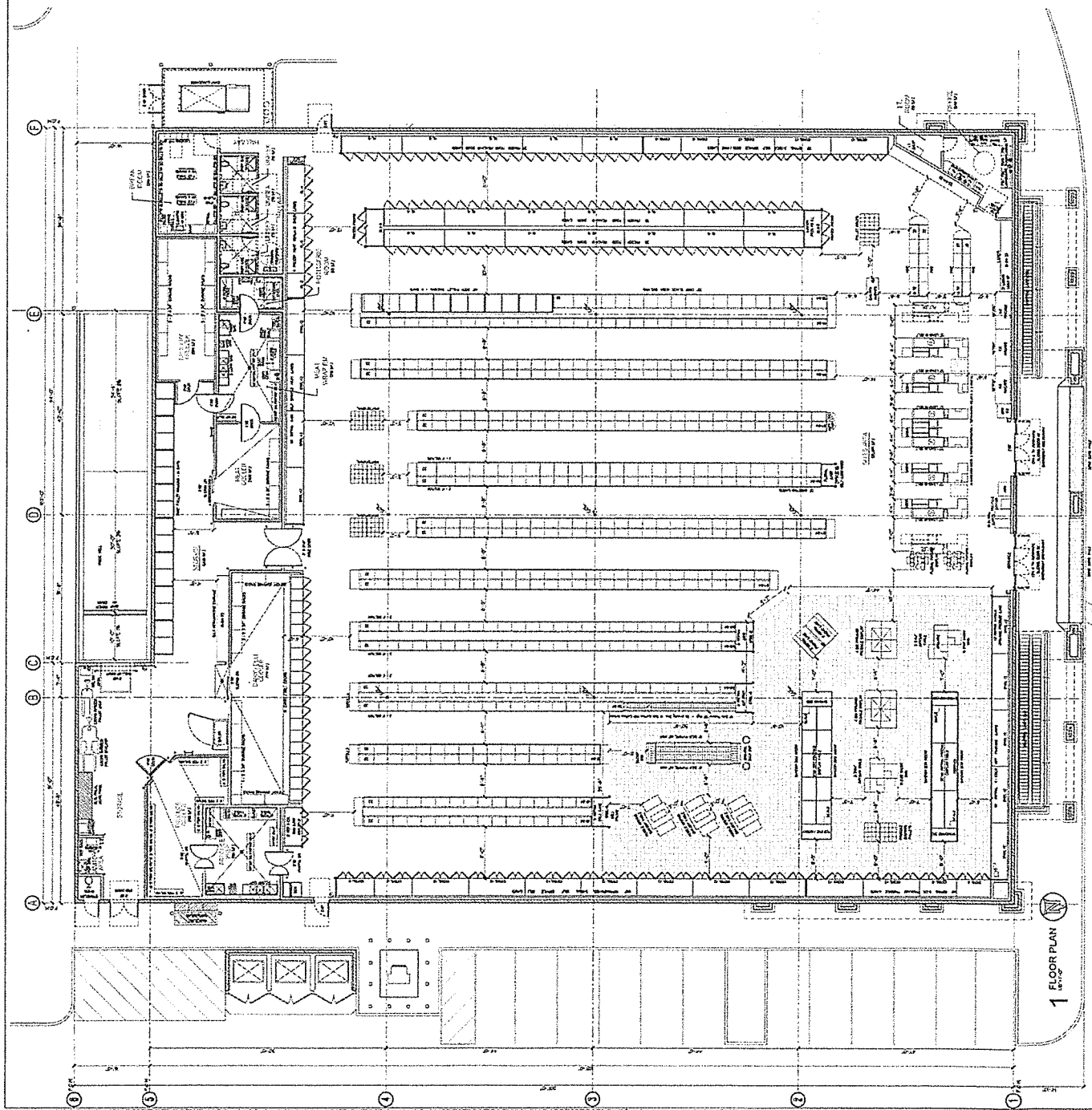


Exhibit B

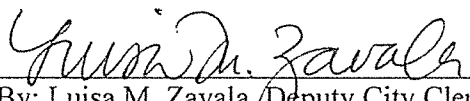
STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 18th day of April, 2017.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	REYES	WARD	STOWE	HAMILTON	FLORES
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk


By: Luisa M. Zavala, Deputy City Clerk

RESOLUTION NO. 98-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF MODIFICATION TO CONDITIONAL USE PERMIT 2016-040 TO ACCOMMODATE THE ADDITION OF "THE HUMAN BEAN" DRIVE THRU COFFEE SHOP FOR THE OLIVE AND LOTAS COMMERCIAL DEVELOPMENT

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of December 15, 2020, conducted a public hearing to consider Modification No. 1 to Conditional Use Permit 2016-040 (Resolution 21-2017) which approved the 60,650± square foot Olive and Lotas Commercial Development. The initial project was conditioned to require an amendment to allow the addition of a drive thru facility in the commercial center; and

WHEREAS: An initial study was prepared pursuant to the California Environmental Quality Act (CEQA), resulting in the approval of a Mitigated Negative Declaration (IS/MND) to the initial project via Resolution No. 19-2017. No further environmental review is required; and

WHEREAS: The City Council made the following findings in its review of the circumstance of the project:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted. The project supports and complies with the following General Plan guiding policies:

LU-G-1: Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.

LU-G-11: Foster strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

LU-G-21: Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.

ED-G-7 Create an image for Porterville that will attract and retain economic activity.

The project is consistent with the goals, policies, and land use designation of the Porterville 2030 General Plan, which designated the site as General and Service Commercial as supported by the current CG (General and Service Commercial) zoning.

2. That the location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the General Plan and with any other applicable plan adopted by the City Council.
 - a. The proposed project will comply with all standards of the Development Ordinance

- b. All structures on the site are consistent with the Porterville Development Ordinance (PDO) for commercial centers which includes building entrances, four-sided architecture, pad development, lighting, and pedestrian pathways.
 - c. The project will not be detrimental to the health, safety, comfort, convenience, and general welfare and will be compatible with surrounding land uses. The project complies with the CG (General and Service Commercial) designation of the City's Development Ordinance, with all applicable City codes, zoning provisions and regulations.
 - d. The location of the project and the conditions under which it will be operated or remained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. The project is conditioned to operate in compliance with the PDO Section 306.08 Maintenance.
3. That the project, as proposed, complies with all design standards of the Porterville Development Ordinance, as well as maintaining compatibility with the architectural style of the Commercial Center. Building permit review will assure all such standards are met.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve Modification #1 to Conditional Use Permit (Resolution 21-2017) subject to the following conditions:

- 1. Unless otherwise expressly modified, all conditions of approval within the Olive and Lotas Conditional Use Permit (Resolution 21-2017) are to remain valid and are still in effect.
- 2. The developer/applicant shall ensure that the corner plaza be designed and constructed to include decorative features including unique paving materials, ample seating area, and landscaping including raised planters and trees for shading. The plaza shall be constructed and landscaped prior to occupancy of any tenant space in Phase 2. Seating need not be installed in association with the drive thru coffee shop, but must be installed prior to occupancy of any other tenant space in Phase 2.
- 3. The drive thru vehicle lanes shall be screened from public streets to a height of (3.5'). Screening devices used shall consist of walls and/or berms with supplemental landscaping and planting materials.
- 4. Landscaping shall be provided in accordance with Sections 303 and 304.10(i) of the Development Code and Chapter 25, Article I, Division 6 of the Municipal Code. In particular, landscaping shall be provided along all building facades that face onto a customer parking lot; such facades shall have one or more landscape planters installed along a minimum twenty percent of the building face. The minimum width of the planter shall be three feet.
- 5. Upon approval of the Modification No. 1, any future changes or additions in operation which substantially alters the conditions or nature of the subject site will require approval by the City Council.
- 6. At all times, the commercial development shall be operated and maintained to comply with State Laws, the City of Porterville Zoning Ordinance, adopted Building Codes and all other applicable laws and ordinances.

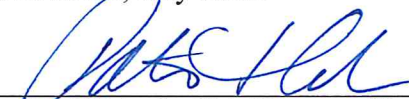
PASSED, APPROVED AND ADOPTED this 15th day of December, 2020.



Monte Reyes, Mayor

ATTEST:

John D. Lollis, City Clerk

By 

Patrice Hildreth, Chief Deputy City Clerk

RESOLUTION NO. 21-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A CONDITIONAL USE
PERMIT (PRC 2016-040-C) TO ALLOW THE DEVELOPMENT OF AN APPROXIMATELY
60,650± SQUARE FOOT DEVELOPMENT AND TYPE 21 OFF-SALE ALCOHOL LICENSE
FOR THE OLIVE AND LOTAS COMMERCIAL DEVELOPMENT

WHEREAS: On November 16, 2016, the Project Review Committee met with the applicant to discuss a proposed 60,650± square foot commercial development including a Tentative Parcel Map (2016-040-P), Conditional Use Permit (2016-040-C) and Master Sign Program; and

WHEREAS: The City Council of the City of Porterville at its scheduled meeting of April 18, 2017, conducted a public hearing to consider the Olive and Lotas Commercial Development Project; and

WHEREAS: An Initial Study was prepared pursuant to the California Environmental Quality Act (CEQA), resulting in approval of a Mitigated Negative Declaration (IS/MND) via Resolution No. 19-2017; and

WHEREAS: Tentative Parcel Map 2016-040-P was approved via Resolution No. 20-2017 to divide a 6.12± acre site into three parcels: Parcel 1- 2.65± acres; Parcel 2- 1.25± acres; Parcel 3- 1.87± acres and identified the proposed phasing of the development; and

WHEREAS: The applicant has requested a conditional use permit (CUP 2016-040-C) to allow for the establishment of a commercial use greater than 50,000 square feet and the sale of alcohol under a Type 21 Off-Sale license; and

WHEREAS: Master Sign Program 2017-001 proposes for cohesive and creative signage for the entire development; and

WHEREAS: The City Council considered the following findings in its review of the circumstances for this project:

1. That the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable plan that the City has adopted. The project supports and complies with the following General Plan guiding policies:

LU-G-1: Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.

LU-G-2 Ensure that new development pays for the public facilities and infrastructure improvements required to meet the demands resulting from that growth.

LU-G-11 Foster strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

LU-G-21 Attract and retain specialty retail and restaurant businesses that will enhance Porterville's unique character.

ED-G-7 Create an image for Porterville that will attract and retain economic activity.

The project is consistent with the goals, policies, and land use designation of the Porterville 2030 General Plan, which designates the site as General and Service Commercial as supported by the current CG (General and Service Commercial) zoning.

2. That the location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conforms in all significant respects with the General Plan and with any other applicable plan adopted by the City Council.
 - a. The proposed project will comply with all standards of the Development Ordinance.
 - b. All structures on the site are consistent with the Porterville Development Ordinance (PDO) for commercial centers which includes building entrances, four-sided architecture, pad development, lighting and pedestrian pathways.
 - c. The project will not be detrimental to the health, safety, comfort, convenience, and general welfare and will be compatible with surrounding land uses. The project complies with the CG (General and Service Commercial) designation of the City's Development Ordinance, with all applicable City codes, zoning provisions and regulations. The project is conditioned in a manner to preserve the public safety, health and welfare to prevent the development from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit.
 - d. The location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity. The project is conditioned to operate in compliance with the PDO Section 306.08 Maintenance.

- e. There are adequate public services, including, but not limited to, fire protection, water supply, sewage disposal, and police protection to serve the project.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Conditional Use Permit PRC 2016-040-C subject to the following conditions:

1. The project shall comply with comments presented in the Project Review Committee (PRC) letter dated December 22, 2016.
2. The proposed project includes more than four establishments in a three-phase development and is required to provide adequate design criteria for commercial centers. As Parcels 1, 2 and 3 develop, they shall develop in a manner consistent with the approved elevations including but not limited to color, materials and theme.
 - The applicant has identified neutral materials and paints for the exterior elevations such as stone veneer, cultured stone country ledgerstone “caramel” for the base of the columns and north elevation frontage as identified on Exhibit A-1, and neutral paint/finish such as Dunn Edwards “boutique beige”, “weather board”, “autumn bark”.
 - Four-sided architecture as identified in Exhibit A will be required of Parcels 2 and 3 as they develop. Approved Elevations on parcel 1 (Exhibit A-1) show larger than normal entry ways, projections, varying building heights and wall mounted painted metal trellises.
 - As Parcel 2 develops, the Corner Plaza (as identified in Exhibit A-2) shall provide unique decorative paving materials, adequate seating areas and shade with attractive landscaping including trees or raised planters.
 - Lighting throughout the commercial development shall be consistent. The applicant has identified goose neck lighting and metal trellises on the exterior of the anchor tenant on parcel 1 (as identified in Exhibit A-1), the project is conditioned to also provide this style of lighting on Parcels 2 and 3 as they develop to provide interesting compositions for outdoor lighting as well as a safe, secure environment.
 - The major tenant has designed a larger than normal entry way to provide shade as customers leave the building, similar entry ways are shown on Exhibit B for Shop Building A, Shop Building B, Major ‘B’, and Shop Building ‘C’.
 - Pedestrian areas, such as walkways, building entrances, and gathering areas, are adequately shaded from the summer sun through such techniques as the careful placement of trees and landscaping, trellis structures, projecting canopies, covered walkways, arcades, porticos, building orientation, and similar techniques.
3. As provided no drive-thru or drive-thru facilities are identified. If drive-thru facilities are later proposed, an amendment to the Conditional Use Permit would be required.

4. The entire development shall include continuous walkways within new commercial districts so they can connect to one another.
5. No alcohol advertising shall be displayed and/or viewed from the outside of the building.
6. The location of alcohol related merchandising shall remain as shown on the Fixture Plan (Exhibit C).
7. Outdoor retail sales and display shall not be permitted without Zoning Administrator approval and is subject to PDO Section 301.12.
8. Signage including Temporary Signs in the project area shall be reviewed with the approved Master Sign Program for the Olive and Lotas Commercial Development. Any signage not identified in the Master Sign Program shall adhere to Porterville Municipal Code Chapter 3 Article IV Signs.
9. Existing frontage improvements were evaluated and determined that a portion of the improvements are non-compliant. The developer/applicant shall construct and/or repair street, curb, gutter, sidewalk, etc. along the full parcel frontage, except where they exist and are determined to be in good condition and in compliance with current accessibility standards in the opinion of the City Engineer (Ordinance No. 1306).

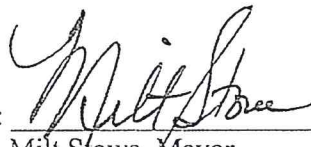
Developer/applicant shall construct curb and gutter, 6' parkway and 6' sidewalk along the frontage of the property on S. Lotas Street, W. Slaughter Avenue, and S. Beverly Street. Developer/applicant shall construct 8' parkway and 8' sidewalk along the frontage of W. Olive Avenue. Existing driveways that are not a function of the facility shall be removed and replaced with curb, gutter and sidewalk. The developer/applicant shall remove and replace the non-compliant curb return at the intersection of Olive Avenue and S. Beverly Street, S. Beverly Street and W. Slaughter Avenue, W. Slaughter Avenue and S. Lotas Street, and S. Lotas Street and Olive Avenue per City standards 20' curb return (existing 15'± radius at Lotas Street and Olive Avenue can be maintained to prevent relocation of existing power pole). The developer/applicant shall be responsible for any and all street paveouts required to tie proposed improvements into existing street sections.

10. The developer/applicant shall dedicate a 6' right-of-way on Olive Avenue to allow for an 8' parkway and 8' sidewalk. The developer/applicant shall dedicate a 5' right-of-way on S. Beverly Street and W. Slaughter Avenue to allow for a 6' parkway and 6' sidewalk. The developer/applicant shall dedicate a 10' right-of-way on S. Lotas Street to allow for a 6' parkway and 6' sidewalk. Additionally, the developer/applicant shall dedicate the required property for accessible ramp(s).
11. The developer/applicant shall design the parking lot stall layout such that parked cars will not back into the onsite drive aisle that connects off of W. Olive Avenue and S. Lotas Street
12. The developer/applicant shall maintain existing traffic circulation and vehicular movements

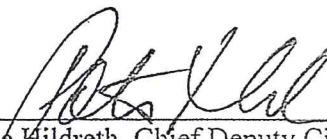
along all perimeter streets.

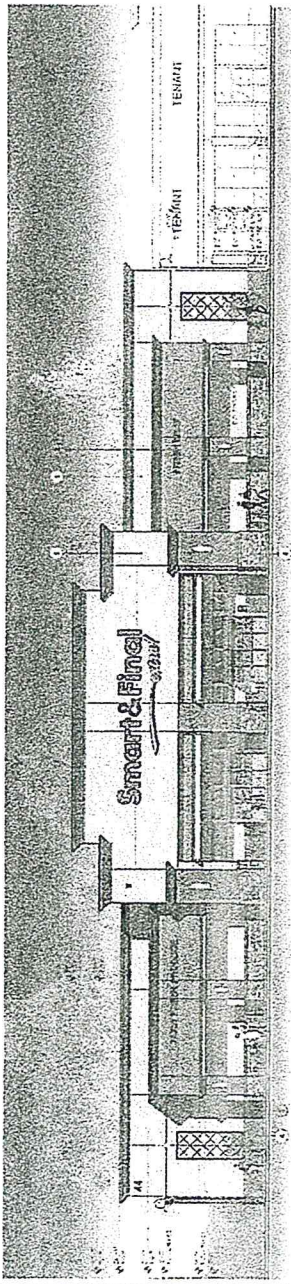
13. The developer/applicant shall install a lighted crosswalk across Olive Avenue, along the west side of Olive Avenue and S. Beverly Street.

PASSED, APPROVED AND ADOPTED this 18th day of April, 2017.

By: 
Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk

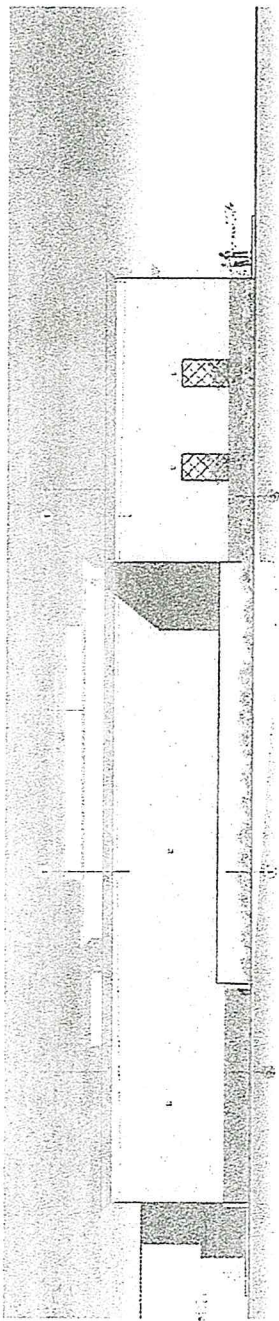
By: 
Patrice Hildreth, Chief Deputy City Clerk



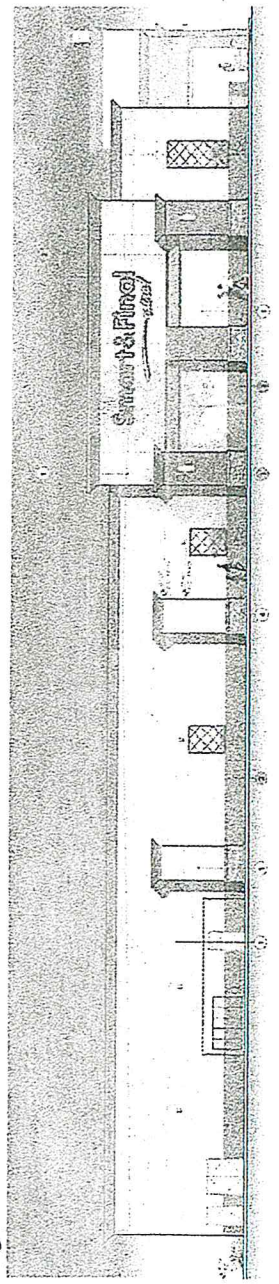
1 FRONT (SOUTH) ELEVATION



2 RIGHT SIDE (EAST) ELEVATION



3 REAR (NORTH) ELEVATION



4 LEFT SIDE (WEST) ELEVATION

LEGEND

- ① Dark Brown Paint
CE 010 "Dorchester"
- ② Dark Brown Paint
CE 010 "Dorchester"
- ③ Dark Brown Paint
CE 010 "Dorchester"
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Smart & Final
ARCHITECTS
4355 Loma Street
Porterville, CA 93257
TEL: 559.581.1111
FAX: 559.581.1111

2017
NEW BUILDING
FOR
Smart & Final
#785
PORTERVILLE

4355 Loma Street
Porterville, CA 93257

DATE: 01/15/2017

BUILDING
ELEVATIONS

ARCHITECT: Smart & Final
DESIGNER: Smart & Final
DRAWN BY: Smart & Final
CHECKED BY: Smart & Final
DATE: 01/15/2017

Scale: 1/8" = 1'-0"

Smart & Final
ARCHITECTS
4355 Loma Street
Porterville, CA 93257
TEL: 559.581.1111
FAX: 559.581.1111

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Smart & Final

INVESTMENT, 2014
CONTRACT, 2014
FALL 2014-2016

2017
SITE DEVELOPMENT
FOR
SMART & FINAL
RETAIL CENTER
PORTERVILLE

3000 S. Olive Avenue
300 S. Olive Street
Porterville, CA 93257

CONTRACT

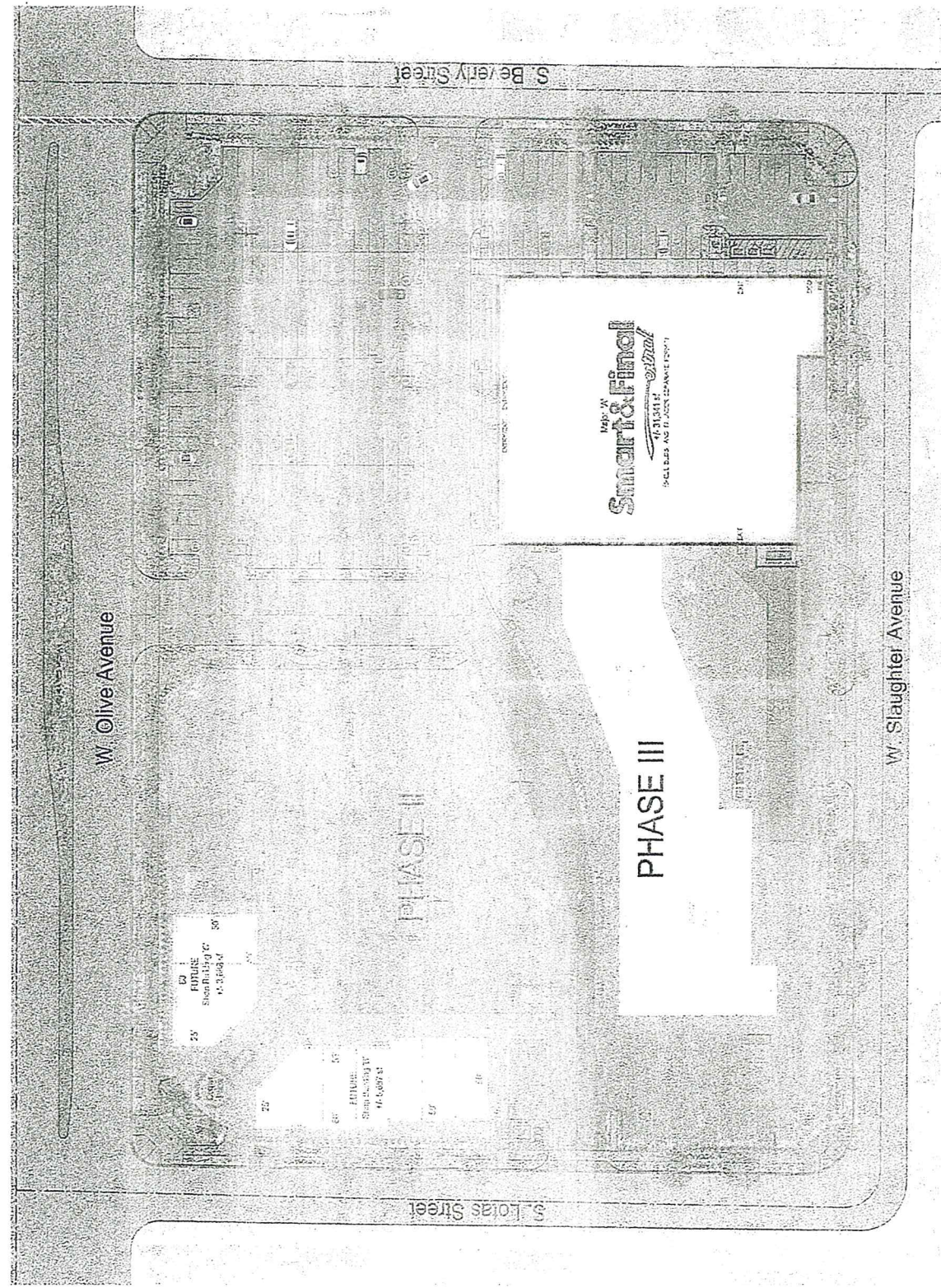
2017/10

SITE PLAN

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PHASE V
PHASE VI
PHASE VII
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Map No. 10000
Scale: 1" = 100'
Date: 10/1/17
Author: [Name]
Checker: [Name]
Reviewer: [Name]
Approved: [Name]
Date: 10/1/17

SD.1

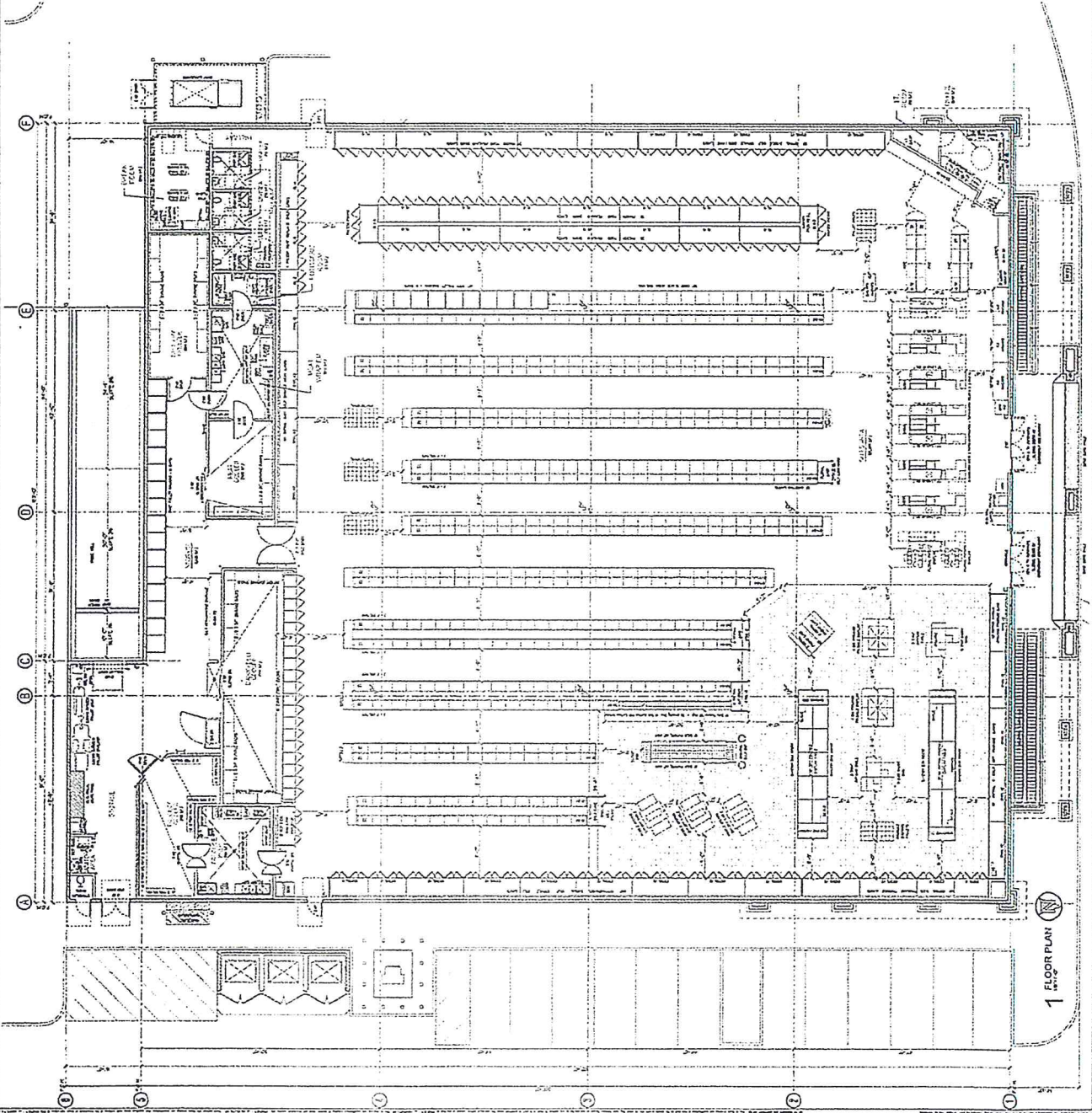


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Scale



2 PHASE II SHOP BUILDING 'B'

A LEGEND
 THIS FLOOR PLAN IS NOT TO BE CONSIDERED AS A CONTRACT DOCUMENT.
 ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 ALL FINISHES ARE TO BE DETERMINED BY THE OWNER.
 ALL MATERIALS AND METHODS OF CONSTRUCTION ARE TO BE DETERMINED BY THE OWNER.
 ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND STANDARDS.
 ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND STANDARDS.



Smart & Final
 ARCHITECTS
 1000 10th Avenue
 Portland, OR 97204
 503.228.1111
 www.smartandfinal.com

2017
NEW BUILDING
FOR
Smart & Final
#785
PORTERVILLE

FLOOR
FIGURE
PLAN

COURTNEY+LE
ARCHITECTS

A11.0
 11/15/2017

Exhibit B

1 FLOOR PLAN

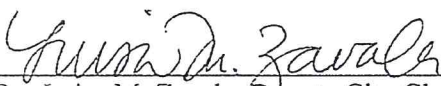
STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 18th day of April, 2017.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	REYES	WARD	STOWE	HAMILTON	FLORES
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk


By: Luisa M. Zavala, Deputy City Clerk

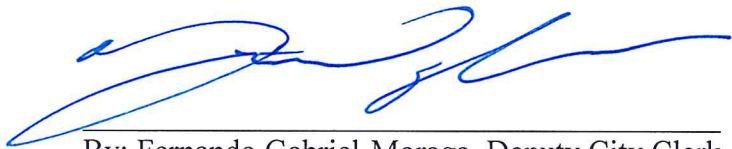
STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 15th day of December, 2020.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	PEÑALOZA	REYES	FLORES	STOWE	CARRILLO
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk



By: Fernando Gabriel-Moraga, Deputy City Clerk



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Conditional Use Permit for Chevron ExtraMile PRC 2020-027

SOURCE: Community Development

BACKGROUND: The applicant is requesting approval of a Conditional Use Permit (PRC 2020-027-C) to allow the development of an automobile service station with drive-thru car wash facilities and approval of a Type 20 (Beer and Wine) off-sale alcohol license.

COMMENT: The project is located at the southwest corner of Olive Avenue and Cobb Street, formerly the Rainbow House of Carpets. The use of Automobile/Vehicle Washing is a permitted use within the CG (General and Service Commercial) zone district subject to approval of a conditional use permit. Section 301.02 of the Porterville Development Ordinance requires approval of a Conditional Use Permit (CUP) for any use involving the sale of alcoholic beverages.

The California Department of Alcoholic Beverage Control (ABC) allows for a specific number of licenses per census tract, based on population. Whenever the ratio of on-sale licenses to population in a census tract exceeds the average ratio for the county, an “undue concentration” of licenses is determined to exist. The subject site is located within Census Tract 36.02. This tract contains eighteen (18) licenses for alcohol sales: eight (8) on-sale and ten (10) off-sale. In Census tract 36.02, six (6) on-sale and seven (7) off-sale are allowed without being deemed over-concentrated. Approval of this on-sale license would be the eleventh (11th)- four (4) above the number authorized by ABC. Due to the over-concentration of on-sale licenses, a Letter of Public Convenience or Necessity will be required.

The store is proposed to be open seven days per week, between 6:00 a.m. and 12:00 a.m. Staff has included in the draft Resolution proposed conditions for the facility to operate and be maintained so as not to be detrimental to the public health, safety or welfare to properties or improvements in the vicinity. Any changes to the operation of business would require a modification of the CUP.

ANALYSIS: The subject site is consistent with the General Plan Land Use Designation

and Zoning Standards for CG (General and Service Commercial). The CG designation is intended to provide for retail and service uses that meet local and regional demand. The proposed service station with alcohol sales would suit the purpose of the zone designation. The service station also supports the General Plan economic development guiding policies to retain, improve and promote businesses in Porterville. The service station is a permitted use in the CG Zone with a Conditional Use Permit, and alcohol sales are permitted in that zone with a Conditional Use Permit. On October 11, 2021, the Project Review Committee deemed the project consistent with the City's General Plan Land Use Policies and Guidelines. The proposed car wash facility compliments the existing uses and meets the CG zone district requirements and the Development Ordinance.

ENVIRONMENTAL On October 11, 2021, the Environmental Coordinator made a preliminary
REVIEW: determination that the project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15332, In-Fill Development Projects. Use of the Class 32 exemption requires the City to establish several facts as follows:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. *The project is allowed in the CG zone district subject to approval of a conditional use permit; the CG zone is the implementing zone for the General and Service Commercial General Plan Land Use Designation. The project will advance General Plan guiding policies LU-G-1, LU-G-3, and LU-G7 and the conditions of approval contain reference to all applicable standards of the Development Ordinance.*
2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. *The project site is within the Porterville city limits and comprises 33,356 square feet, or approximately 0.766 acres. It is abutted to the north, east, and west by existing urban development. The parcel to the immediate south has historically been developed with urban uses, which were only recently removed.*
3. The project site has no value as habitat for endangered, rare or threatened species. Review of the California Natural Diversity Database (CNDDB) does not indicate the presence of any species of concern within the vicinity of the project site. Additionally, the site and the surrounding properties have historically been developed with active urban uses and do not contain habitat suitable for any special-status species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. *The project qualifies as a local-serving retail project and is thus considered to have a less-than-significant effect to traffic. The site is located on W. Olive Avenue, a major*

east-west transportation corridor and is within 200 feet of State Route 65. Traffic-generated noise from the project will be consistent with existing ambient noise levels and mechanical noise from the carwash will be attenuated via building design. A run of the California Emissions Estimator Model (CalEEMod) version 2020.4.0 indicates that air quality and greenhouse gas emissions will not exceed any applicable thresholds. The project will utilize a water recycling system and will comply with applicable cross-connection prevention requirements and water-efficient landscaping requirements.

5. The site can be adequately served by all required utilities and public services. *Water, wastewater, and storm drainage facilities exist within W. Olive Avenue and S. Cobb Street and have sufficient capacity to serve the site. Public safety services are available to the site and will not be substantially affected by development and operation of the project.*

RECOMMENDATION: That the City Council adopt the draft Resolution approving the Conditional Use Permit (PRC 2020-027-C) subject to conditions of approval.

ATTACHMENTS:

1. Draft Resolution
2. Draft Letter of Public Necessity
3. Locator Map
4. General Plan Land Use Map
5. Zoning Map
6. Site Plan
7. ABC Map

Appropriated/Funded:

Review By:

Department Director:

Jason Ridenour, Community Development Director

Final Approver: John Lollis, City Manager

RESOLUTION NO.____-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A CONDITIONAL USE
PERMIT (PRC 2021-027-C) TO ALLOW FOR THE CONSTRUCTION OF A
CHEVRON SERVICE STATION INCLUDING AN EXTRA MILE CONVENIENCE
STORE WITH ALCOHOL SALES AND DRIVE-THRU CAR WASH FACILITIES

WHEREAS: The City Council of Porterville, at its regularly scheduled meeting of October 19, 2021, reviewed and considered an application for a proposed Chevron automobile service station and convenience store with drive-thru car wash and sale of alcohol under a Type 20 off-sale alcohol license to be located at the southwest corner of W. Olive Avenue and S. Cobb Street; and

WHEREAS: Pursuant to Chapter 203 of the Porterville Development Ordinance, a service station requires a conditional use permit (CUP) in the CG (General and Service Commercial) zone; and

WHEREAS: pursuant to Section 301.02 of the Porterville Development Ordinance, a conditional use permit is required for alcoholic beverage sales; and

WHEREAS: On October 11, 2021, the Environmental Coordinator made a preliminary determination that the project is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15332 "In-Fill Development Projects" based upon the following findings, the evidence for said findings contained in the record:

1. The project is consistent with the General Plan designation of General and Service Commercial and the CG (General and Service Commercial) zone district.
2. The project occurs within the city limits on a site of no more than five acres and is substantially surrounded by urban uses.
3. The site has no value as habitat.
4. The project will not result in significant effects related to traffic, noise, air quality, or water quality.
5. The site can be served by all required utilities and services; and

WHEREAS: The project site is situated in Tulare County Census Tract 36.02, in which Census Tract there exists an "undue concentration" of off-sale alcohol licenses; and

WHEREAS: The City Council of the City of Porterville authorized the Mayor to sign the Letter of Public Convenience or Necessity due to the over concentration of alcohol licenses within Tulare County Census Tract 36.02; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. The proposed project will advance the goals and objectives of, and is consistent with, the policies of the General Plan and any other applicable plan that the City has adopted.

- a. The project supports and complies with the follow General Plan guiding polices:

LU-G-1: Promote a sustainable, balanced land use pattern that responds to existing needs and future needs of the City.

LU-G-3: Promote sustainability in the design and development of public and private development projects.

ED-G-7: Create an image for Porterville that will attract and retain economic activity.

2. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

Conditions of approval are included herein to ensure adequate operational standards are met. The project is located within an existing building and is conditioned that all activities associated with the sale of alcohol, in association with the Type 20 off-sale license shall be exclusively confined to the interior of the building. No consumption of alcohol is permitted on premises.

Additionally, the project is conditioned to preserve the public safety, health, and welfare to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances, and regulations regarding the sale of alcohol. In the event that any condition of approval is violated the City Council may modify or revoke the conditional use permit.

3. The project is exempt from CEQA pursuant to CEQA Guidelines Section 15332, In-Fill Development Projects.
4. Issuance of an off-sale alcohol license at the project site would serve the public convenience by providing a location along east-bound Olive Avenue that combines multiple uses at a single facility, thus reducing the need for additional vehicle trips, and with the resultant benefit of reducing additional turning movements in proximity to a major interchange. Accordingly, the City Council of the City of Porterville has authorized the Mayor to execute a letter containing a finding to that effect.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Conditional Use Permit (PRC 2020-027-C) subject to the following conditions:

1. New structures and/or buildings shall comply with the PMC Chapter 21 § 203.03.

- 203.03(a) Articulated Facades. Buildings shall provide adequate architectural articulation and detail to avoid a bulky and “box like” appearance. If new buildings or substantial remodel are proposed, the building façade shall be articulated with measures such as, indentation in plane, change of materials in a complimentary manner, sensitive composition and juxtaposition of opening and solid wall and/or building frame, and projecting elements, such as awnings or marquees, to provide shade and shelter. Strip malls are prohibited.
2. Development of an Auto service stations/car washes shall comply with PMC Chapter 21 § 301.05(10) Specifically, please note the following subsections:
- Washing Facilities: No building or structure shall be located within ten feet (10') of the property line or within twenty feet (20') of any interior lot line of a residential use or an R district.
 - Hours of Operation: Automobile/vehicle washing facilities are limited to seven o'clock (7:00) A.M. to ten o'clock (10:00) P.M., seven (7) days a week. When abutting an R district, the hours of operation shall be eight o'clock (8:00) A.M. to eight o'clock (8:00) P.M., seven (7) days a week unless modified otherwise by a conditional use permit.
 - Application Review and Findings for Approval: In reviewing proposals, emphasis shall be placed on quality design of building materials and landscape features. The following standards shall be incorporated:
 - i. The project shall be designed so that form and scale are harmonious and consistent with the character of the specific site, the adjacent uses and structures, and the surrounding neighborhood.
 - ii. The site design, including the location and number of driveways, shall promote safe and efficient on site and off site traffic circulation.
 - iii. Service bay openings shall be designed to minimize the visual intrusion on surrounding streets and properties.
 - iv. Lighting shall be designed to be low profile, indirect or diffused, create a pleasing appearance, and avoid adverse impacts on surrounding uses.
 - v. Conditions Of Approval: Conditions of approval of a conditional use permit may address operational characteristics of the use; impose restrictions on outdoor storage and display, location of pump islands, canopies and service bay openings; and/or require buffering, screening, lighting, planting areas, or other site elements, in order to avoid adverse impacts on properties in the surrounding area.
3. Parking Requirements are regulated by Chapter 304, and Parking Area Design and Development Standards are addressed in §304.10. The site plan as proposed does not meet certain conditions. Specifically, please note the following subsections:
- §304.04(h) Queuing Area. The number of parking spaces required by Table 304.04(A) does not include queuing space that may be required for vehicles and customers waiting in vehicles for service at drive-through facilities, pump stations,

auto service bays, or similar uses. Queuing Area shall provide space for six (6) vehicles (restaurants shall provide spacing from the menu board). In lieu of this standard, a focused traffic study which models vehicular queuing may be prepared subject to Zoning Administrator approval. The stacking area shall not interfere with other on-site circulation and parking facilities. Where required, queuing area shall be measured as twenty (20) feet per car.

- §304.10(c) Size of Parking Spaces and Maneuvering Aisles. Parking spaces and maneuvering aisles shall be provided to meet the minimum dimensions required by this subsection. Screening walls, roof support posts, columns, or other structural members shall not intrude into the required dimensions for parking spaces.
 - §304.10(i) Landscaping. Landscaping of parking areas shall be provided and maintained according to the general standards of Chapter 303, Landscaping, as well as the standards of this subsection. This is a sizeable section and will not be included in the letter, but please review this section in the Development Code.
4. In addition to the landscaping provisions identified in §304.10(i) referenced above, Landscaping shall comply with PMC Chapter 21 §303 Landscaping (see specifically §303.04) and with PMC Chapter 25, Article I, Division 6, as it relates to water conservation irrigation. Landscaping shall not be installed prior to submittal and approval of a landscaping plan.
 5. All signage, permanent and temporary are subject to PMC Ch. 21 §305. Please see Table 305.09 for sign types and area allowance. Also, specifically note the following subsections:
 - §305.05(d) [Exempt Signs include} Signs, not more than four (4) square feet in area, incorporated into displays, machinery or equipment by a manufacturer, distributor or vendor, such as signs customarily fixed to automated teller machines (ATMs), gasoline pumps, vending machines, menu boards and umbrellas, such as those represented in Figure 305.05(D).
 - §305.07(e) Changeable Copy. Changeable copy shall cover no more than forty percent (40%) of the total sign allowance for manually changeable signs. For electronic message center signs with copy that can be changed or altered by electric, electromechanical, electronic, or any other artificial energy means, the changeable portion of the sign shall cover no more than forty percent (40%) of the total sign allowance. *The following uses are exempt from this restriction:* religious institutions, cinemas, government or civic uses, *gas station uses*, indoor theaters, schools, and colleges.
 6. Lighting and Illumination shall comply with PMC Chapter 21 § 300.07.
 - Maximum height for light fixtures in the CG zone district shall be 40 feet.
 - Parking lot lighting shall comply with PMC Chapter 21 § 304.10(g)
 7. Trash Enclosure shall be developed per PMC Chapter 21 § 300.13.
 8. Development shall comply with PMC Chapter 21 § 306 Performance Standards.
 - 306.07 Lighting and Glare

- 306.08 Maintenance

9. Upon approval of the Conditional Use Permit, any future change in operation which substantially alters the conditions or nature of the subject business will require approval by the City Council. Further, any future violations of regulations of the codes relating to the sales or consumption of alcohol, and/or excessive services calls by the Police Department resulting from the sales of alcohol may result in the revocation of the Conditional Use Permit.
10. Unless an extension of time is granted by the City Council, the conditional use permit shall expire two years after the date of approval if the on-sale alcohol license is not active or actively pursued. The City Council may approve a one year extension of any permit or approval granted under this ordinance upon receipt of a written application with the required fee before the permit expires.
11. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations regarding the sale of alcohol. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.
12. Pursuant to Section 601.10(d) the City Council may revoke the permit if it makes any of the following findings:
 - That approval was obtained by means of fraud or misrepresentation of a material fact;
 - That the use in question has ceased to exist or has been suspended for one year or more;
 - That there is or has been a violation of or failure to observe the terms or conditions of the permit or variance, or the use has been conducted in violation of the provisions of this ordinance, law or regulation; or
 - That the use to which the permit or variance applies has been conducted in a manner detrimental to the public safety, health and welfare or so as to be a nuisance.
13. The hours of operation during which alcoholic beverages may be sold shall be limited to 6:00 a.m. to 12:00 a.m., seven days a week. Any amendments to business that would modify this condition will be subject to modification of this permit.
14. All activities associated with the proposed use shall be exclusively confined to the interior of the building to the extent permitted by Alcohol Beverage Control.
15. The developer/applicant shall provide soil compaction test(s) as required by the applicable building code sections.
16. The developer/applicant shall pay School Development fees and all other City fees at the time table determined by current City Ordinance.
17. The developer/applicant shall pay all fees according to the Municipal Code and State Law.

18. The developer/applicant shall obtain plan approval from the Tulare County Health Department and provide proof of said approval to the City of Porterville Building Department prior to the issuance of the building permit.
19. The developer/applicant shall request inspection by the Tulare County Health Department and shall provide proof of approval prior to final occupancy being requested/granted by the City of Porterville.
20. Restrooms, main entrance/s, and paths of travel from designated parking stalls shall comply with current access laws (both State and federal). The most stringent Code shall prevail.
21. Plan submittals shall include the installation of bike racks if the occupant load is ten (10) or more. (Per California Green Code.)
22. Plan submittals shall include the installation of Clean Air parking stall(s) if ten (10) or more parking stalls are required for the project. (Per California Green Code.)
23. All construction offices, storage containers, etc. planned and/or intended for temporary use during construction must receive approval from the Chief Building Official through a separate permit process prior to their installation and/or placement on the property and must be removed from the jobsite prior to final occupancy being requested and/or approved.
24. Signs require separate plan submittal and separate permit per the Development Ordinance.
25. The Building Official has designated the proposed construction to be a B Occupancy Classification.
26. A back-flow device is required on the water meter.
27. A grease trap or grease interceptor is required.
28. The developer/applicant shall comply with the City standard for "backflow" prevention pursuant to Resolution No. 9615.
29. The developer/applicant shall comply with Ordinance No. 1636 regarding Waste Water Discharge requirements and shall complete and submit the following:
 - Wastewater Discharge Permit application, Part "A"; and
30. If monitoring is required, based on the responses to questions in Part "A" of the Wastewater Discharge Permit, then the developer/applicant shall complete and submit the remainder of the application along with the Permit Fee, and provide monitoring facilities to allow inspection, sampling, and flow measurement of the flows in the sewer and drainage system.

31. An oil, sand, and silt separator, with a capacity of at least 1,000 gallons, will be required for this car wash development. Capacity calculations shall be provided with the building permit application. City also requests that the developer/applicant consider enhancing the water recycling and water conservation capabilities of the proposed car wash facility.
32. The developer/applicant shall install a refuse container enclosure according to City standards. Enclosure location to be approved by City prior to issuance of building permit. Enclosure should be oriented for direct stab pick up. The developer/ applicant shall also sign a waiver of liability for refuse truck damage to the parking lot if the refuse container location requires refuse trucks to travel on the parking lot.

PASSED, APPROVED AND ADOPTED this 19th day of October, 2021.

By: _____
Adrian Monte Reyes, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk

October 20, 2021

California Department of Alcoholic Beverage Control
Fresno District Office
3640 East Ashlan Ave
Fresno, CA 93726
ATTN: Christine Weldon

RE: Chevron ExtraMile 1043 W. Olive Ave., Porterville, CA

Dear Ms. Weldon:

The City Council of the City of Porterville has elected to approve submittal of this letter regarding the public convenience or necessity to be served through issuance of a Type 20 Off-Sale (beer and wine) for Chevron ExtraMile to be located at 1043 W. Olive Ave.

Approval of this letter was based on the following:

1. Per Section 23958.4 of the "Business and Professions Code," the subject site is located within Census Tract 36.02 which allows six on-sale and seven off-sale licenses. At the present time one off-sale license currently exists in this tract; the approval of the subject license would result in two off-sale license. Due to the over concentration of on-sale licenses a Letter of Public Convenience or Necessity was required.
2. On October 19, 2021, the City Council conditionally approved Conditional Use Permit (PRC 2020-027-C) to allow the off-sale of beer and wine for Chevron ExtraMile; a copy of that resolution is attached. As a condition of approval, a Letter of Public Convenience or Necessity was required to be approved by the City Council.
3. In consideration of the above, the City Council determined that public convenience or necessity would be served by the issuance of a Type 20 Off-Sale (beer and wine) alcohol license.

Further issuance of an off-sale license allowing beer and wine sales represents a viable economic asset to the community which will contribute tax revenues to the local economy. The subject site is consistent with the General Plan Land Use Designation and Zoning Standards for General and Service Commercial. The CG zone designation is intended to maintain a broad range of

commercial uses. The requested Conditional Use Permit for a Type 20 Off- Sale General, (beer and wine) alcohol license for a convenience store would suit the purpose of the zone designation as well as meeting the economic development guiding policy needed to retain, improve and promote existing businesses in Porterville.

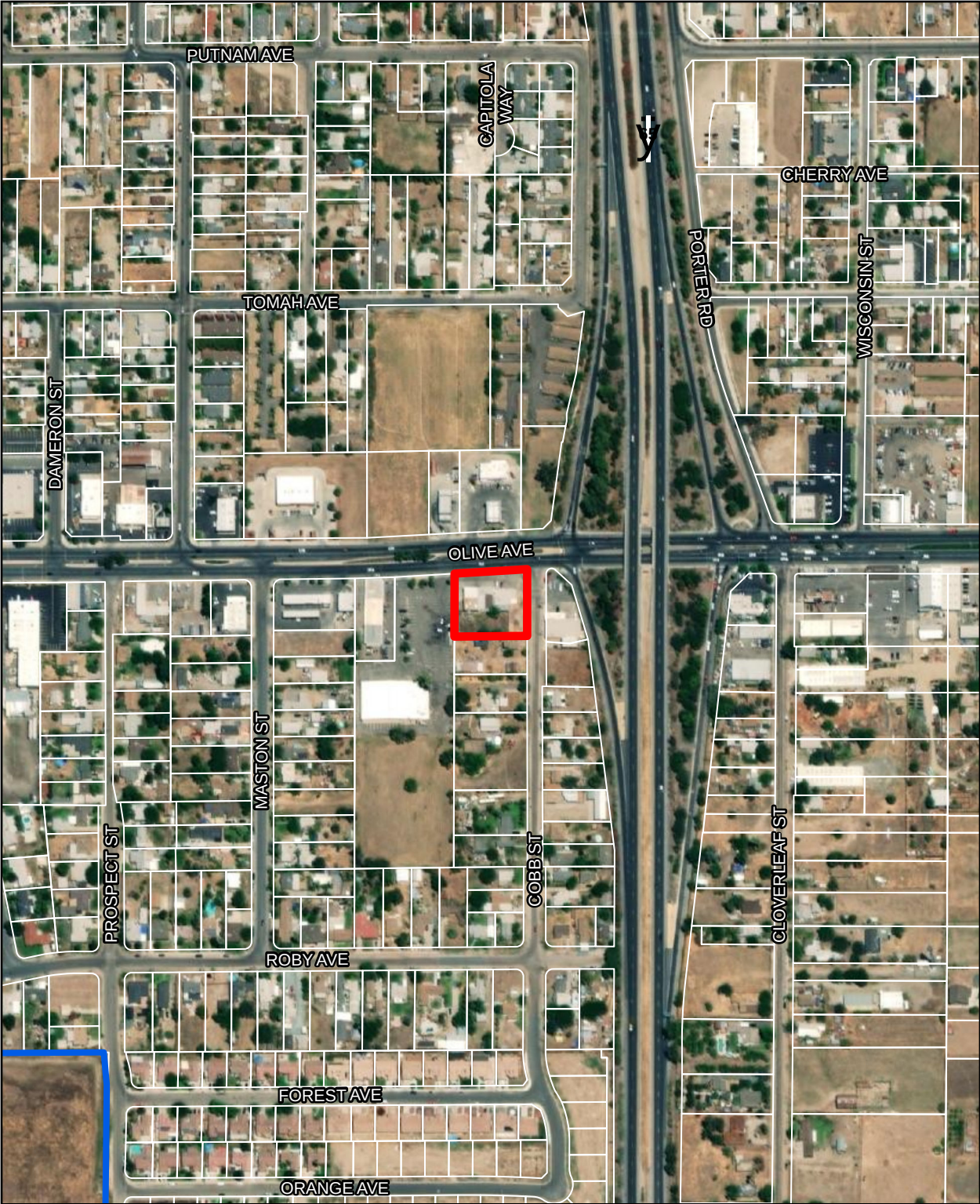
For these reasons, the City Council of the City of Porterville supports issuance of a Type 20 Off-Sale, (beer and wine) license for Chevron ExtraMile to be located at 1043 W. Olive Ave., Porterville, CA.

Sincerely,

Adrian Monte Reyes, Mayor

Attachment: Resolution

Locator Map
PRC 2020-027



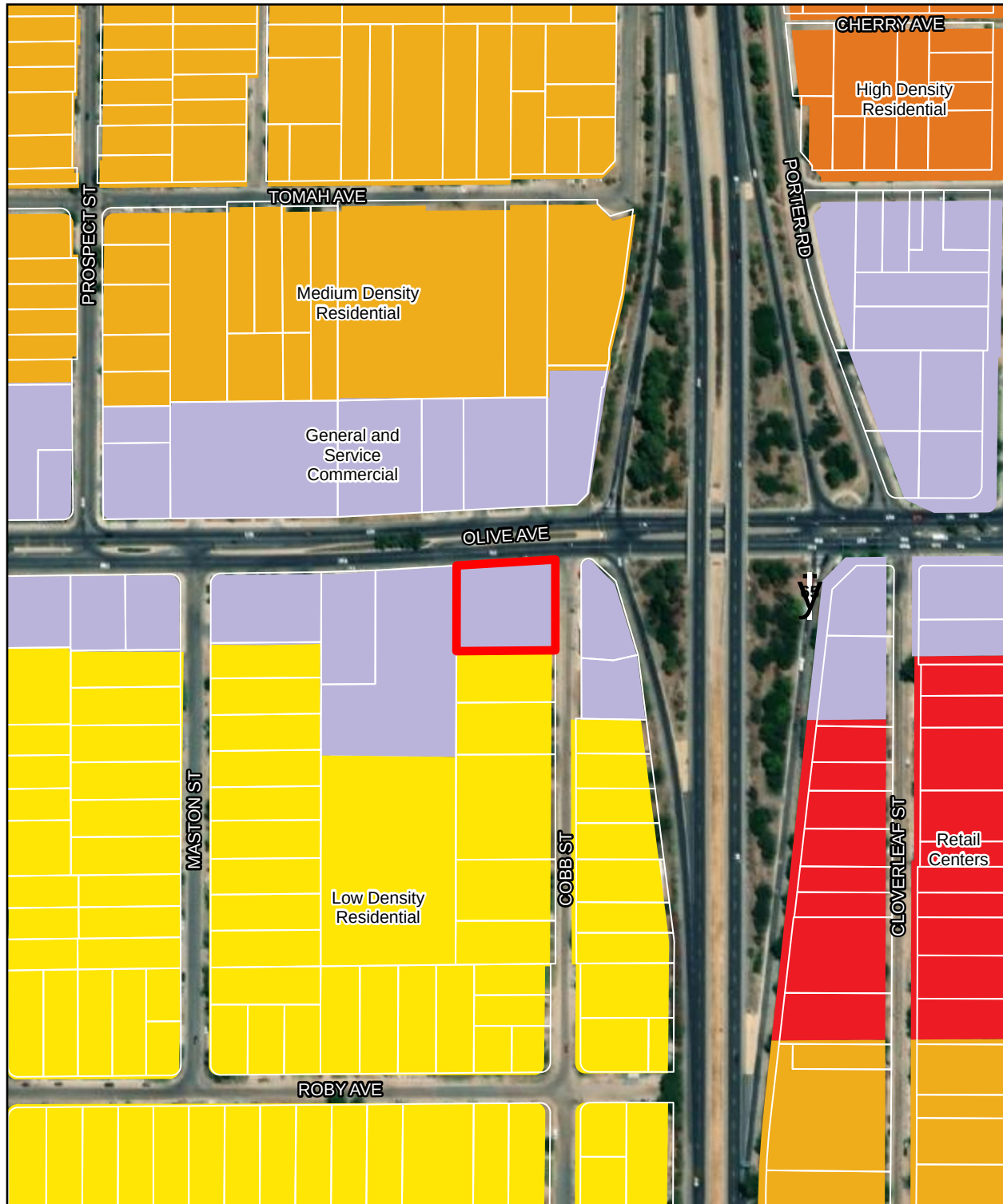
Olive Ave Chevron
@ 1043 W Olive Ave

-  Project Location
-  City Limits

1 in = 400 feet



GPLU
PRC 2020-027



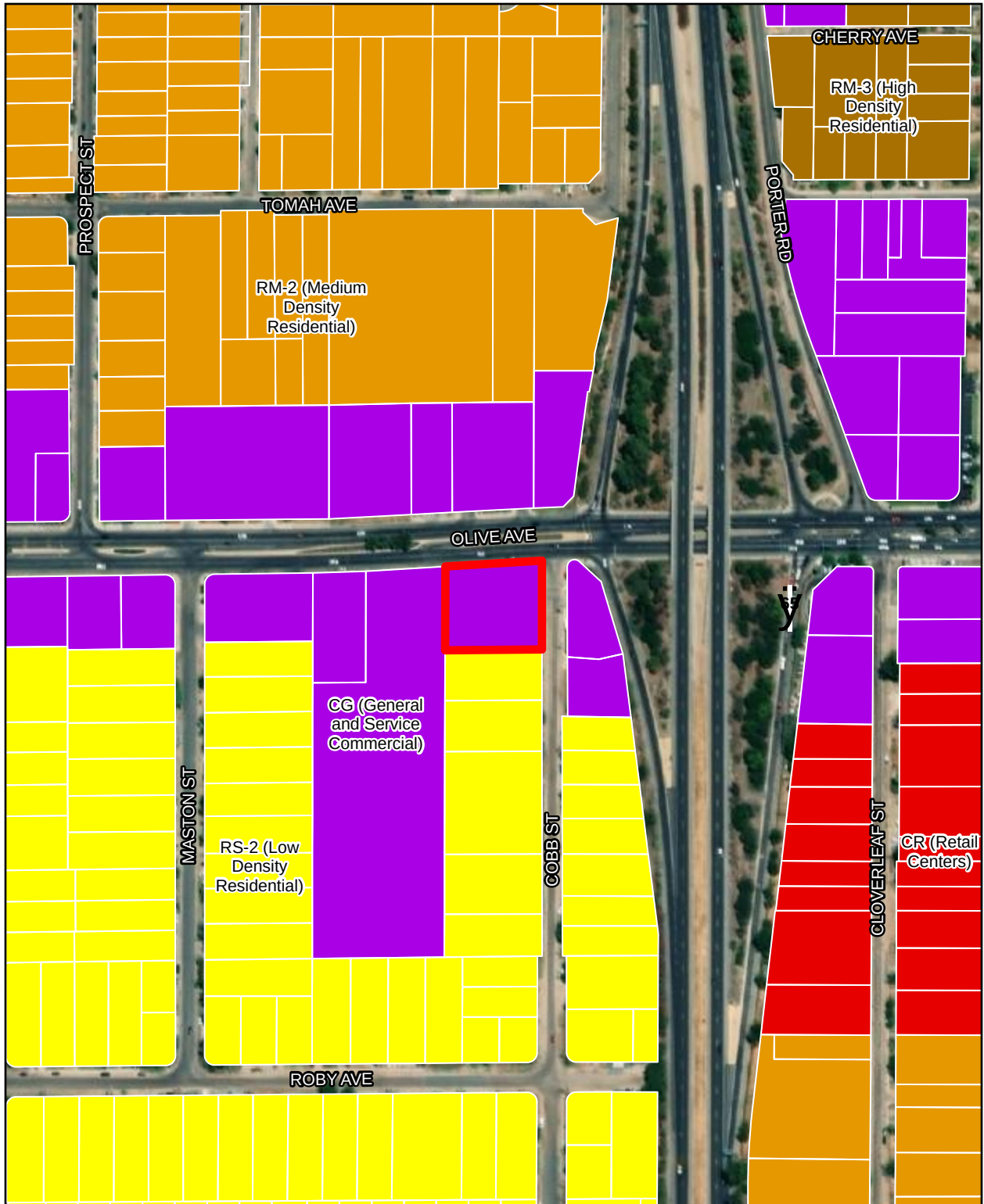
Dive Ave Chevron
@ 1043 W Dive Ave

 Project Location

1 in = 300 feet



Zoning PRC 2020-027

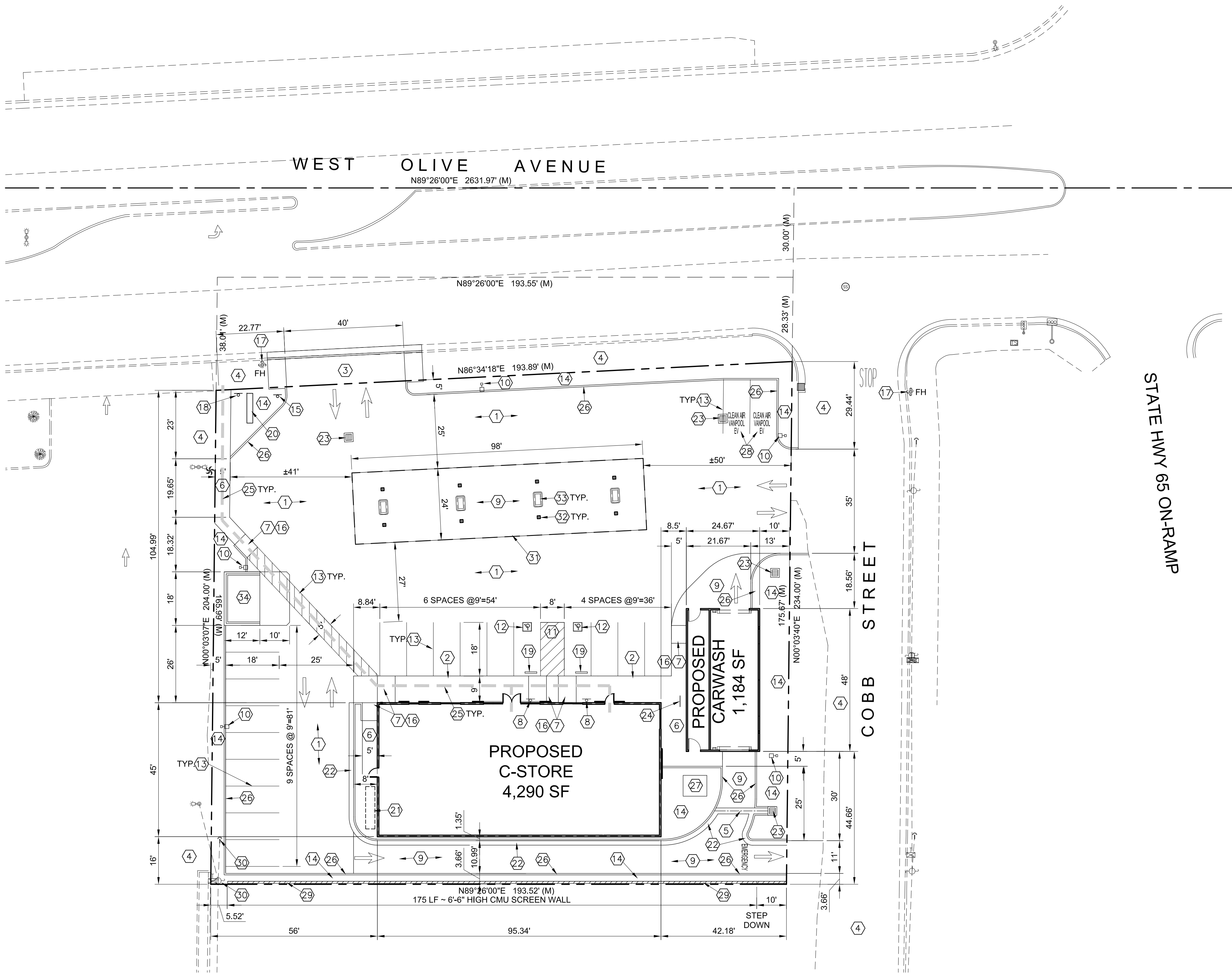


Olive Ave Chevron
@ 1043 W Olive Ave

 Project Location

1 in = 300 feet





STATE HWY 65 ON-RAMP

GENERAL NOTES

1. PRIOR TO STARTING CONSTRUCTION THE CONTRACTOR SHALL BE RESPONSIBLE TO MAKE SURE THAT ALL REQUIRED PERMITS AND APPROVALS HAVE BEEN OBTAINED. NO CONSTRUCTION OR FABRICATION SHALL BEGIN UNTIL THE CONTRACTOR HAS RECEIVED AND THOROUGHLY REVIEWED ALL PLANS AND OTHER DOCUMENTS APPROVED BY ALL OF THE PERMITTING AUTHORITIES.
2. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THESE PLANS AND THE REQUIREMENTS AND STANDARDS OF THE LOCAL GOVERNING AUTHORITY. THE SOILS REPORT AND RECOMMENDATIONS SET FORTH THEREIN ARE A PART OF THE REQUIRED CONSTRUCTION DOCUMENTS AND IN CASE OF CONFLICT SHALL TAKE PRECEDENCE UNLESS SPECIFICALLY NOTED OTHERWISE ON THE PLANS.
3. SITE GRADING SHALL BE PERFORMED IN ACCORDANCE WITH THESE PLANS AND THE RECOMMENDATIONS SET FORTH IN THE SOILS REPORT REFERENCED IN THIS PLAN SET.
4. THE LOCATIONS OF UNDERGROUND FACILITIES SHOWN ON THESE PLANS ARE BASED ON LOCAL UTILITY COMPANY RECORDS. IT SHALL BE THE CONTRACTOR'S FULL RESPONSIBILITY TO CONTACT THE VARIOUS UTILITY COMPANIES TO LOCATE THEIR FACILITIES PRIOR TO STARTING CONSTRUCTION. NO ADDITIONAL COMPENSATION SHALL BE PAID TO THE CONTRACTOR FOR DAMAGE AND REPAIR TO THESE FACILITIES CAUSED BY HIS WORK FORCE.
5. ALL DIMENSIONS AND GRADES SHOWN ON THE PLANS SHALL BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. CONTRACTOR SHALL NOTIFY THE ENGINEER IF ANY DISCREPANCIES EXIST PRIOR TO PROCEEDING WITH CONSTRUCTION FOR NECESSARY PLAN OR GRADE CHANGES. NO EXTRA COMPENSATION SHALL BE PAID TO THE CONTRACTOR FOR WORK HAVING TO BE REDONE DUE TO DIMENSIONS OR GRADES SHOWN INCORRECTLY ON THESE PLANS IF SUCH NOTIFICATION HAS NOT BEEN GIVEN.
6. WATER SERVICE MATERIALS SHALL BE COPPER TYPE "K". DIAMETER SHALL BE AS NOTED ON THESE PLANS AND SHALL BE INSTALLED WITH 24" MINIMUM COVER OR BELOW FROSTLINE WHICH EVER IS GREATER. CONTRACTORS PRICE FOR WATER SERVICE SHALL INCLUDE ALL FEES AND APPURTANCES REQUIRED BY THE UTILITY TO PROVIDE A COMPLETE WORKING SERVICE.

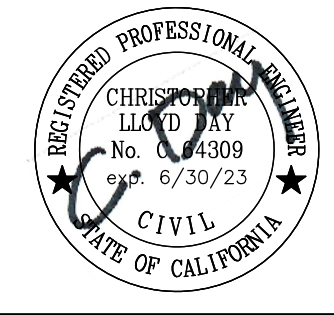
CONSTRUCTION NOTES

1. ASPHALT CONCRETE PAVEMENT: 2.5" A.C. OVER 4" CLASS 2 A.B. PER SOILS REPORT.
2. CONSTRUCT P.C.C. CURB EDGE SIDEWALK PER DETAIL 2/C2.1
3. CONSTRUCT P.C.C. COMMERCIAL DRIVEWAY PER CITY STANDARDS
4. EXISTING OFF-SITE IMPROVEMENTS TO REMAIN, U.O.N.
5. CONSTRUCT P.C.C. SWALE PER DETAIL 3/C2.1
6. CONSTRUCT P.C.C. SIDEWALK PER DETAIL 4/C2.1.
7. CONSTRUCT P.C.C. RAMP - MAX SLOPE 1:12 PER DETAIL 13/C2.1 (or 5/C2.1 WHERE APPLICABLE).
8. ACCESSIBLE PARKING SIGN PER DETAIL 7/C2.1, MOUNTED ON BOLLARD OR BUILDING, AS SHOWN.
9. P.C.C. SLAB: 6" P.C.C. OVER 4" CLASS 2 A.B. PER SOILS REPORT
10. INSTALL YARD LIGHT PER ELECTRICAL PLANS (BY OTHERS). PARKING LOT LIGHTING NOT TO EXCEED 20 FEET ABOVE FINISHED GRADE.
11. ACCESS AISLE MUST BE IDENTIFIED WITH WORDS "NO PARKING" IN 12" TALL CONTRASTING COLOR LETTERS PER CBC 11296.4.2.
12. PAINT ACCESSIBILITY SYMBOL - WHITE ON BLUE BACKGROUND PER DETAIL 10/C2.1
13. PAINT 4" WIDE SOLID STRIPE - WHITE.
14. LANDSCAPE AREA. SEE LANDSCAPE PLANS
15. INSTALL TOW AWAY SIGN PER DETAIL 8/C2.1
16. INSTALL TRUNCATED DOMES 3 FT. WIDE (MINIMUM) BY WIDTH OF WALK PER CBC STDS. 1127B.5 AND 1133B.8.5. SEE DETAIL 15/C2.1.
17. EXISTING FIRE HYDRANT TO REMAIN
18. INSTALL ACCESSIBLE PATH OF TRAVEL DIRECTIONAL SIGN
19. INSTALL WHEEL STOP PER DETAIL 14/C2.1.
20. MONUMENT SIGN / PRICE SIGN (BY OTHERS UNDER SEPARATE PERMIT)
21. NEW MAIN SWITCH BOARD. SEE ELECTRICAL PLANS.
22. CONSTRUCT P.C.C. CURB AND GUTTER PER DETAIL 12/C2.1
23. INSTALL DRAINAGE INLET PER 9/C2.1 WITH "ENVIROPOD" LITTA TRAP (OR EQUAL) INLET FILTER.
24. INSTALL BIKE RACK PER ZONING ORDINANCE.
25. ACCESSIBLE PATH OF TRAVEL
26. CONSTRUCT P.C.C. CURB PER DETAIL 1/C2.1
27. CONSTRUCT P.C.C. TRANSFORMER PAD PER UTILITY COMPANY REQUIREMENTS
28. PAINT THE FOLLOWING CHARACTERS SUCH THAT THE LOWER EDGE OF THE LAST WORD ALIGNS WITH THE END OF THE STALL. STRIPING AND IS VISIBLE BENEATH THE PARKED VEHICLE: CLEAN AIR/VANPOOL/EV. INSTALL 1" CONDUIT FOR "FUTURE" CHARGING STATION EQUIPMENT.
29. CONSTRUCT 6'-6" HIGH SPLIT-FACE CMU WALL WITH CAPSTONE
30. EXISTING POWER POLE AND GUY WIRES TO REMAIN, UNLESS OTHERWISE NOTED TO BE REMOVED BY UTILITY COMPANY PLANS
31. OUTLINE INDICATES OVERHEAD CANOPY OVER FUEL PUMPS. REFER CANOPY PLANS BY OTHERS.
32. CANOPY COLUMN (TYP. OF 8) BY CANOPY PLANS (BY OTHERS)
33. FUEL PUMP (TYP. OF 4) PER FUEL PLANS (BY OTHERS)
34. CONSTRUCT TRASH ENCLOSURE WITH COVER PER SHEET C2.2

IS THE CURRENT DRAWING SET REVISION NUMBER				OWNER:
4-5-21	PRC	COMMENTS		
MARK	DATE	REVISIONS	INITIAL	PROJECT:



MILESTONE ASSOCIATES
1000 LINCOLN RD., STE H202, YUBA CITY, CA 95991
(530) 755-4700



MILESTONES

PROJECT PHASE	DATE	INITIALS	STORE:
ISSUED FOR PLANNING	8-11-20	JT	FACILITY:
ISSUED FOR PERMIT	10-01-21	JT	LAYOUT: NON-STD
ISSUED FOR BID			JOB# 20-051
ISSUED FOR CONSTRUCTION			SCALE:

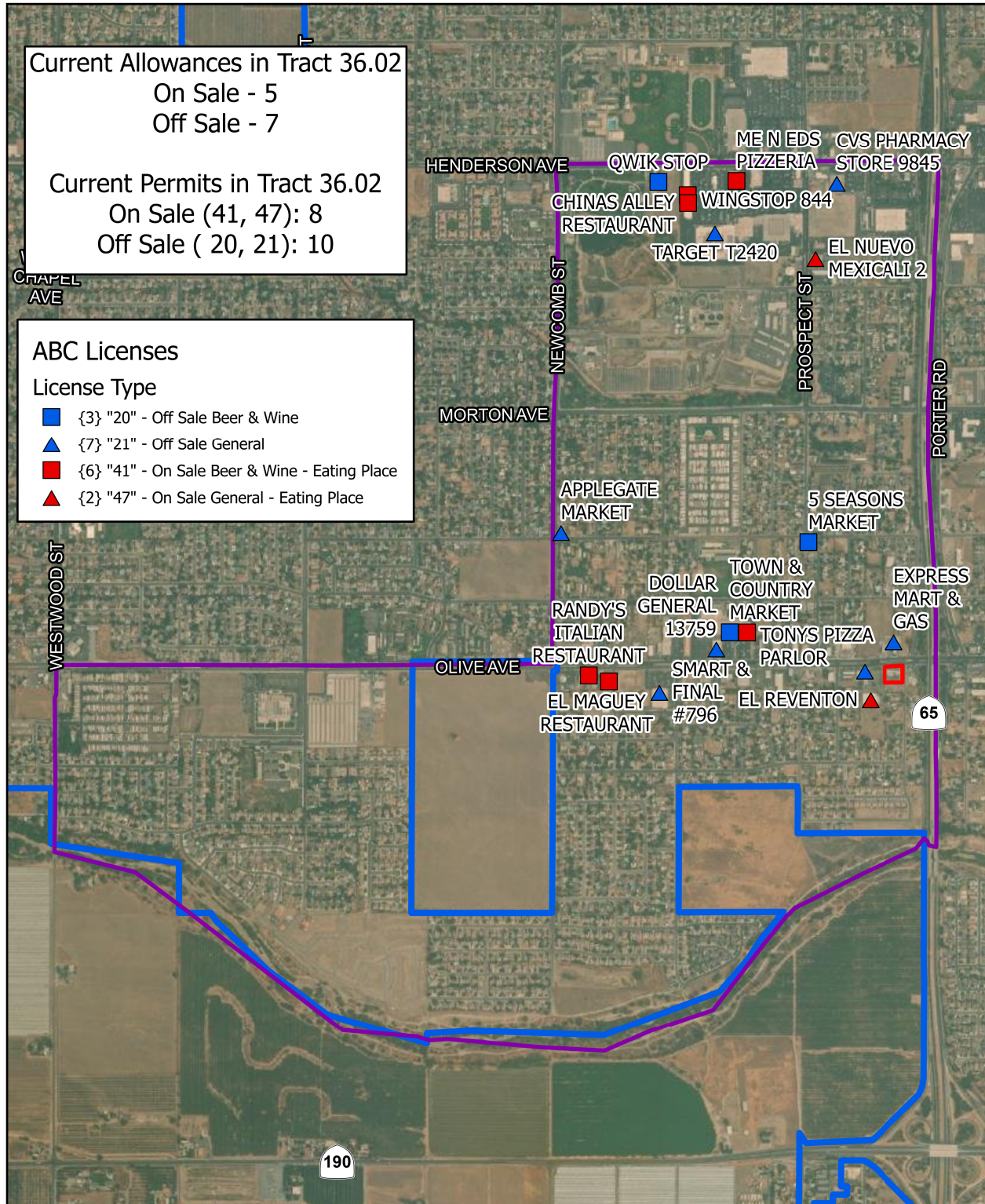
LION BUILDERS, INC
3323 PENDRAGON STREET,
BAKERSFIELD, CA 93313
(661) 900-9578

OLIVE AVENUE CHEVRON
1043 W. OLIVE AVENUE, PORTERVILLE, CA 93257
A.P.N. 0259-101-021

SITE PLAN

DATE	INITIALS	STORE:	SHEET
8-11-20	JT	FACILITY:	C2
10-01-21	JT	LAYOUT: NON-STD	
		JOB# 20-051	
		SCALE:	

ABC Map PRC 2020-027



**Olive Ave Chevron
@ 1043 W. Olive Ave**

- Project Location
- Census Tract 36.02
- City Limits

1 in = 1,600 feet





CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Budget Adjustment/Citizens' Option for Public Safety (COPS) Funding

SOURCE: Police

COMMENT: The Porterville Police Department has regularly received annual funding from the State of California through the Citizens' Option for Public Safety (COPS) Grant Program. The Department is again programmed to receive \$100,000 for the current 2021-2022 Fiscal Year, and a Public Hearing on the intent of the expenditures is required.

The Department has historically used these funds in support of personnel assigned to the Patrol Division, including necessary training, equipment, and overtime costs, and it is the intent to continue. The expenditure of these funds in this manner is in proper adherence to the requirements as specified in Assembly Bill 3229.

RECOMMENDATION: That the City Council:

1. Conduct the Public Hearing to receive public comment;
2. Authorize use of these funds to offset costs for personnel assigned to the Police Department's Patrol Division, including necessary training, equipment, and overtime costs; and
3. Adopt the draft Resolution accepting the Citizens' Option for Public Safety grant funds and approving a budget adjustment increasing the Police Department's Patrol Division budget by \$100,000 to support said costs.

ATTACHMENTS:

1. Draft Resolution
2. COPS Award Letter - September 17, 2021
3. AB 3229 Text

Appropriated/Funded:

Review By:

Department Director:
Jake Castellow, Chief of Police

Final Approver: John Lollis, City Manager

RESOLUTION NO. ____-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
ACCEPTING CITIZENS' OPTION FOR PUBLIC SAFETY (COPS) GRANT
FUNDS AND APPROVING A BUDGET ADJUSTMENT TO THE
PORTERVILLE POLICE DEPARTMENT BUDGET.

BE IT HEREBY RESOLVED by the City Council of the City of Porterville as follows:

1. That the City of Porterville accepts the 2021/2022 Citizens' Option for Public Safety (COPS) Grant Funds; and
2. Police Department's Special Safety Grants – Citizens' Option for Public Safety (COPS) budget is increased by \$100,000 to allow for expenditure of these Grant Funds in support of personnel assigned to the Patrol Division and their operational costs.

PASSED, APPROVED, AND ADOPTED this 19th day of October, 2021.

Adrian Monte Reyes, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk



County of Tulare

221 S. Mooney Blvd. Room 101-E
Visalia, CA 93291

Cass Cook · Auditor-Controller

Justin Avila · Assistant Auditor-Controller

Telephone: (559) 636-5200

Fax: (559) 730-2547

September 17, 2021

Melinda Rios
City of Porterville
291 N. Main St.
Porterville, CA 93257

AB 3229 CITIZENS OPTION FOR PUBLIC SAFETY (COPS) PROGRAM

Please provide our office with your city's 2021/22 Resolution and the Notice of Public Hearing approving the expenditures for AB 3229 (COPS). These documents are required in order to distribute the grant money to the city.

Please send these documents via the postal service or email by October 25, 2021.

If you have any questions, please call me at 636-5235.

Sincerely,

Alejandro Chavez

Alejandro Chavez
Accountant

BILL NUMBER: AB 3229 CHAPTERED
BILL TEXT

CHAPTER 134
FILED WITH SECRETARY OF STATE JULY 10, 1996
APPROVED BY GOVERNOR JULY 10, 1996
PASSED THE SENATE JULY 8, 1996
PASSED THE ASSEMBLY JULY 8, 1996
AMENDED IN SENATE JULY 8, 1996
AMENDED IN SENATE JUNE 11, 1996
AMENDED IN ASSEMBLY MAY 24, 1996
AMENDED IN ASSEMBLY APRIL 24, 1996

INTRODUCED BY Assembly Member Brulte and Senator Lockyer
 (Coauthor: Assembly Member Bowen)
 (Coauthor: Senator Wright)

FEBRUARY 23, 1996

An act to add Chapter 6.7 (commencing with Section 30061) to Division 3 of Title 3 of the Government Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3229, Brulte. Local law enforcement: supplemental funding.

Existing provisions of the California Constitution and related implementing statutes provide for the imposition of a specified statewide sales and use tax rate, and require that the revenues derived from that rate be allocated to qualifying local agencies, as described, to supplement otherwise available funding for local public safety services, as defined.

This bill would require the Controller, pursuant to written requests from a county or city and county, to allocate \$100,000,000, which is appropriated by the Budget Act of 1996, to counties, cities, and a certain special district in the County of San Mateo, for purposes of the Citizens Option for Public Safety (COPS) Program established by this bill.

This bill would, pursuant to the COPS program, require all Local Law Enforcement Fund moneys allocated to a county pursuant to this bill to be deposited in a Supplemental Law Enforcement Services Fund (SLESF), as provided, for allocation in accordance with specified formulas and procedures to the county sheriff, district attorney, the county, cities, and a certain special district in the County of San Mateo, to be expended exclusively, except as otherwise provided for certain counties with respect to misdemeanor prosecutions, for county jails, police, sheriff, and district attorney services. This bill would require a city receiving a SLESF allocation to deposit that allocation in its own SLESF, prior to expending those moneys as required by this bill. This bill would, as provided, require each county auditor and city treasurer to regularly report with respect to SLESF allocations to, among other local bodies, a Supplemental Law Enforcement Oversight Committee (SLEOC) established in each county, and also require each SLEOC to at least annually review expenditures by local law enforcement officials of SLESF moneys. By imposing additional duties upon local officials in connection with the administration of a city or county SLESF, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby finds and declares that there is a compelling need for additional resources to be applied at the local level for the purpose of ensuring public safety, and to that end the Legislature hereby enacts the Citizen's Option for Public Safety Program (COPS).

(b) In light of the Legislature having appropriated one hundred million dollars (\$100,000,000) in the Budget Act of 1996 for the support of the COPS program in the 1996-97 fiscal year, the Controller shall allocate those budgeted moneys among each Supplemental Law Enforcement Services Fund (SLESF), established by each county and city and county pursuant to subdivision (a) of Section 30061 of the Government Code, in accordance with the proportionate share of the state's total population that resides in each county and city and county, as determined on the basis of the most recent January population estimates developed by the Department of Finance. The Controller shall make all disbursements upon the request of an individual county or city and county that has established a SLESF, and has established an oversight committee pursuant to Section 30064 of the Government Code for the 1996-97 fiscal year no later than September 15, 1996.

SEC. 2. Chapter 6.7 (commencing with Section 30061) is added to Division 3 of Title 3 of the Government Code, to read:

CHAPTER 6.7. SUPPLEMENTAL LOCAL LAW ENFORCEMENT FUNDING

30061. (a) There shall be established in each county treasury a Supplemental Law Enforcement Services Fund (SLESF), to receive all amounts allocated to a county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives money to be expended for the implementation of this chapter, the county auditor shall allocate moneys in the county's Supplemental Law Enforcement Services Fund (SLESF), including any interest or other return earned on the investment of those moneys, within 30 days of the deposit of those moneys into the fund, and shall allocate those moneys in accordance with the following requirements:

(1) Twelve and one-half percent to the county sheriff for county jail construction and operation.

(2) Twelve and one-half percent to the district attorney for criminal prosecution.

(3) Seventy-five percent to the county and the cities within the county, and, in the case of the County of San Mateo, also to the Special District of Broadmoor, in accordance with the relative population of the cities within the county and the unincorporated area of the county, and the Special District of Broadmoor in the County of San Mateo, as specified in the most recent January estimate by the population research unit of the Department of Finance. No person residing within the Special District of Broadmoor shall also be counted as residing within the unincorporated area of the County

of San Mateo or within any city located within that county. Moneys allocated to the county pursuant to this subdivision shall be retained in the county SLESF, and moneys allocated to a city pursuant to this subdivision shall be deposited in a SLESF established in the city treasury.

(c) Subject to subdivision (d), for each fiscal year in which the county and each city, and the Special District of Broadmoor, receives moneys pursuant to paragraph (3) of subdivision (b), the county and each city shall appropriate those moneys in accordance with the following procedures:

(1) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide front line law enforcement services, other than those services specified in paragraphs (1) and (2) of subdivision (b), in the unincorporated areas of the county, in response to written requests submitted to the board by the county sheriff and the district attorney. Any request submitted pursuant to this paragraph shall specify the front line law enforcement needs of the requesting entity, and those personnel, equipment, and programs that are necessary to meet those needs. The board shall, at a public hearing held in September in each year that the Legislature appropriates funds for purposes of this chapter, consider and determine each submitted request within 60 days of receipt, pursuant to the decision of a majority of a quorum present. The board shall consider these written requests separate and apart from the process applicable to proposed allocations of the county general fund.

(2) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund front line municipal police services, in accordance with written requests submitted by the chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city. These written requests shall be acted upon by the city council in the same manner as specified in paragraph (1) for county appropriations.

(3) In the case of the Special District of Broadmoor, within the County of San Mateo, the legislative body of that special district shall appropriate existing and anticipated moneys exclusively to fund front line municipal police services, in accordance with written requests submitted by the chief administrator of the law enforcement agency that provides police services for that special district. These written requests shall be acted upon by the legislative body in the same manner specified in paragraph (1) for county appropriations.

(d) For each fiscal year in which the county, a city, or the Special District of Broadmoor within the County of San Mateo receives any moneys pursuant to this chapter, in no event shall the governing body of any of those recipient agencies subsequently alter any previous, valid appropriation by that body, for that same fiscal year, of moneys allocated to the county or city pursuant to paragraph (3) of subdivision (b).

30062. (a) Except as required by paragraphs (1) and (2) of subdivision (b) of Section 30061, moneys allocated from a SLESF to a recipient entity shall be expended exclusively to provide front line law enforcement services. These moneys shall supplement existing services, and shall not be used to supplant, any existing funding for law enforcement services provided by that entity.

(b) In the Counties of Los Angeles, Orange, and San Diego only, the district attorney may, in consultation with city attorneys in the county, determine a prorated share of the moneys received by the district attorney pursuant to this section to be allocated to city attorneys in the county in each fiscal year to fund the prosecution by those city attorneys of misdemeanor violations of state law.

(c) In no event shall any moneys allocated from a SLESF be expended by a recipient agency to fund either of the following:

(1) Administrative overhead costs in excess of 0.5 percent of a

recipient entity's SLESF allocation for that year.

(2) The costs of any capital project or construction project funded from moneys allocated pursuant to paragraph (3) of subdivision (b) of Section 30061 that does not directly support front line law enforcement services.

(d) For purposes of this chapter, "front line law enforcement services" and "front line municipal police services" each include antigang and community crime prevention programs.

30063. (a) The Supplemental Law Enforcement Services Fund (SLESF) in each county or city is to be expended exclusively as required by this chapter. Moneys in that fund shall not be transferred to, or intermingled with, the moneys in any other fund in the county or city treasury, except that moneys may be transferred from the SLESF to the county's or city's general fund to the extent necessary to facilitate the appropriation and expenditure of those transferred moneys in the manner required by this chapter.

(b) Moneys in a SLESF may only be invested in safe and conservative investments in accordance with those standards of prudent investment applicable to the investment of trust moneys. The treasurer of the county and each city shall provide a monthly SLESF investment report to either the police chief or the county sheriff and district attorney, as applicable.

(c) The county auditor and city treasurer shall monthly detail and summarize allocations from the county's or city's SLESF, as applicable, in a written, public report filed with the Supplemental Law Enforcement Oversight Committee (SLEOC), the county board of supervisors or city council, as applicable, and the county sheriff or police chief, as applicable. On or before September 1, 1998, and annually on or before September 1 thereafter, the county auditor and each city treasurer shall file with those entities or persons specified in the preceding sentence a consolidated written report, of the same nature as the monthly report required pursuant to the preceding sentence, with respect to SLESF allocations for the entirety of the immediately preceding fiscal year.

30064. (a) There is in each county a Supplemental Law Enforcement Oversight Committee (SLEOC), consisting of five members as follows:

- (1) One municipal police chief.
- (2) The county sheriff.
- (3) The district attorney.
- (4) The county's executive officer.
- (5) One city manager.

(b) (1) The cities in each county shall organize as a city selection committee for the purposes of appointing a city manager and a municipal police chief to the Supplemental Law Enforcement Oversight Committee. Each appointment shall be made by not less than a majority of all the cities in the county having not less than a majority of the population of all the cities in the county. For purposes of the preceding sentence, population figures shall be determined on the basis of the most recent census data developed by the Department of Finance.

(2) The SLEOC shall determine whether recipient entities have expended moneys received from the Supplemental Law Enforcement Services Fund (SLESF) in compliance with this chapter. For this purpose, the SLEOC shall at least annually review the expenditure of SLESF funds by city police departments, the county sheriff, and the district attorney, and shall make its annual review report available to the public.

30065. In no event shall this chapter be construed to affect in any manner the public safety service allocations required by Chapter 6.5 (commencing with Section 30051).

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide timely and critically needed fiscal resources and legal authority to local agencies that will assist those agencies in keeping the peace and maintaining public safety, and to safeguard the life and property of each and every California citizen, it is necessary that this act take effect immediately.



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Appointments to the Parks & Leisure Services Commission

SOURCE: Administrative Services

COMMENT: Four Commissioners on the Parks and Leisure Services Commission have terms that are set to expire on October 31, 2021:

- Kieran Daly
- Phillip Duncan
- Diane Graybehl
- Janet Uresti

Of the Commissioners with expiring terms, each Commissioner has expressed an interest in serving a second term and have submitted a Request for Reappointment, which is provided herein for the City Council's consideration.

Eligibility for appointment to this Commission requires city residency and staff has confirmed that each applicant's listed address is located within the city limits of Porterville.

RECOMMENDATION: That the City Council consider the appointment of four individuals to the Parks and Leisure Services Commission for four-year terms expiring in October 2025.

ATTACHMENTS:

1. Request for Appointment - Kieran Daly
2. Request for Appointment - Phillip Duncan
3. Request for Appointment - Diane Graybehl
4. Request for Appointment - Janet Uresti

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Deputy City Manager

Final Approver: John Lollis, City Manager



CITY OF PORTERVILLE REQUEST FOR APPOINTMENT



RECEIVED

SEP 21 2021

CITY OF PORTERVILLE
CITY CLERK OFFICE

Please complete all blanks.

Name: Kieran P. Daly
(Please Print)

Appointment to: Parks and Leisure Commission
(Name of Board, Commission, or Committee)

☒ Reappointment; or IF NEW, Please provide:

Street Address:



Porterville CA 93857

Mailing Address:

Name of Business:

USPS

☐ Own

☒ Operate

Business Address:

65 W Mill

Telephone: Home

(559)



Work

FAX

E-mail

City of Porterville Resident:

☒ Yes

☐ No

Select District:

☐ 1 ☐ 2 ☐ 3

☐ 4 ☐ 5

Registered Voter:

☒ Yes

☐ No

Qualifications: (It is recommended that a resume or letter accompany this form.)

Please tell us why you are interested in this position.

☐ Resume attached

☐ Letter of request attached

Submitted By:

Kieran P. Daly

Date

Received by: _____

Forwarded to: City Clerk

☐ Date: _____

City Council

☐ Date: _____

Staff Liaison

☐ Date: _____

Tentative Council Mtg Date: _____



CITY OF PORTERVILLE REQUEST FOR APPOINTMENT



RECEIVED

SEP 20 2021

CITY OF PORTERVILLE
CITY CLERK OFFICE

Please complete all blanks.

Name: PHILLIP DUNCAN

(Please Print)

Appointment to: PARKS AND LEISURE COMMISSION
(Name of Board, Commission, or Committee)

☐ Reappointment; or IF NEW, Please provide:

Street Address:

PORTERVILLE, CALIFORNIA 93257

Mailing Address:

SAME AS ABOVE

Name of Business:

N/A

☐ Own

☐ Operate

Business Address:

N/A

Telephone: Home

N/A

Work

N/A

FAX

N/A

E-mail

[REDACTED]@yahoo.co.uk

CELL 559-[REDACTED]

City of Porterville Resident:

☒ Yes

☐ No

Select District:

☐ 1 ☐ 2 ☐ 3

☐ 4 ☐ 5

Registered Voter:

☒ Yes

☐ No

Qualifications: (It is recommended that a resume or letter accompany this form.)

REAPPOINTMENT REQUEST FOR SECOND
CONSECUTIVE TERM.

Please tell us why you are interested in this position.

☐ Resume attached

☐ Letter of request attached

Submitted By:

Phil Duman

9.11.21

Date

Received by: _____

Forwarded to: City Clerk

☐ Date: _____

City Council

☐ Date: _____

Staff Liaison

☐ Date: _____

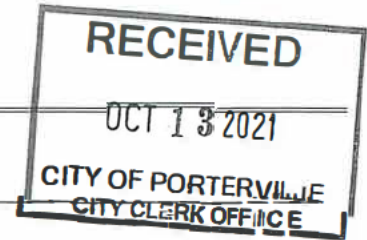
Tentative Council Mtg Date: _____



CITY OF PORTERVILLE REQUEST FOR APPOINTMENT



Please complete all blanks.



Name: Diane Graybehl
(Please Print)

Appointment to: Parks + Leisure Commissioner
(Name of Board, Commission, or Committee)

☐ Reappointment; or IF NEW, Please provide:

Street Address: [REDACTED]

Mailing Address: Same

Name of Business: -

☐ Own ☐ Operate

Business Address: -

Telephone: Home (559) [REDACTED]

Work -

FAX -

E-mail [REDACTED]@gmail.com

City of Porterville Resident:

☒ Yes

☐ No

Select District:

☐ 1 ☐ 2 ☐ 3

☒ 4 ☐ 5

Registered Voter:

☒ Yes

☐ No

Qualifications: (It is recommended that a resume or letter accompany this form.)

I have been a Parks + Leisure Commissioner
for the past four years. My experience teaching
Physical Education throughout the Porterville area
for the past 38 years has given me a good
understanding of the needs of the community. I have also
coached several sports including volleyball, basketball and track.
Please tell us why you are interested in this position.

I enjoy being involved in community service activities
with my background in Physical Education. I can apply
what I have done in the past to activities and events
in the Parks + Leisure Department. I sincerely appreciate
the opportunity to give back to my community since I am
now retired and have the time to do so.

☐ Resume attached

☒ Letter of request attached

Submitted By: Alicia Graybill

10/13/21
Date

Received by: _____

Forwarded to: City Clerk

☐ Date: _____

City Council

☐ Date: _____

Staff Liaison

☐ Date: _____

Tentative Council Mtg Date: _____

October 13, 2021

Mr. Donnie Moore
Director of Parks and Leisure
City of Porterville
291 N. Main Street
Porterville, CA 93257

Dear Mr. Moore

I submit this letter of interest to serve once again as Parks and Leisure Commissioner for the City of Porterville. I currently serve as commissioners and have done so for four years. Being a long time resident of Porterville and a retired Physical Education teacher for the Porterville Unified School District I have vast knowledge of facilities and a great interest in the value of sports and recreation activities. Being a commissioner it has been my honor to participate in city events, activities and celebrations which increases the opportunity of our citizens to be physically fit, building connections and increase overall well-being while having fun.

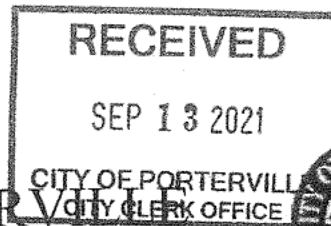
Please consider my request for appointment.

Sincerely,



Diane Graybehl

Porterville, CA 93257



CITY OF PORTERVILLE REQUEST FOR APPOINTMENT

RECEIVED

Please complete all blanks.

SEP 13 2021

Name: Janet Uresti

(Please Print)

CITY OF PORTERVILLE
CITY MANAGER

Appointment to: Parks and Leisure Services Commission

(Name of Board, Commission, or Committee)

☒ Reappointment, or IF NEW, Please provide:

Street Address: _____

Mailing Address: _____

Name of Business: _____

☐ Own

☐ Operate

Business Address: _____

Telephone: Home 559- [REDACTED]

Work 559- [REDACTED]

FAX NA

E-mail [REDACTED] @gmail.com

City of Porterville Resident:

Select District:

Registered Voter:

☒ Yes

☐ 1 ☐ 2 ☐ 3

☒ Yes

☐ No

☐ 4 ☒ 5

☐ No

Qualifications: (It is recommended that a resume or letter accompany this form.)

Resume Submitted

Please tell us why you are interested in this position.

I enjoy visiting the City Parks and taking my two sons. We also like swimming in the City Pool each summer. I enjoy knowing what is going on in the community and serving when I can.

☒ Resume attached

☐ Letter of request attached

Submitted By:

Janet Wren

9/10/2021

Date

Received by: _____

Forwarded to: City Clerk

☐ Date: _____

City Council

☐ Date: _____

Staff Liaison

☐ Date: _____

Tentative Council Mtg Date: _____

Janet Uresti

Porterville

559-

@gmail.com

Driven and dynamic educator dedicated to teaching students and inspiring them to become life-long learners. A self-starting leader with excellent organizational and communication skills who effectively collaborates with students, faculty, staff and parents to ensure a positive learning environment for all students. Experience in working in an elementary setting as well as an alternative education setting with at-risk, English language learners, Special Needs students and high-achieving students.

Experience

AUGUST 2021 - PRESENT

Teacher / Tipton Elementary School, Tipton

- Developed and taught standards-based curriculum in math, English language development, journalism and physical education.
- Maintained versatility in instruction in order to adapt quickly to meet the learning needs of students – including English learners and special needs students.
- Attended professional meetings and workshops to maintain and improve professional competence.
- Cultivated a desire to build relationships, find solutions to problems and be helpful and friendly.

2019 - PRESENT

Part-Time Instructor / Porterville College, Porterville

- Taught interdisciplinary studies courses in innovative, engaging ways that helped students learn and encouraged them to attend class regularly.
- Established clear objectives for all lessons, units, and projects and communicated those objectives to students.
- Developed course outlines and curriculum, which helped students make decisions about their career choices, advancement, progress and goal attainment in their field of study.
- Reviewed instructional content, methods, and student feedback to assess strengths and weaknesses, and to develop recommendations for course revision and further development.
- Monitored students' performance to make suggestions for improvement and to ensure they satisfy course standards.

2014 - PRESENT

Part-Time Teacher / Butterfield Charter School, Porterville

- Taught an articulated college and career readiness course in which students create a 10-year plan.
- Developed curriculum in various areas of study for students to earn elective credits.
- Assisted in running a credit recovery summer school program for high school students throughout the district.
- Administered the English Language Proficiency Assessment for California as well as the California Assessment of Student Performance and Progress.
- Trained new teachers in the schools policies, procedures and on how to complete required paperwork.

- Assisted in preparing the WASC progress report and served on a visiting committee for a similar independent study charter school.
- Established and maintained a positive school environment while ensuring a safe and healthy learning environment for students and staff.

Education

2017

M.A. Administrative Services / Fresno Pacific University, Visalia

Administrative Services Credential (Certificate of Eligibility)

2009

Clear Multiple Subject Teaching Credential / Fresno Pacific University, Visalia

2004

B.A. Mass Communications and Journalism / California State University, Fresno

2001

A.A., Liberal Arts / West Hills College, Lemoore

Professional Development

- Mini Google Summit – August 2017
- Code.org CS Fundamentals – August 2017
- Kagan Cooperative Learning (Days 4-5) – July 2016
- Kagan Cooperative Learning (Days 1-3 – August 2015
- Focus on Freshman (Career Choices training) – July 2015
- Common Core State Standards Implementation Institute – September 2012
- Receiving Teachers K-12 (training for teachers of special needs students) – August 2010

Community Service

City of Porterville – Parks and Leisure Services Commissioner

- Advised the Porterville City Council and Director of Parks and Leisure Services on the management and control of parks, public grounds and the events carried out by the Leisure Services division.



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Appointments to the Library & Literacy Commission

SOURCE: Administrative Services

COMMENT: Four Commissioners on the Library and Literacy Commission have terms that are set to expire on October 31, 2021:

- Patience Christenson
- Esther Figueroa
- Edith LaVonne
- Leslie Pelon

Eligibility for appointment to this Commission requires city residency. Of the Commissioners with expiring terms, Patience Christenson, Esther Figueroa, and Edith LaVonne has submitted a Request for Reappointment, which is provided herein for the City Council's consideration. Commissioner Leslie Pelon has informed staff of her decision to not seek reappointment.

Staff is in receipt of one additional Requests for Appointment, which is also provided herein for Council's consideration:

- Karen Stover

Staff has confirmed that each applicant's listed address is located within the city limits of Porterville.

RECOMMENDATION: That the City Council consider the appointment of four individuals to the Library and Literacy Commission for three-year terms expiring in October 2024.

ATTACHMENTS:

1. Request for Appointment - Patience Christensen
2. Request for Appointment - Esther Figueroa
3. Request for Appointment - Edith LaVonne
4. Request for Appointment - Karen Stover

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Deputy City Manager

Final Approver: John Lollis, City Manager

CITY OF PORTERVILLE REQUEST FOR APPOINTMENT

RECEIVED

SEP 23 2021

CITY OF PORTERVILLE
CITY CLERK OFFICE

Please complete all blanks.

Name: PATIENCE CHRISTENSON

(Please Print)

Appointment to: LIBRARY AND LITERACY COMMISSION

(Name of Board, Commission, or Committee)

☒ Reappointment; or IF NEW, please provide :

Street Address:

Mailing Address:

Name of Business:

☐ Own

☐ Operate

Business Address:

Telephone: Home

Work

FAX

E-mail

City of Porterville resident:

☒ Yes

☐ No

Registered Voter:

☒ Yes

☐ No

Qualifications: CURRENT COMMISSIONER

- ☐ Resume attached
- ☐ Letter of request attached

Submitted By: Patricia Christensen 22 SEPT. 2021
Date

Received by: _____

Forwarded to: City Clerk ☐ Date: _____

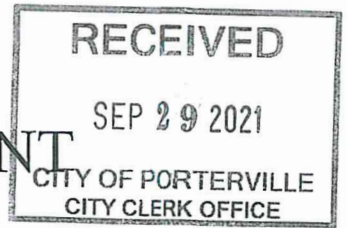
City Council ☐ Date: _____

City Manager ☐ Date: _____

Applicable Dept. ☐ Date: _____

Tentative Council Mtg Date: _____

CITY OF PORTERVILLE REQUEST FOR APPOINTMENT



Please complete all blanks.

Name: Esther Figueroa
(Please Print)

Appointment to: Library And Literacy Commission
(Name of Board, Commission, or Committee)

☒ Reappointment; or IF NEW, please provide :

Street Address: _____

Mailing Address: _____

Name of Business: _____

☐ Own ☐ Operate

Business Address: _____

Telephone: Home _____

Work _____

FAX _____

E-mail _____

City of Porterville resident:

☒ Yes
☐ No

Registered Voter:

☒ Yes
☐ No

Reappointment

Qualifications: _____

A library, town, is the heart of the community. This is a space where everyone has equal access and a place of security. Among other attributes, the Library, provides the tools for our youth to succeed in life. This is the venue for life-long learning. I look forward to continuing as a member of this advisory Board on this journey to raise & sustain a Library for Porterville and our surrounding communities.

☐ Resume attached

☐ Letter of request attached

Submitted By: _____

Ethel Figueroa

9/25/2021
Date

Received by: _____

Forwarded to: City Clerk

☐ Date: _____

City Council

☐ Date: _____

City Manager

☐ Date: _____

Applicable Dept.

☐ Date: _____

Tentative Council Mtg Date: _____

CITY OF PORTERVILLE REQUEST FOR APPOINTMENT

RECEIVED

OCT 13 2021

CITY OF PORTERVILLE
CITY CLERK OFFICE

Please complete all blanks.

Name: Edith LaVonne
(Please Print)

Appointment to: Library & Literacy Commission
(Name of Board, Commission, or Committee)

☒ Reappointment; or IF NEW, please provide :

Street Address: _____

Mailing Address: _____

Name of Business: _____

☐ Own ☐ Operate

Business Address: _____

Telephone: Home _____

Work _____

FAX _____

E-mail _____

City of Porterville resident:

☒ Yes

☐ No

Registered Voter:

☒ Yes

☐ No

Qualifications: _____

- ☐ Resume attached
☐ Letter of request attached

Submitted By: Edith Lavenne 10-12-2021
Date

Received by: _____

Forwarded to: City Clerk ☐ Date: _____
City Council ☐ Date: _____
City Manager ☐ Date: _____
Applicable Dept. ☐ Date: _____

Tentative Council Mtg Date: _____



CITY OF PORTERVILLE REQUEST FOR APPOINTMENT

Please complete all blanks.

Name: Karen Stover
(Please Print)

Appointment to: Library and Literacy Commission
(Name of Board, Commission, or Committee)

☐ Reappointment; or IF NEW, please provide :

Street Address:



Mailing Address:

Porterville, CA. 93257
(Same as above)

Name of Business:

☐ Own

☐ Operate

Business Address:

Telephone:

Home

559-

Cell

Work

559-

FAX

E-mail

@gmail.com

City of Porterville resident:

☒ Yes

☐ No

Registered Voter:

☒ Yes

☐ No

Qualifications: * Earned teaching credential from UCSB 1978.
* Taught grades Kindergarten - 4th from 1978-1984.
* Taught grades 1-4 at Belleview School from 1984-2010.
* Used children's literature as the centerpiece
for teaching reading.
* Used literature to integrate science and social studies
into the curriculum.
* Retired from teaching in 2010 with 32 years total service.
* Volunteered at Belleview School.
* Volunteered in 4th grade classroom at St. Anne's
Elementary School. (Continued on next page)

- ☐ Resume attached
- ☐ Letter of request attached

Submitted By: Karen Stover 9-27-21
Date

Received by: _____

Forwarded to: City Clerk ☐ Date: _____
City Council ☐ Date: _____
City Manager ☐ Date: _____
Applicable Dept. ☐ Date: _____

Tentative Council Mtg Date: _____

Qualifications:

- I have been a member of a local Book Club for over 10 years - I read all the time. Have had a love of libraries and books my whole life.
- I hope I can give back to the Porterville community if I am approved for the Library and Literacy Commission.

- ☐ Resume attached
- ☐ Letter of request attached

Submitted By: Karen Stover 9-27-21
Date

Received by: _____

Forwarded to: City Clerk ☐ Date: _____
City Council ☐ Date: _____
City Manager ☐ Date: _____
Applicable Dept. ☐ Date: _____

Tentative Council Mtg Date: _____



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Appointment to the Arts Commission

SOURCE: Administrative Services

COMMENT: The City's Arts Commission is comprised of five members, plus one youth member, who represent various areas of arts, including theatrical/performing; visual graphics; music; and youth. The members serve staggered three-year terms, with the exception of the youth member, who serves a one-year term.

Currently, one Commissioner, Donna Serna has a term that expired in July 2020. No appointments were considered or made during 2020 due to the COVID pandemic. Donna Serna has indicated no interest in continuing to serve and has not submitted an application for reappointment.

Staff is in receipt of a Request for Appointment from Maria Menga, a copy of which is provided for the City Council's consideration.

RECOMMENDATION: That the City Council appoint Maria Menga to the Arts Commission to a term to expire in July 2023.

ATTACHMENTS: 1. Request for Appointment - Maria Menga

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Deputy City Manager

Final Approver: John Lollis, City Manager



CITY OF PORTERVILLE REQUEST FOR APPOINTMENT



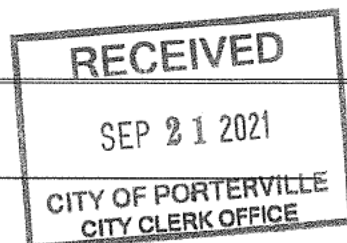
Please complete all blanks.

Name: MARIA MENA

(Please Print)

Appointment to: Arts Commission

(Name of Board, Commission, or Committee)



☐ Reappointment; or IF NEW, Please provide:

Street Address:

[REDACTED]

Porterville, CA 93257

Mailing Address:

[REDACTED]

Porterville,

CA 93258

Name of Business:

☐ Own

☐ Operate

Business Address:

Telephone:

Home

(559)-

[REDACTED]

Work

FAX

E-mail

[REDACTED]

@GMAIL.COM

City of Porterville Resident:

☒ Yes

☐ No

Select District:

☐ 1 ☐ 2 ☐ 3

☐ 4 ☐ 5

Registered Voter:

☒ Yes

☐ No

Qualifications: (It is recommended that a resume or letter accompany this form.)

INTERESTED IN ART IN GENERAL - MY PASSION.
SELF-TAUGHT DIGITAL ARTIST W/ OWN WEBSITE/PORTFOLIO.
ACTIVE PRINT SHOP (ONLINE: TNPRINT).

PARTICIPATED IN PROJECTS INCLUDING OTHER SKILLED
ARTISTS (ONE OF THE ARTISTS IN ONE OF THE PROJECTS HAS

Please tell us why you are interested in this position. WORKED FOR NICKOLODTON, CARTOON
NETWORK, RICK & MORTY, ETC.)

I'D LIKE TO HELP THE ART COMMUNITY IN PORTERVILLE
THINK; I HAVEN'T SEEN AS MANY ART EVENTS HERE,
& FROM WHAT I'VE HEARD, IT'S BECAUSE THERE'S NOT
ENOUGH PEOPLE ATTENDING THE MEETINGS. I'D LIKE TO
HELP ORGANIZE EVENTS HERE AS WELL.

☐ Resume attached

☐ Letter of request attached

Submitted By: Min MA

09/21/21
Date

Received by: _____

Forwarded to: City Clerk

☐ Date: _____

City Council

☐ Date: _____

Staff Liaison

☐ Date: _____

Tentative Council Mtg Date: _____



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Request for Street Closure

SOURCE: City Manager's Office

COMMENT: The Porterville Unified School District's Porterville Military Academy has requested the temporary closure of Porter Road at Pioneer Avenue on Wednesday, October 27, 2021, from 5:00 P.M. to 9:00 P.M. in support of a planned "Trunk-or-Treat" school event. The street closure is requested to promote event traffic safety, and no event activities would occur in the closed roadway. Porter Road currently provides no local traffic circulation and exclusively serves the school site. City staff recommends that should the City Council approve the requested street closure, the Council direct City staff to locate and remove the City-owned traffic safety barriers in support of the street closure.

RECOMMENDATION: That the City Council consider the request of the Porterville Military Academy to close Porter Road on Wednesday, October 27, 2021, from 5:00 P.M. to 9:00 P.M., and to provide direction to City staff in the location and removal of City-owned traffic safety barriers.

ATTACHMENTS:

1. Porterville Military Academy Request Letter - October 8, 2021
2. Locator Map

Appropriated/Funded:

Review By:

Department Director:

John Lollis, City Manager

Final Approver: John Lollis, City Manager



October 8, 2020

To whom it may concern:

The Porterville Military Academy's Associated Student Body with help from the PMA's Parent Action Committee, will be hosting a Trunk-or-Treat event on **Wednesday, October 27th** from 6 - 8pm on campus. This will be a fun event for our students and community.

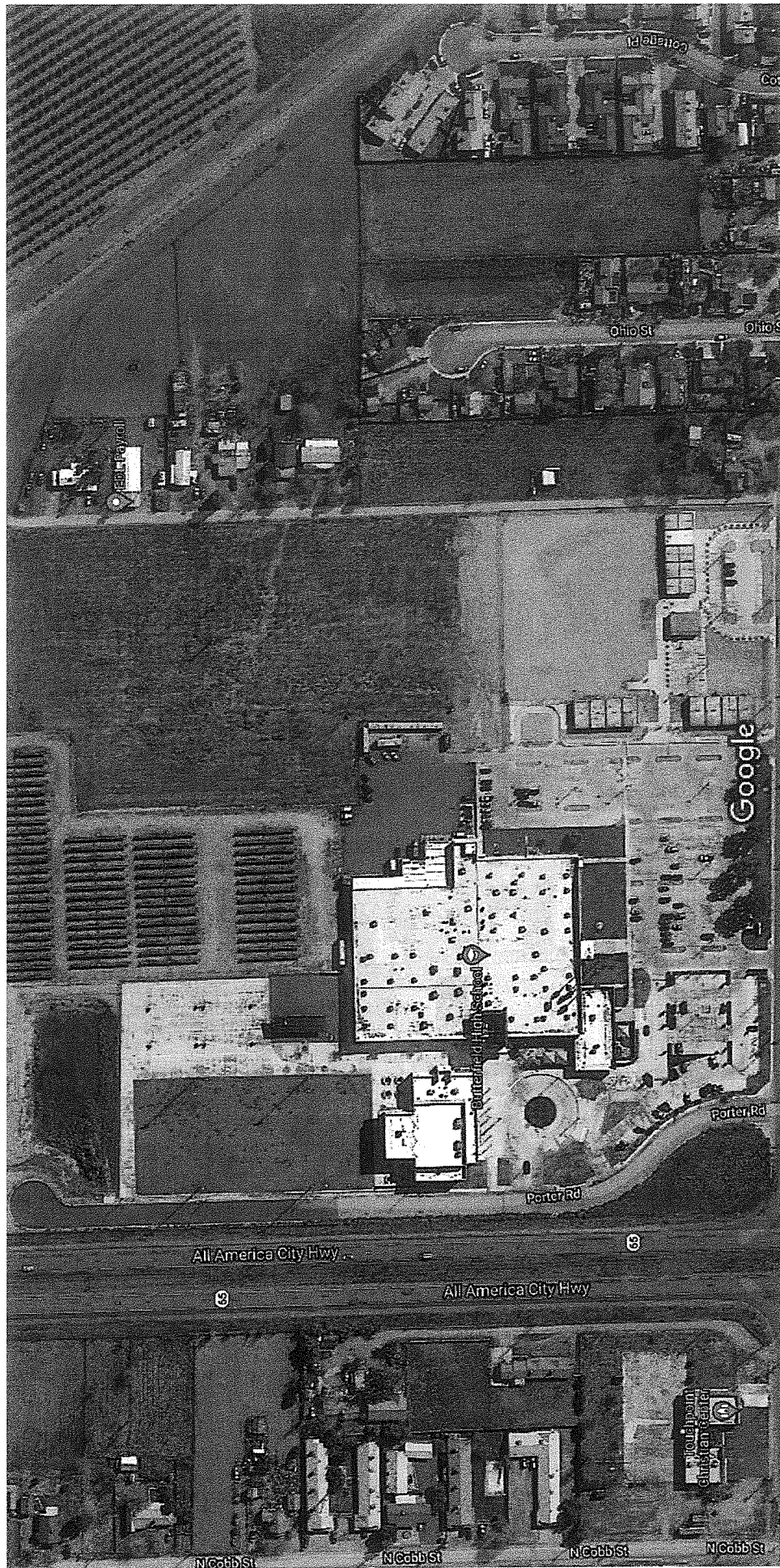
We humbly request for the Porter Road to be closed where it intersects with Pioneer from 5 - 9pm to accommodate our PMA families to set-up and clean-up their vehicles for the Trunk or Treat. We believe this will create a better flow for the event and allow easy access if emergency vehicles are needed.

Thank you in advance for your consideration.

Sincerely,

Leia Lozano
PMA PAC President

Doug Ihmels
Principal
Porterville Military Academy





CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Proposition 68 Per Capita Grant Program (Sports Complex and Veterans Park)

SOURCE: City Manager's Office

COMMENT: The California State Parks Proposition 68 Per Capita Grant Program's purpose is to allocate funds for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients are encouraged to utilize awards to rehabilitate existing infrastructure and to address deficiencies in neighborhoods lacking access to the outdoors. The City received an award of \$177,952 through Proposition 68 Per Capita Grant Program funds, and there is no local match requirement for projects that serve severely disadvantaged communities.

At its meeting on September 7, 2021, the City Council directed the Parks and Leisure Services Commission to provide a recommendation to Council focusing on projects exclusively in Veterans Park and the Sports Complex. The Commission reviewed potential projects for those two sites at its meeting on October 7, 2021. The projects reviewed were as follows:

Sports Complex practice field lighting (area covering snack bar east to ditch): \$600,000

Challenge Fitness Course: \$195,000

Pump Track (skateboards, bicycles, scooters): \$175,000

Mini Pitch lighted arena soccer field with artificial turf: \$180,000

Large picnic shelter: \$168,000

Band shell: \$215,000

Sand volleyball courts (2): \$90,000

Skatepark: exterior viewing shade, concrete addition in a dirt portion of the interior, minimal solar lighting: \$177,000

Outdoor fitness equipment: \$165,000

The Parks and Leisure Services Commission's top selection was the Skatepark project. The pump track received the second most votes. Outdoor fitness equipment, mini pitch, and Sports Complex practice field lighting all tied for the third project. The grant application deadline is December 31, 2021, and the project must be completed by February 28, 2023.

RECOMMENDATION: That the City Council provide direction on a project for the Proposition 68 Per Capita Grant Program in which the City was awarded the amount of \$177,952.

ATTACHMENTS: 1. Proposition 68 Per Capita Funding Project Concepts

Appropriated/Funded:

Review By:

Department Director:

Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager



Per Capita Prop 68

Project Ideas

Parks & Leisure Services

\$177,952 Grant Award



December 31

Submit Application



February 29

Complete Project

Potential Project Sites



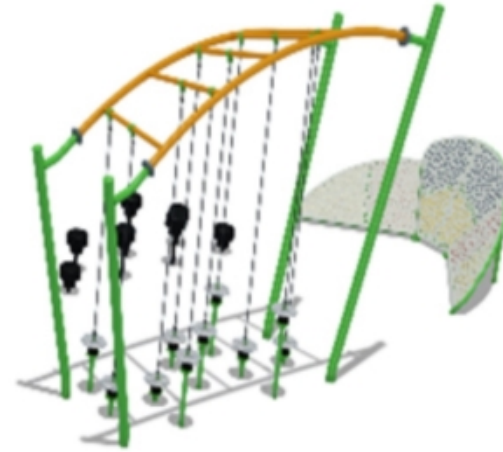
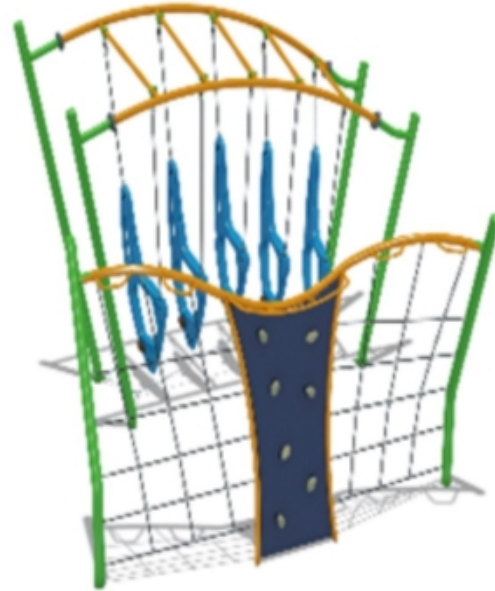
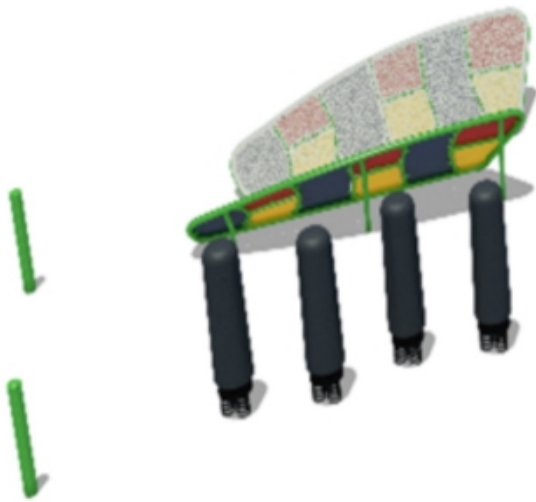
**Sports
Complex**

**Veterans
Park**



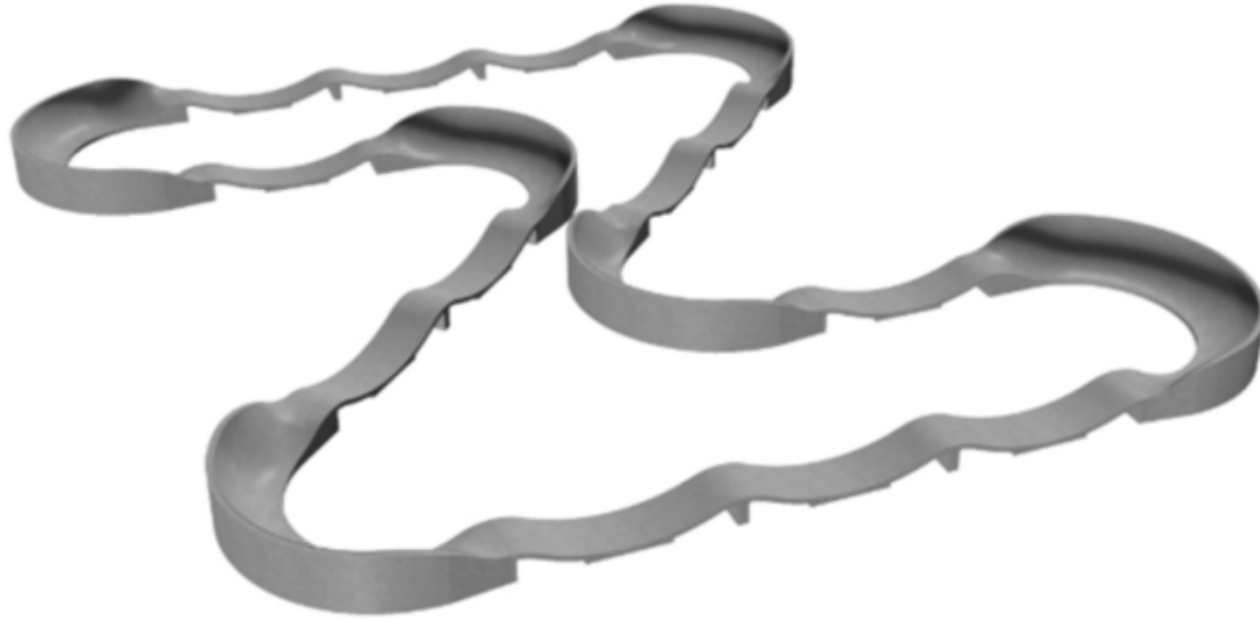
Sports Complex Practice Field Lighting

→ \$600,000



Challenge Fitness Course

→ \$195,000



Pump Track

→ \$175,000



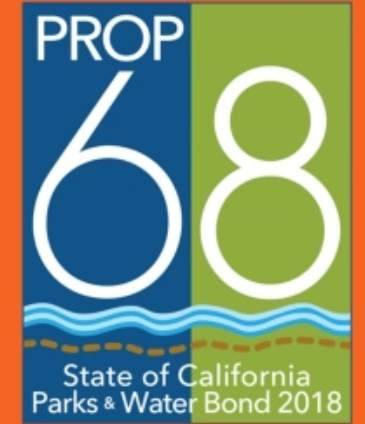


Mini Pitch
→ **\$180,000**



Large Picnic Shelter

→ \$168,000



Band Shell
→ **\$215,000**

Sand Volleyball Courts (two)

→ \$90,000



**Skatepark
Shade
Concrete
Lighting**

→ \$177,000



A photograph of an outdoor fitness trail in a park. The equipment, including various exercise machines and a bench, is green and yellow. It is set on a paved path with a grassy area and trees in the background. A sign on the left reads "Lyon's Park Zone & Signs".

Fitness Equipment
➔ **\$165,000**



Thank You!



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: American Rescue Plan Act (ARPA) Funding Proposal Request

SOURCE: Community Development

COMMENT: On September 22, 2021, City staff received a request for American Rescue Plan Act (ARPA) funds from Self-Help Enterprises and UPHoldings for the Finca Serena housing project, which includes the development of an eighty (80) unit apartment complex with a community center for low income families and individuals experiencing homelessness located at 358 South E Street. The request states that the parties have a \$750,000 funding gap due to construction cost increases and are seeking ARPA funds to fill the financial gap. Industry reports, including the Building Cost Index report prepared by Turner Construction (Attachment 2), state there is an increase in demand for construction services combined with pandemic related labor and supply chain disruptions that lead to a spike in construction costs for material including lumber, steel, copper, aluminum, PVC and gypsum, which support the statements of increased construction expenses in the request.

Through the passage of the American Rescue Plan Act, the City is expected to receive \$19,984,717 to help offset the negative impacts of COVID-19. All funds must be obligated by the end of calendar year 2024 and expended by the end of calendar year 2026. Current regulations allow local governments to utilize funds in the following ways:

- Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
- Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and storm water infrastructure, and to expand access to broadband internet,
- Ineligible uses include deposits into pension funds, debt service, legal settlement or judgements, deposits to rainy day funds or financial

reserves.

Additionally, in the Department of the Treasury's Interim Final Rule for ARPA funds, the proposed use of the funds (affordable housing development for the benefit of the homeless community), is considered an eligible expense under section 35.6 (b)(12) (A) and/or (B): 35.6 (b)(12) (A) Supportive housing or other programs and services to improve access to stable, affordable housing among individuals who are homeless; or 35.6 (b)(12) (B) Development of affordable housing to increase supply of affordable and high-quality living units;

On August 24, 2021, the Tulare County Board of Supervisors allocated \$500,000 of the County's ARPA funds in Section 3: Services to Disproportionately Impacted Communities of the adopted American Rescue Plan Act Interim Recovery Plan; Section 3.11 Housing Support: Services for Unhoused Persons, to potential eligible projects in Porterville. The City Council can recommend the use of the County of Tulare ARPA funds to a project that they see fit. This can include funding a project such as Finca Serena, as well as other projects within the Services for Unhoused Persons category.

At its meeting on May 18, 2021, the Council provided direction that the priorities for the City's ARPA funding include water infrastructure, homeless services, broadband and technology infrastructure, business assistance and vaccine support. The request for funding received by Self-Help Enterprises and UPHoldings for the Finca Serena project falls within the Council's priority of homeless assistance.

Given this project falls under both the City of Porterville's and the County of Tulare's ARPA funding priorities, should the Council decide to approve the request, it can recommend funding the request with either or a combination of the two funding sources.

RECOMMENDATION: That the City Council:

1. Consider the request for ARPA funds from Self-Help Enterprises and UPHoldings; and
2. If appropriate, direct staff to send the commitment letter for a grant to Self-Help Enterprises to be issued upon approval with funds being made available as soon as possible to directly offset construction costs, process a subrecipient agreement, authorize the Mayor and City Manager to sign all documents necessary; and
3. Provide direction on the recommended use of the County of Tulare ARPA funds allocated in Section 3.11 Housing Support: Services for Unhoused Persons in the city of Porterville.

ATTACHMENTS: 1. UPHoldings and Self-Help Enterprises ARPA Funding Request Letter

2. Tulare County Board of Supervisors COVID-19 Strategic Guide
3. Turner Building Cost Index - 2021 Second Quarter Forecast
4. Department of the Treasury American Rescue Plan Act Interim Final Rule

Appropriated/Funded:

Review By:

Department Director:

Jason Ridenour, Community Development Director

Final Approver: John Lollis, City Manager

Jason Ridenour
Community Development Director
City of Porterville
291 N. Main Street
Porterville, CA 93257

Dear Mr. Ridenour,

On behalf of the Finca Serena development team comprised of UPHoldings and Self-Help Enterprises, I am writing to formally request funds from the City of Porterville's allocation of the American Rescue Plan Act (ARPA) for the Finca Serena affordable housing project to be built at 358 South E Street, Porterville, CA 93258. Despite securing over \$32 million in funding from several competitive affordable housing programs including Low-Income Housing Tax Credits and California Housing and Community Development's No Place Like Home (NPLH) and HOME programs, recent industry-wide increases in the prices of construction materials have left the project with a funding gap of \$750,000. We believe that the Finca Serena project directly addresses the key priority presented by the City Council of using the ARPA money to provide assistance for the homeless residents of Porterville. As such, we would like to respectfully request \$750,000 in ARPA funding to ensure that the collaborative momentum behind Finca Serena moves forward. If this request is approved, we ask that a commitment letter for a grant to Self-Help Enterprises be issued upon approval with funds being made available as soon as possible to directly offset construction costs.

The direct relief provided by ARPA has allowed cities and states to take swift action to address their most pressing issues. The COVID-19 pandemic has acutely demonstrated the need to provide immediate support for persons experiencing homelessness. The housing affordability crisis in California only exacerbates this issue. Finca Serena would provide a crucial path forward for many of those most in need: an opportunity to move into permanent supportive housing with services that support all aspects of one's health. Our current timeline anticipates that residents could begin moving into the property as early as November of 2022 with construction beginning in October of 2021.

Finca Serena will include eighty (80) units of affordable housing with a variety of services to ensure that all residents of the project have the support that they need to thrive. Of the eighty (80) units, thirty-nine (39) will be specifically set aside for persons with serious mental illness who are chronically homeless, homeless, or at-risk of being chronically homeless. The development team has partnered with the Tulare County Health and Human Services Agency (HHSA) to provide social and health services to all residents of the project. These services will include comprehensive case management, employment services, health insurance and SSI advocacy, and mental health and substance abuse services.

UPHoldings, through property management company UPA, LLC, and GSF, Inc. will bring extensive experience in providing property management services for permanent supportive housing to Finca Serena. The management team will work closely with the service providers to



provide full wraparound support for residents. Additionally, two live-in “community builders” will serve as vital contacts for residents in accessing community services.

Thank you very much for your consideration of this funding request for Finca Serena. The development team looks forward to continued collaboration with the City of Porterville as this project becomes a reality. Please feel free to contact our team if there is any additional information that we can provide.

Sincerely,



Jessica Hoff Berzac
UPH Porterville, LLC



Thomas Collishaw
Self-Help Enterprises



18. Request from the County Administrative Office to approve the County of Tulare American Rescue Plan Act Interim Recovery Plan for initial usage of \$90,552,914 of the American Rescue Plan Act funds received to support the County in responding to the economic and public health impacts of COVID-19. Approve all budgetary and accounting transactions necessary to process transfers and reimbursements to cover the County of Tulare American Rescue Plan Act Interim Recovery Plan costs for Fiscal Years 2020/21 through 2023/24, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule. Authorize the County Administrative Officer discretionary authority for minor adjustments or changes to the County of Tulare American Rescue Plan Act Interim Recovery Plan projects and programs up to +/- 5% of each expenditure category, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.



County Administrative Office

COUNTY OF TULARE AGENDA ITEM

BOARD OF SUPERVISORS

LARRY MICARI
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: August 24, 2021 - REVISED

Public Hearing Required	N/A
Scheduled Public Hearing w/Clerk	N/A
Published Notice Required	N/A
Advertised Published Notice	N/A
Meet & Confer Required	N/A
Budget Transfer (Aud 308) attached	N/A
Personnel Resolution attached	N/A
Agreement(s) attached	N/A

CONTACT PERSON: Paul Guerrero PHONE: 559-636-5005

SUBJECT: Approve the County of Tulare ARPA Interim Recovery Plan for Federal American Rescue Plan Act Funds

REQUEST(S):

That the Board of Supervisors:

1. Approve the County of Tulare American Rescue Plan Act Interim Recovery Plan for initial usage of \$90,552,914 of the American Rescue Plan Act funds received to support the County in responding to the economic and public health impacts of COVID-19.
2. Approve all budgetary and accounting transactions necessary to process transfers and reimbursements to cover the County of Tulare American Rescue Plan Act Interim Recovery Plan costs for Fiscal Years 2020/21 through 2023/24, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.
3. Authorize the County Administrative Officer discretionary authority for minor adjustments or changes to the County of Tulare American Rescue Plan Act Interim Recovery Plan projects and programs up to +/- 5% of each expenditure category, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.
4. Direct the County Administrative Officer to finalize and submit the County of Tulare American Rescue Plan Act Interim Recovery Plan to the U.S. Department of the Treasury.

SUBJECT: Approve the County of Tulare ARPA Interim Recovery Plan for Federal American Rescue Plan Act Funds

DATE: August 24, 2021

SUMMARY:

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by President Biden. This legislation authorizes more than \$1.9 trillion in relief funds to address the continued impact of the COVID-19 pandemic on the economy, public health, state and local governments, individuals, and businesses.

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), established by the American Rescue Plan Act of 2021 and administered by the U.S. Department of the Treasury, provides \$350 billion in emergency funding for state, local, territorial, and Tribal governments. Eligible state, territorial, metropolitan city, county, and Tribal governments will be able to access funding directly from the Treasury Department to assist communities as they recover from the COVID-19 pandemic.

The SLFRF provide some flexibility for each jurisdiction to decide how to best meet the needs of their local communities – including support for households, small businesses, impacted industries, essential workers, and the communities hardest hit by the pandemic. Recipients can use funds for the following four statutory purposes:

- a. To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.
- b. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.
- c. For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency.
- d. To make necessary investments in water, sewer, or broadband infrastructure.

Funds are subject to the requirements specified in the Interim Final Rule adopted by the U.S. Department of the Treasury on May 10, 2021. The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to U.S. Department of the Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report within 30 days after the end of the 12-month period (by July 31 of each year).

The County Administrative Officer's certification allows Tulare County to receive up to \$90,552,914 in direct funding and certifies that the County will follow the proposed uses of the funds provided under the applicable provisions of Interim Final Rule, Final Rule (once approved and finalized), and the compliance and Reporting Guidance established by the U.S. Department of the Treasury.

On May 25, 2021, your Board authorized and ratified the County Administrative Officer's signature and submission of certification for receipt of American Rescue Plan funding

SUBJECT: Approve the County of Tulare ARPA Interim Recovery Plan for Federal American Rescue Plan Act Funds

DATE: August 24, 2021

from the U.S. Department of the Treasury on May 19, 2021, and directed the County Administrative Officer to establish, for Board approval, a spending plan for SLFRF.

County of Tulare ARPA Interim Recovery Plan

The County's allocated amount of \$90,552,914 in ARPA funds will be given to the County in two tranches, with 50% allocated in June of 2021, and the balance delivered approximately 12 months later. The County has received its first allocation of \$45,276,457. These funds are allocated to eligible costs in accordance with this plan during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as funds for obligations incurred by December 31, 2024 are expended by December 31, 2026.

Costs for projects incurred prior to March 3, 2021 are not eligible, as provided for in the Treasury's Interim Final Rule. However, SLFRF awarded funds may be used to provide assistance to communities, households, businesses, and individuals within the eligible use categories described in the Interim Final Rule for costs incurred prior to March 3, 2021. Any ARPA funds not obligated or expended for eligible uses by the dates above must be returned to U.S. Department of the Treasury.

In accordance with the Interim Final Rule, the County is required to publish and submit to the U.S. Department of the Treasury an annual Recovery Plan, which describes projects the County is undertaking with ARPA funding. The initial Interim Recovery Plan will cover the period from the date of award to July 31, 2021 and is due by August 31, 2021.

The County of Tulare ARPA Interim Recovery Plan is summarized below with a summary and detailed plan included as attachments. Key elements of the Interim Recovery Plan include the use of funds by expenditure category; a description of how funds will be used to respond to the public health emergency, promote recovery; and equity within the County; a description of community engagement in plan development; and performance indicators for the projects undertaken by the County with ARPA funds. The Plan follows the Interim Final Rule and the Compliance and Reporting Guidance set forth by the U.S. Department of the Treasury for the use of ARPA funds and is subject to change based on the Final Rule or new guidance or clarification from the U.S. Treasury. The following is a summary of the total amount allocated to each expenditure category:

Expenditure Categories	Total
1. Public Health	\$59,495,682
2. Negative Economic Impacts	\$4,425,000
3. Services to disproportionately Impacted Communities	\$5,600,000
4. Premium Pay	\$5,800,000

SUBJECT: Approve the County of Tulare ARPA Interim Recovery Plan for Federal American Rescue Plan Act Funds

DATE: August 24, 2021

5. Infrastructure	\$14,558,000
6. Revenue Replacement	\$0
7. Administrative	\$674,232
SLFRF Allocated to County of Tulare	
	\$90,552,914

The County's proposed projects and programs included in this plan are subject to change based on guidance and clarification from the U.S. Department of the Treasury, and changes in resource demands associated with the pandemic. Throughout the ARPA funding cycle, the County intends to prioritize COVID-19 testing, vaccination, and other emergency response activities. Should these activities require additional funds to address County needs, ARPA funding will be redirected away from other proposed projects and toward these specific public health activities. Major modifications, such as, adding new projects or programs, removing projects and programs, or any change in dollar amount allocations greater than +/- 5% per ARPA Expenditure Category will be brought back to the Board of Supervisors for direction and approval.

FISCAL IMPACT/FINANCING:

Approving the County of Tulare ARPA Interim Recovery Plan ensures the County can assist in the recovery of the COVID-19 pandemic. Of the County's \$90.6 million award, \$1,144,094 has been expended to date, \$454,094 of which was accrued in FY 2020/21 by HHSA to cover ARPA recovery responses to the public health emergency. There is no net County cost to the General Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Safety and Security Initiative to provide for the safety and security of the public. The approval of the County of Tulare ARPA Interim Recovery Plan addresses impacts, mitigations, emergency preparedness, responses, and effects caused by the public health emergency with respect to the COVID-19 pandemic.

ADMINISTRATIVE SIGN-OFF:

/s/Jason T. Britt

Jason T. Britt
County Administrative Officer

Cc: County Administrative Office

SUBJECT: Approve the County of Tulare ARPA Interim Recovery Plan for Federal American Rescue Plan Act Funds

DATE: August 24, 2021

Attachments:

County of Tulare ARPA Interim Recovery Plan

Interim Final Rule

Compliance and Reporting Guidance

BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF Approve the County)
of Tulare ARPA Interim Recovery Plan for) Resolution No. 2021-0666
Federal American Rescue Plan Act Funds)
)
)

UPON MOTION OF SUPERVISOR MICARI, SECONDED BY SUPERVISOR
TOWNSEND, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS,
AT AN OFFICIAL MEETING HELD AUGUST 24, 2021, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND
TOWNSEND
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE



ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY:

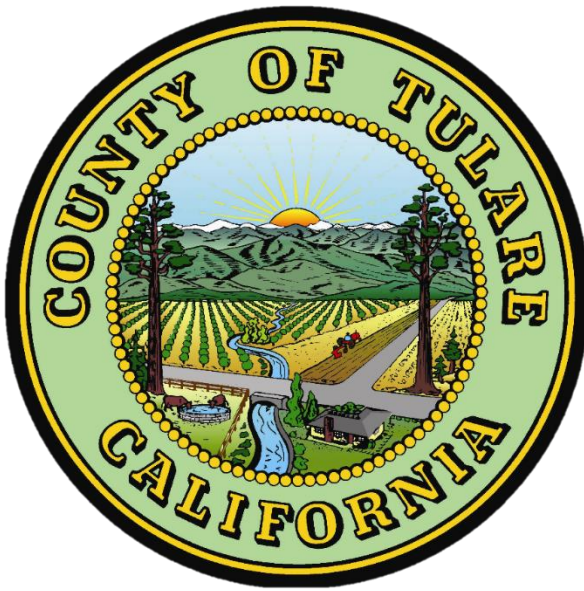

Deputy Clerk

* * * * *

1. Approved the County of Tulare American Rescue Plan Act Interim Recovery Plan for initial usage of \$90,552,914 of the American Rescue Plan Act funds received to support the County in responding to the economic and public health impacts of COVID-19.
2. Approved all budgetary and accounting transactions necessary to process transfers and reimbursements to cover the County of Tulare American Rescue Plan Act Interim Recovery Plan costs for Fiscal Years 2020/21 through 2023/24, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.
3. Authorized the County Administrative Officer discretionary authority for minor adjustments or changes to the County of Tulare American Rescue Plan Act Interim Recovery Plan projects and programs up to +/- 5% of each expenditure category, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.

4. Directed the County Administrative Officer to finalize and submit the County of Tulare American Rescue Plan Act Interim Recovery Plan to the U.S. Department of the Treasury.

CAO
08/24/2021
ML



REVISED

AMERICAN RESCUE PLAN ACT INTERIM RECOVERY PLAN

COUNTY ADMINISTRATIVE OFFICE

AUGUST 24, 2021



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

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COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

1. EXECUTIVE SUMMARY

On March 11, 2021, the \$1.9 trillion American Rescue Plan Act (ARPA) was signed into law by President Biden to address the continued impact of the COVID-19 pandemic on the economy, public health, state and local governments, individuals, and businesses. The legislation established \$350 billion in Coronavirus State and Local Fiscal Recovery Funds (SLFRF) specifically for state, local, territorial, and tribal governments to use in responding to the COVID-19 pandemic, addressing its economic fallout, and laying the foundation for a strong and equitable recovery. Tulare County's share of the SLFRF is \$90,552,914. These funds are intended to cover eligible costs incurred from March 3, 2021, through December 31, 2024.

In accordance with the Interim Final Rule and the Compliance and Reporting Guidance adopted by the U.S. Department of the Treasury, the County prepared the following Interim Recovery Plan, which outlines the County's intended use of ARPA funds and reports on actual expenditures during the first reporting period starting from the date of award through July 31, 2021. The County will publish and submit this Plan to the U.S. Department of the Treasury by August 31, 2021.

Over the next three years, Tulare County intends to utilize its ARPA funds to respond to the public health emergency, address negative economic impacts, support essential workers, and make strategic investments in water, sewer, or broadband infrastructure to support an equitable recovery from the pandemic. The total budgeted funds for each eligible expenditure category are listed in the table below. Amounts may be subject to modifications based on community needs, operational needs, and as determined by the Board of Supervisors:

ARPA EXPENDITURE CATEGORY	BUDGET	CUMULATIVE EXPENDITURES TO DATE	BALANCE
1. Public Health	\$59,495,682	\$144,094	\$59,351,588
2. Negative Economic Impacts	\$4,425,000	\$0	\$4,425,000
3. Services to Impacted Communities	\$5,600,000	\$310,000	\$5,290,000
4. Premium Pay	\$5,800,000	\$690,000	\$5,110,000
5. Infrastructure	\$14,558,000	\$0	\$14,558,000
6. Revenue Replacement	\$0	\$0	\$0
7. Plan Administration	\$674,232	\$0	\$674,232
	\$90,552,914	\$1,144,094	\$89,408,820

During the initial reporting period ending July 31, 2021, the County utilized \$1,144,094 in ARPA funds to provide premium pay to essential county employees and to cover incurred expenses by Health and Human Service Agency (HHS) responding to the public health emergency. HHS expended and accrued in FY 2020/21, \$454,094, which covered expenses from March 2021 through June 2021.

KEY OUTCOMES

Tulare County is considered an economically distressed region of the country. Prior to the COVID-19 pandemic, its rates of unemployment, and poverty were consistently higher than the statewide and national averages, median household income was low, and nearly half of residents received some form of public assistance. The COVID-19 pandemic and the



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

necessary actions taken to control the spread have worsened the already distressed situation for many of the County's most vulnerable populations. At the height of the emergency, farmworkers were testing positive at a rate of seven to one compared to the overall population, unemployment rates spiked to 13.2%, and the increased demand for public assistance placed an added strain on County pandemic-response resources. In response to the disproportionate toll the COVID-19 pandemic has taken on this region, the County intends to use its SLFRF allocation to fund projects and programs that mitigate the spread of COVID-19 within the County, assist the economic recovery of local businesses and industries that have lacked other sources of support through the pandemic, and build resilience in disadvantaged and underserved communities through housing support and infrastructure improvements.

2. USE OF FUNDS

This section outlines the guiding principles utilized by Tulare County to strategically allocate ARPA funds and further details the intended use of funds over the next three years.

GUIDING PRINCIPLES

In addition to facilitating the County's response to the COVID-19 pandemic and addressing its negative impacts on residents, ARPA funds provide a unique opportunity for the County to complete projects and programs that will have a transformative and lasting impact on county services and the community. In this spirit, the County established the following principles to guide the allocation and use of ARPA funds.

- **Be Transformational.** Pursue projects or programs that solve an ongoing problem and make a long-term and sustainable difference in the community.
- **One-Time Uses.** Consistent with the County's budget protocols, allocate one-time ARPA dollars to projects or programs with a defined funding period that do not create an ongoing fiscal obligation for the County.
- **Health & Safety.** Support the public health and safety response to COVID-19, which includes addressing the pandemic's ongoing health and safety impacts and building resiliency to better prepare the County for future disasters.
- **Equitable Outcomes.** Prioritize projects or programs that aim to increase equitable recovery and future resilience for disadvantaged or unincorporated communities.
- **Data-Driven.** Prioritize evidence-based projects or programs or contain the necessary data to demonstrate how they will address the impacts of the COVID-19 pandemic or assist in recovery.
- **Shovel-Ready.** Prioritize shovel-ready infrastructure projects that can be completed within the defined funding period.
- **Close Funding Gaps.** Prioritize funding for industries that experienced negative economic impacts due to the pandemic but did not receive other sources of funding or relief.
- **Avoid Duplication.** Ensure funded projects or programs do not duplicate services approved or administered by the state or federal government, including duplication of efforts of cities.



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

DETAIL BY FUNDING CATEGORY

The following further details the intended use of SLFRF funds by expenditure category. Funding will be used to respond to the COVID-19 emergency; address the negative economic impacts caused by the public health emergency; provide services to underserved populations and communities disproportionately impacted by COVID-19; provide premium pay to county essential workers; and improve County and community infrastructure to respond effectively and efficiently to the current and future public health emergencies.

The County's proposed projects and programs included in this plan are subject to change based on guidance and clarification from the U.S. Department of the Treasury, and changes in resource demands associated with the pandemic. Throughout the ARPA funding cycle, the County intends to prioritize COVID-19 testing, vaccination, and other emergency response activities. Should these activities require additional funds to address County needs, ARPA funding will be redirected away from other proposed projects and toward these specific public health activities. Major modifications, such as, adding new projects or programs, removing projects and programs, or any change in dollar amount allocations greater than +/- 5% per ARPA Expenditure Category will be brought back to the Board of Supervisors for direction and approval.

PUBLIC HEALTH

- **COVID -19 Vaccination** - Vaccination programs for residents of Tulare County are intended to mitigate the health impacts and reduce the number of deaths caused by COVID-19. In addition to administering currently available vaccines, the County anticipates using ARPA funds to organize and administer a vaccine booster in future years.
- **COVID-19 Testing** – Provide an employee and countywide testing program to serve the communities of Tulare County for mitigation and prevention of the COVID-19 virus.
- **Personal Protective Equipment (PPE)** – The County anticipates a sustained demand for PPE among staff and outside medical agencies as organizational policies change to require the use of PPE in daily operations. PPE protects staff and mitigates the spread of the COVID-19 virus among county employees as they perform their essential functions of serving the public and maintaining county operations. Demand for PPE may increase should the County experience another surge in COVID-19 cases during the recovery plan period. Therefore, ARPA funding has been set aside to address this potential cost.
- **Capital Investments or Physical Plant Changes to Public Facilities** – These capital projects would improve the County's response to the COVID-19 public health emergency. The HVAC projects would assist in mitigating the spread of the COVID-19 virus in county buildings by improving ventilation in congregate settings. Radio Tower projects would allow better medical and public safety responses to Tulare County communities, including disadvantaged and isolated communities in the mountainous areas.
- **Other COVID-19 Public Health Expenses (including Communication, Enforcement, Isolation/Quarantine)** – The County will provide communication messaging and outreach to residents and communities within Tulare County regarding COVID-19 vaccinations and testing; provide facilities for quarantining the homeless and jail inmate populations with COVID-19; improve teleworking and video conferencing to allow for social distancing while maintaining the continuity of essential County operations; and enhance outdoor and green space areas for residents and communities to remain active and socially distanced during this public health emergency.



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

- **Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19** – County departments with staff directly or substantially dedicated to responding to or mitigating the COVID-19 public health emergency will use ARPA funding to cover the associated payroll costs of those employees.
- **Other Public Health Services** – Other COVID-19 expenditures include technology expenditures to continue County public health operations and provide services to the public. These technology projects would digitize records and allow for teleworking so that the County may continue to provide socially-distanced services to the public, residents, and communities of Tulare County online.

NEGATIVE ECONOMIC IMPACTS

- **Small Business Economic Assistance** – Assist local small business through an Environmental Health Fee waiver.
- **Aid to Nonprofit Organizations** – Develop programs in collaboration with local nonprofit organizations to assist those in Tulare County impacted by the public health emergency.
- **Aid to Impacted Industries** – Provide assistance to the County libraries for modification of services that mitigate and prevent the spread of COVID-19, and aid industries impacted by the public health emergency, such as museums, memorial districts, and other community service districts, that have not received other sources of pandemic relief.

SERVICES TO DISPROPORTIONATELY IMPACTED COMMUNITIES

The County recognizes that individuals experiencing homelessness have been particularly hard hit during this pandemic, and will use SLFRF funds to develop projects that provide housing support and allow for homeless populations to safely quarantine during the pandemic.

PREMIUM PAY

County employees deemed essential workers and eligible under the guidelines set forth by the U.S. Department of the Treasury, were given \$1,500 in premium pay for their continued work throughout the pandemic. County workers are considered disaster workers by ordinance. During the COVID-19 pandemic, county workers were deemed essential via emergency order to maintain the continuity of critical services that ensure the safety, health, and wellbeing of county residents.

INFRASTRUCTURE

- **Clean Water Projects** – The following projects meet a critical sewer infrastructure need for the identified disadvantaged and underserved communities: Ivanhoe Public Utilities District (PUD) Disposal Pond Improvements, Tipton Community Services District (CSD) Wastewater Treatment Plant Improvements, and Earlimart PUD Interceptor and Relief Sewer Project.
- **Drinking Water Projects** – The following projects meet a critical drinking water infrastructure need for the identified disadvantaged and underserved communities: Tipton CSD North Burnett Road Water Line Replacement, Avenue 264 Water Main Extension, Pixley PUD Water Main Extension, Poplar CSD Well Replacement, Earlimart Front Street Well Treatment, Tipton CSD Well Number Six, Cutler PUD Well Number Ten, Strathmore PUD Well and Treatment, Strathmore PUD Tank Repair, Chinowth Street Apartments Fire Hydrant, Earlimart PUD Clay West Well Sound Wall, and Orosi PUD Well Number Five Auxiliary Power.



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

ADMINISTRATIVE

The County will fund direct and indirect SLFRF administrative costs for implementation of projects and programs. Administering and developing the County's Recovery Plan will require the oversight of the County Administrative Office, Auditor's Office, and County Cost Centers (e.g. Health and Human Services Agency, Information and Communications Technology Department, and the General Services Agency). Administrative funds may also be used to hire a consultant to take over administration, monitoring, and reporting associated with the County's Recovery Plan. The proposed consultant would support effective management and oversight, ensuring compliance with legal, regulatory, statutory, and other requirements.

PROJECT AND PROGRAM PHASES

Projects and programs will be completed in their assigned phase unless otherwise noted. Due to scope and complexity, some projects and programs may be completed over multiple phases. Other projects may be developed at a later date, currently noted a "To Be Determined." The phases outlined below are projected start and completion timeframes and are subject to change, as determined by the County Administrative Officer, based on direction from the Board of Supervisors and the U.S. Treasury's Final Rule, guidance, and clarification.

Phase I: March 2021 through June 2022.

Phase II: July 2022 through June 2023.

Phase III: July 2023 through June 2024.

Phase IV: July 2024 through December 31, 2024. If funds are obligated by December 31, 2024, they may be expended by December 31, 2026.

3. EQUITABLE OUTCOMES

Tulare County is composed of eight incorporated cities and numerous unincorporated communities and hamlets, including 17 qualified census tracts, designated as disadvantaged communities. According to the Distressed Communities Index, which evaluates the economic well-being of communities across the US, the County is an economically distressed area.ⁱ Approximately 23.8% of the population lives at or below the poverty level, more than 30% of adults 25 and older do not have a high school diploma, and more than 30% of adults aged 25 to 54 are not working or not in the labor force. Countywide, the median household income is 79% of the national average and 66% of the state average.ⁱⁱ

The projects and programs detailed in this plan were selected to help all Tulare County communities, but with special consideration for the disadvantaged and underserved communities who experienced a greater negative economic and social impact as a result of the COVID-19 public health emergency. The Plan focuses on projects and programs that may facilitate economic prosperity in disadvantaged communities and hasten a full recovery from the pandemic. Specific areas of focus include public health and safety protection, emergency medical services, reliable communication infrastructure, access to county services, and access to clean, safe, and sustainable water sources.



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

4. COMMUNITY ENGAGEMENT

The SLFRF parameters provide substantial flexibility for each jurisdiction to decide how to best meet the needs of their local communities and allow for flexible spending up to the level of their revenue loss. The County, through public comments at Board of Supervisors meetings, Board of Supervisors Town Halls, Government Affairs Committee meetings (City Chambers of Commerce), community council meetings, Board Of Supervisors Monthly Message (County website, Facebook, and Twitter), county constituent contacts, and internal county meetings, has developed a recovery plan, following SLFRF guidelines and community input to:

- a. 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. Respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.
- c. Provide 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.
- d. Make necessary investments in water, sewer, or broadband infrastructure.

As part of this plan, the County will disseminate information through its social media sites, community-based organization partners, Board of Supervisor meetings, Town Halls, Government Affairs Committee meetings, and community council meetings to ensure employees, residents, and businesses of the County are aware of the services funded through SLFRF.

5. LABOR PRACTICES

County labor practices will follow and comply with all local, state, and federal laws, regulations, and directives. This includes compliance with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment. The County, its contractors, and subcontractors shall comply with Title VI of the Civil Rights Act of 1964, and in accordance with said Act, no person on the grounds of race, color, sex or national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any service or activity in connection with any public works project.

With regard to public works projects, the County, its contractors, and subcontractors shall pay all workers employed on public works projects not less than the prevailing wage rates determined by the Director of the Department of Industrial Relations and shall comply with all laws and regulations relating to the employment of apprentices. Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Tulare County General Services Agency, 2637 W. Burrell Avenue Suite 200, Visalia, California and will be made available to any interested person on request.

No contractor or subcontractor may work on county public works projects unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. According to Labor Code section 1776, contractors and subcontractors are required to keep an accurate record showing the names, occupations, and actual per diem wage of all laborers, workers and mechanics employed by it in connection with county public works projects.



COUNTY OF TULARE ARPA INTERIM RECOVERY PLAN

August 24, 2021

6. USE OF EVIDENCE

The plan considers the use of evidence-based programs and identifies them on the Tulare County Interim ARPA Recovery Plan Project List - Attachment B.

7. EXPENSES BY EXPENDITURE CATEGORY

Tulare County Interim ARPA Recovery Plan Project List – Attachment A.

8. PROJECT INVENTORY & PERFORMANCE

Tulare County Interim ARPA Recovery Plan Project List – Attachment B.

ⁱ <https://eig.org/dci/interactive-map?path=county/06107&view=county>

Economic Innovation Group, *Distressed Communities Index, Interactive Map*, October 2020, Accessed August 6, 2021.

ⁱⁱ <https://www.census.gov/quickfacts/fact/table/US,CA,tularecountycalifornia/PST045219>

United States Census Bureau, *Quick Facts United States; California; Tulare County, California*, July 1, 2019, Accessed August 6, 2021.

Attachment A - Expense by Expenditure Category - REVISED

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

		Department	Total Project Cost
1: Public Health			\$ 59,495,682
1.1	COVID-19 Vaccination ^		\$ 2,526,711
	<i>HHSA support for vaccine administration by community partners</i>	HHSA	\$ 2,500,000
	<i>Response Team Support</i>	HHSA	\$ 26,711
1.2	COVID-19 Testing ^		\$ 200,000
	<i>HRD Color Testing for County Employees</i>	HHSA	\$ 200,000
1.5	Personal Protective Equipment		\$ 2,595,279
	<i>PPE for HHSA Staff</i>	HHSA	\$ 1,073,279
	<i>Distribution of PPE for other Tulare County institutions responding to COVID-19</i>	HHSA	\$ 1,522,000
1.6	Medical Expenses (including Alternative Care Facilities)		\$ 3,000,000
	<i>Hospitals</i>	HHSA	\$ 3,000,000
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency		\$ 14,229,559
	<i>HVAC Project - Visalia Government Plaza</i>	GSA	\$ 375,000
	<i>HVAC Project - Hillman TulareWORKS and WIC (Women, Infants, and Children)</i>	GSA	\$ 200,000
	<i>HVAC Project - Hillman Annex/Immunization Clinic</i>	GSA	\$ 70,000
	<i>HVAC Project - Lindsay TulareWorks</i>	GSA	\$ 270,000
	<i>HVAC Project - Agricultural Commissioner</i>	GSA	\$ 30,000
	<i>HVAC Project - Tulare County Libraries</i>	GSA	\$ 1,040,000
	<i>HVAC Project - Fire Stations</i>	GSA	\$ 1,620,000
	<i>HVAC Project - Tulare Hillman Health Center</i>	GSA	\$ 700,000
	<i>HVAC Project - Museum</i>	GSA	\$ 30,000
	<i>Lewis Hill Tower Relocation</i>	TCiCT	\$ 800,000
	<i>Exeter Rocky Hill Radio Tower</i>	TCiCT	\$ 500,000
	<i>Porterville Rocky Hill Radio Tower</i>	TCiCT	\$ 750,000
	<i>Goshen Radio Tower</i>	TCiCT	\$ 300,000
	<i>Richgrove Radio Tower</i>	TCiCT	\$ 300,000
	<i>Tipton Radio Tower</i>	TCiCT	\$ 300,000
	<i>Traver Radio Tower</i>	TCiCT	\$ 300,000
	<i>Replace MTR2000/Repeaters</i>	TCiCT	\$ 40,000
	<i>Handheld Radios (10)</i>	TCiCT	\$ 25,000
	<i>TCSO & FIRE - Upgraded Dispatch Firewall, 911 System</i>	TCiCT	\$ 1,764,559
	<i>HHSA - Equipment and licenses for use in telework, HIPAA compliance, privacy and security, and cloud based structures</i>	TCiCT	\$ 3,000,000
	<i>TCSO - Earlimart Radio Tower & Microwave infrastructure for Earlimart Sub</i>	TCiCT	\$ 265,000
	<i>OES - Video Conferencing</i>	HHSA	\$ 35,000
	<i>OES - Plotter upgrade</i>	HHSA	\$ 15,000
	<i>HHSA - Air Purifiers and Installation Cost</i>	HHSA	\$ 1,500,000
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)		\$ 15,365,706
	<i>Project Roomkey/Homekey Site Operations - quarantine facilities for homeless</i>	HHSA	\$ 1,010,000
	<i>COVID-19 Vaccine and testing outreach</i>	HHSA	\$ 100,000
	<i>Alpaugh Park</i>	GSA	\$ 853,500
	<i>Bartlett Park</i>	GSA	\$ 1,553,200
	<i>Cutler Park</i>	GSA	\$ 2,523,100
	<i>Goshen Park</i>	GSA	\$ 125,100
	<i>Kings River Park</i>	GSA	\$ 109,600
	<i>Ledbetter Park</i>	GSA	\$ 700,000
	<i>Mooney Grove Park</i>	GSA	\$ 1,193,200
	<i>Pixely Park</i>	GSA	\$ 1,153,800
	<i>Woodville Park</i>	GSA	\$ 50,500
	<i>TCSO Isolation and Quarantine Measures</i>	TCSO	\$ 5,993,706

Attachment A - Expense by Expenditure Category - REVISED

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Department	Total Project Cost
1.9 Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19		\$ 20,828,427
<i>Payroll for HHSA Staff</i>	HHSA	\$ 1,994,103
<i>Payroll for OES Staff - EMPG Local Match</i>	HHSA	\$ 195,000
<i>Payroll for Sheriff Staff</i>	TCSO	\$ 5,212,536
<i>Payroll for Fire Staff</i>	FIRE	\$ 13,426,788
1.12 Other Public Health Services		\$ 750,000
<i>Tech Equipment (Adobe Acrobat Licenses, iPad minis for vaccine pods)</i>	HHSA	\$ 250,000
<i>ASSESSOR - Electronic Records - Property Folders - Scanning Project</i>	TCICT	\$ 500,000
2: Negative Economic Impacts		\$ 4,425,000
2.9 Small Business Economic Assistance (General)* ^		\$ 925,000
<i>Assistance to Local Restaurants & Other Impacted Businesses - Environmental Health Fee</i>	HHSA	\$ 925,000
2.10 Aid to Nonprofit Organizations*		\$ 1,000,000
<i>Aid for local nonprofit organizations</i>	CAO	\$ 1,000,000
2.11 Aid to Tourism, Travel, or Hospitality		\$ 500,000
<i>Aid for tourism and economic development</i>	CAO	\$ 500,000
2.12 Aid to Other Impacted Industries		\$ 2,000,000
<i>Assistance to Library for Modified Services</i>	CAO	\$ 500,000
<i>Assistance to Museums, Memorial Districts, and other CSDs</i>	CAO	\$ 1,500,000
3: Services to Disproportionately Impacted Communities		\$ 5,600,000
3.10 Housing Support: Affordable Housing* ^		\$ 1,500,000
<i>Addressing Homelessness - Tagus Gardens and Sequoia Lodge Renovations</i>	HHSA	\$ 1,500,000
3.11 Housing Support: Services for Unhoused Persons* ^		\$ 4,100,000
<i>Addressing Homelessness - Homeless Key Supports</i>	HHSA	\$ 1,200,000
<i>No Place Like Home</i>	HHSA	\$ 400,000
<i>The Village Tiny Homes in Tulare and Goshen</i>	HHSA	\$ 500,000
<i>TC Hope Projects in Visalia, Tulare, and Porterville</i>	HHSA	\$ 2,000,000
4: Premium Pay		\$ 5,800,000
4.1 Public Sector Employees		\$ 5,800,000
<i>County Premium Pay - \$1,500</i>	CAO	\$ 5,800,000
5: Infrastructure		\$ 14,558,000
5.1 Clean Water: Centralized Wastewater Treatment		\$ 946,000
<i>Ivanhoe PUD - Disposal Pond Improvements</i>	WATER	\$ 650,000
<i>Tipton CSD - Wastewater Treatment Plant Improvements</i>	WATER	\$ 296,000
5.2 Clean Water: Centralized Wastewater Collection and Conveyance		\$ 1,600,000
<i>Earlimart PUD Sewer - Interceptor & Relief Sewer Project</i>	WATER	\$ 1,600,000
5.11 Drinking water: Transmission & Distribution		\$ 3,000,000
<i>Tipton CSD - North Burnett Rd Water Line Replacement</i>	WATER	\$ 500,000
<i>Ave 264 Water Main Extension</i>	WATER	\$ 500,000
<i>Pixley PUD - Water Main Extension</i>	WATER	\$ 2,000,000
5.13 Drinking water: Source		\$ 8,249,000
<i>Capital Project - CalWater Connection</i>	GSA	\$ 1,000,000
<i>Poplar CSD - Well Replacement</i>	WATER	\$ 499,000

Attachment A - Expense by Expenditure Category - REVISED

^ Must report if projects are primarily serving disadvantaged communities:
* Must identify total funds allocated to evidence-based interventions:

		Department	Total Project Cost
<i>Earlimart PUD - Front Street Well</i>		<i>WATER</i>	\$ 2,200,000
<i>Tipton CSD - Well No. 6</i>		<i>WATER</i>	\$ 1,700,000
<i>Cutler PUD - Well No. 10</i>		<i>WATER</i>	\$ 700,000
<i>Strathmore Public Utilities District - Well and Treatment.</i>		<i>WATER</i>	\$ 2,150,000
5.14 Drinking water: Storage			\$ 150,000
<i>Strathmore Public Utilities District - Tank Repair</i>		<i>WATER</i>	\$ 150,000
5.15 Drinking water: Other water infrastructure			\$ 613,000
<i>Chinowith Fire Hydrant</i>		<i>WATER</i>	\$ 38,000
<i>Earlimart PUD Clay West Well Sound Wall</i>		<i>WATER</i>	\$ 75,000
<i>Orosi Public Utility District Well No. 5 Auxiliary Power Project</i>		<i>WATER</i>	\$ 500,000
6: Revenue Replacement			\$ -
7: Administrative			\$ 674,232
7.1 Administrative Expenses			\$ 674,232
<i>ARPA Administration</i>		<i>CAO</i>	\$ 674,232
Grand Total:			\$ 90,552,914

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
1: Public Health		\$ 59,495,682				
1.1 COVID-19 Vaccination ^						
Project Name: HHSA support for vaccine administration by community partners	HHSA	\$ 2,500,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: HHSA has and continues to establish agreements with healthcare partners to assist with COVID-19 vaccine administration. The \$2.5M would be used after Epidemiology and Laboratory Capacity (ELC) funds have been maximized. Additionally, there may be the need to administer booster vaccines in the future. This funding would allow the Agency to reimburse partners for the administration of approximately 45,450 vaccines (\$55/dose).						
Equity Measures: Vaccination strategies are informed by the California Healthy Places Index (HPI), which identifies which communities are most disadvantaged or at-risk. Tulare County has used this index to identify the zip codes that are most vulnerable, and vaccination events and activities in these underserved areas are prioritized. In addition to this strategy, Tulare County also developed a GIS Mapping tool to identify vaccine registered providers in the County. This tool extended the ability to identify where within the county/communities under the Q1 HPI quartiles needed providers to be registered as vaccine providers. This was addressing health equity by targeting the commuting distance to a vaccination location and decreasing transportation inequities. Accessibility is addressed by locating vaccine events and providers within the communities that may have low vaccination rates. For example, if a community falls under a specific percentage, like under 30% being vaccinated, this draws the attention to set these communities as priorities and schedule vaccine events in that community. The project will be able to sustain these vaccine efforts by making sure that these well-established locations are kept active in these communities for consistency access to the residents.						
Performance Indicators: As noted above, this funding would provide approximately 45,450 vaccine doses. The County will measure the progress of the project by measuring both the overall County vaccination rate as well as vaccination rates by zip code. Weekly reports are being compiled by Tulare County Epidemiology team to demonstrate the percentage of vaccination among the priority communities, to identify where the needs are and what planning should take place to increase/improve the percentage.						
Project Status Ongoing						
^ Serving disadvantaged communities: Yes, 19 communities were identified to be under the 25% quartile. These are priority communities to be reached.						
Project Name: Response Team Support	HHSA	\$ 26,711	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Due to the nature of the vaccine point of distribution (POD) events, volunteers and staff working at these events are not able to leave the location, or there is not enough time to leave and get food; therefore, food has been provided. Covers primarily period from March through May during period of intensive vaccination efforts, plus a small amount to pay for food during any potential surges.						
Equity Measures: POD vaccination events were planned through out Tulare County. The number of events increased with the demand of the vaccine. Many of the events were hosted in underserved communities in the County. The volunteers were key in making the events successful.						
Performance Indicators: There were over 100 volunteers who assisted during the POD events.						
Project Status Ongoing						
^ Serving disadvantaged communities: Staff support vaccination events in disadvantaged and underserved communities.						
1.2 COVID-19 Testing ^						
Project Name: COVID Testing for Tulare County Employees	HHSA	\$ 200,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Contract with the vendor Color to make COVID-19 testing available for Tulare County staff members. Testing is an important measure to mitigate and contain the COVID-19 disease.						
Equity Measures: Tulare County is establishing a testing program for its employees. Tulare County staff are considered essential workers, and have been assisting with responding to the COVID-19 pandemic. These testing sites will be located through out County facilities, in addition to testing sites available to County residents.						
Performance Indicators: The County of Tulare employees over 4,000 employees (full-time and part-time) and all employees will have the opportunity to participate in this testing program.						
Project Status Not Started						
^ Serving disadvantaged communities: County of Tulare has offices throughout the County, and many of them are located in, and serve disadvantaged communities. The testing sites for staff will be located in some of these communities.						
1.3 COVID-19 Contact Tracing						
1.4 Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*						
1.5 Personal Protective Equipment						
Project Name: PPE for HHSA Staff	HHSA	\$ 1,073,279	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Employees continue to use PPE in the office. Funds would cover Cintas monthly order of masks and hand sanitizer stations. Expense serves approximately 2,000 Agency staff, plus members of the public on a monthly contracted basis. On July 26, 2021 the State Public Health Officer issued an order, effective August 9, that requires workers in certain facilities to wear FDA-cleared surgical masks and follow CDC masking guidelines. This applies to: A) Acute Health Care and Long-Term Care Settings; B) High-Risk Congregate Settings; and C) Other Health Care Settings. These supplies would be procured outside of the Agency's agreement with Cintas which provides cloth masks and hand sanitizer stations for employees and clients.						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: <i>PPE will serve Agency staff, plus members of the public which includes a significant number of disadvantaged communities and populations</i>						
Performance Indicators: <i>PPE will be purchased and distributed to employees to use in the office, including masks, and hand sanitizer stations.</i>						
Project Status: <i>Less than 50% Completed</i>						
Project Name: <i>Distribution of PPE for other Tulare County institutions responding to COVID-19</i>	HHS	\$ 1,522,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>This funding is primarily reserved for any potential COVID-19 surge in the County. Given the widespread demand that hospitals, nursing homes, doctor's offices, dental clinics, and other small businesses have shown in the past for PPE, a surge in COVID-19 cases could easily require this much funding for PPE, and possibly more. Supplying PPE keeps the disease contained, and could help small businesses stay open when they might otherwise have to close due to an inability to meet disease-mitigation requirements. This project considers that manufacturers have previously raised their prices in the event of widespread PPE shortages, and the proposed amount is reasonable, should COVID-19 cases take a sharp increase in the next few months.</i>						
Equity Measures: <i>PPE will be provided throughout the County which includes underserved and unincorporated areas. It will also be provided to healthcare workers who provide services in these areas.</i>						
Performance Indicators: <i>The goal is to procure surgical masks, gloves, and N95 masks and distribute throughout the County.</i>						
Project Status: <i>Not Started</i>						
1.6 Medical Expenses (including Alternative Care Facilities)						
Project Name: <i>Hospitals</i>	HHS	\$ 3,000,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Public Health will provide additional funding to local hospitals to assist with COVID-19 mitigation measures through testing and vaccination. These funds will also provide for COVID-19 safety measures in the emergency room and in-patient rooms.</i>						
Equity Measures: <i>This project was designed to assist community partners with providing direct patient care through mobile clinics and street medicine teams as well as enhanced services provided through the emergency room. The three recipient hospitals in Tulare County serve all residents of the County, including underserved communities and residents who live in qualified census tracts.</i>						
Performance Indicators: <i>The hospitals will be presenting work plans to provide testing and vaccination services to unincorporated and underserved areas of the County. This includes both direct patient care and the supplies needed to accomplish these tasks.</i>						
Project Status: <i>Not Started</i>						
1.7 Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency						
Project Name: <i>HVAC Project - Visalia Government Plaza</i>	GSA	\$ 375,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project: Purchase and install two (2) chillers and two (2) boilers at Visalia Government Plaza. Project timeline: This project will be completed by June 30, 2022. Intended outcomes: Improve ventilation in congregate settings/key County offices. According to the Centers for Disease Control and Prevention*, "when indoors, ventilation mitigation strategies can help reduce viral particle concentration. The lower the concentration the less likely viral particles can be inhaled by the lungs, contact eyes, nose, and mouth; or fall out of the air to accumulate on surfaces. However, ventilation system upgrades or improvements can increase the delivery of clean air and dilute potential contaminants." *https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html</i>						
Equity Measures: <i>Visalia Government Plaza is a key County office housing 622 employees from multiple departments that serve all county residents. These departments include Health and Human Services Agency (HHS) Administration, Resource Management Agency (RMA), Registrar of Voters, Grand Jury, Information & Communications Technology (TCICT), and General Services Agency (GSA) Print Shop. Members of the public also frequent the building to receive services from these agencies.</i>						
Performance Indicators: <i>N/A</i>						
Project Status: <i>Not Started</i>						
Project Name: <i>HVAC Project - Hillman TulareWORKS and WIC (Women, Infants, and Children)</i>	GSA	\$ 200,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project: Purchase and install two (2) compressors (motors inside the chillers) and one (1) boiler at Hillman TulareWORKS and WIC office. Project timeline: This project will be completed by June 30, 2023. Intended outcomes: Improve ventilation in congregate settings/key County Offices. According to the Centers for Disease Control and Prevention*, "when indoors, ventilation mitigation strategies can help reduce viral particle concentration. The lower the concentration the less likely viral particles can be inhaled by the lungs, contact eyes, nose, and mouth; or fall out of the air to accumulate on surfaces. However, ventilation system upgrades or improvements can increase the delivery of clean air and dilute potential contaminants." *https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html</i>						
Equity Measures: <i>Hillman TulareWORKS and WIC are key County offices housing 84 employees. TulareWORKS employees provide benefit assistance to all qualified families seeking governmental assistance. WIC employees provide services to all low-income women, infants, and children under five who are nutritionally at risk seeking governmental assistance.</i>						
Performance Indicators: <i>N/A</i>						
Project Status: <i>Not Started</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Project Name: HVAC Project - Hillman Annex/Immunization Clinic	GSA	\$ 70,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Purchase and install one (1) Dual Pack (heater and cooler in one unit) and three (3) split HVAC units at Hillman Annex/Immunization Clinic. Project timeline: This project will be completed by June 30, 2022. Intended outcomes: Improve ventilation in congregate settings/key County Offices. According to the Centers for Disease Control and Prevention*, "when indoors, ventilation mitigation strategies can help reduce viral particle concentration. The lower the concentration the less likely viral particles can be inhaled by the lungs, contact eyes, nose, and mouth; or fall out of the air to accumulate on surfaces. However, ventilation system upgrades or improvements can increase the delivery of clean air and dilute potential contaminants." *https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html						
Equity Measures: Hillman Annex/Immunization Clinic is a key County office housing 12 employees. The Immunization Clinic provides vaccinations for children whose parents or guardians cannot afford the costs. The Immunization Clinic also provide vaccinations for adults traveling abroad, or who have work, school, or immigration requirements.						
Performance N/A						
Indicators:						
Project Status Not Started						
Project Name: HVAC Project - Lindsay TulareWorks	GSA	\$ 270,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Purchase and install nine (9) Dual Packs (heater and cooler in one unit) at Lindsay TulareWorks. Project timeline: This project will be completed by June 30, 2023. Intended outcomes: Improve ventilation in congregate settings/key County Offices. According to the CDC*, "when indoors, ventilation mitigation strategies can help reduce viral particle concentration. The lower the concentration the less likely viral particles can be inhaled by the lungs, contact eyes, nose, and mouth; or fall out of the air to accumulate on surfaces. However, ventilation system upgrades or improvements can increase the delivery of clean air and dilute potential contaminants." *https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html						
Equity Measures: Lindsay TulareWORKS is a key County office housing 66 employees. TulareWORKS employees provide benefit assistance to all qualified families in need of governmental assistance.						
Performance N/A						
Indicators:						
Project Status Not Started						
Project Name: HVAC Project - Agricultural Commissioner	GSA	\$ 30,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Purchase and install two (2) split HVAC units at the Agricultural Commissioner's Office. Project timeline: This project will be completed by June 30, 2022. Intended outcomes: Improve ventilation in congregate settings/key County Offices. According to the Centers for Disease Control and Prevention*, "when indoors, ventilation mitigation strategies can help reduce viral particle concentration. The lower the concentration the less likely viral particles can be inhaled by the lungs, contact eyes, nose, and mouth; or fall out of the air to accumulate on surfaces. However, ventilation system upgrades or improvements can increase the delivery of clean air and dilute potential contaminants." *https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html						
Equity Measures: The Agricultural Commissioner's Office is a key County office housing 66 employees. The Agricultural Commissioner's office provides services for pesticide use enforcement, pest detection, pest eradication, pest quarantine, fruit and vegetable quality control, weights and measures enforcement, organic and certified producer program, etc. The Agricultural Commissioner's Office is available to members of the public to receive services.						
Performance N/A						
Indicators:						
Project Status Not Started						
Project Name: HVAC Project - Tulare County Libraries	GSA	\$ 1,040,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Purchase and install seven (7) Dual Packs at the Visalia Library, one (1) Split at Alpaugh Library, one (1) Dual Pack at Tipton Library, two (2) Wall Packs at London Library, two (2) Dual Packs at Ivanhoe Library, five (5) Dual Packs at Dinuba Library, three (3) Dual Packs at Exeter Library, four (4) Dual Packs at Strathmore Library, one (1) Split at Earlimart Library, three (3) Dual Packs at Three Rivers Library, and one (1) Dual Pack at Maddox House. Project timeline: This project will be completed by June 30, 2023. Intended outcomes: Improve ventilation in congregate settings/key County Offices. According to the Centers for Disease Control and Prevention*, "when indoors, ventilation mitigation strategies can help reduce viral particle concentration. The lower the concentration the less likely viral particles can be inhaled by the lungs, contact eyes, nose, and mouth; or fall out of the air to accumulate on surfaces. However, ventilation system upgrades or improvements can increase the delivery of clean air and dilute potential contaminants." *https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html						
Equity Measures: The Tulare County Libraries are key County service locations. The libraries provide services in the cities and unincorporated communities throughout the entire County. The libraries also provide internet and digital services to disadvantaged community members throughout the County.						
Performance N/A						
Indicators:						
Project Status Not Started						
Project Name: HVAC Project - Fire Stations	GSA	\$ 1,620,000	X			

* Must identify total funds allocated to evidence-based interventions:

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: 1) Description: The implementation will allow for improved communications for all of the Tulare County emergency services. Installation will add to the public safety, including in remote communities. 2) Timeline: > 1 year 3) Delivery Mechanism: tbd						
Equity Measures: Effort will aid in Tulare County's ability to respond to emergency situations throughout the county including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Tower will provide communication services for all of Tulare County emergency services						
Project Status: Not started						
Project Name: Porterville Rocky Hill Radio Tower	TCICT	\$ 750,000		X	X	
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: The implementation will allow for improved communications for all of the Tulare County emergency services. Installation will add to the public safety, including in remote communities. 2) Timeline: > 1 year 3) Delivery Mechanism: tbd						
Equity Measures: Effort will aid in Tulare County's ability to respond to emergency situations throughout the county including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Tower will provide communication services for all of Tulare County emergency services						
Project Status: Not started						
Project Name: Goshen Radio Tower	TCICT	\$ 300,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: The implementation will allow for improved communications for all of the Tulare County emergency services. Installation will add to the public safety, including in remote communities. 2) Timeline: > 1 year 3) Delivery Mechanism: tbd						
Equity Measures: Effort will aid in Tulare County's ability to respond to emergency situations throughout the county including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Tower will provide communication services for all of Tulare County emergency services						
Project Status: Not started						
Project Name: Richgrove Radio Tower	TCICT	\$ 300,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: The implementation will allow for improved communications for all of the Tulare County emergency services. Installation will add to the public safety, including in remote communities. 2) Timeline: > 1 year 3) Delivery Mechanism: tbd						
Equity Measures: Effort will aid in Tulare County's ability to respond to emergency situations throughout the county including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Tower will provide communication services for all of Tulare County emergency services						
Project Status: Not started						
Project Name: Tipton Radio Tower	TCICT	\$ 300,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: The implementation will allow for improved communications for all of the Tulare County emergency services. Installation will add to the public safety, including in remote communities. 2) Timeline: > 1 year 3) Delivery Mechanism: tbd						
Equity Measures: Effort will aid in Tulare County's ability to respond to emergency situations throughout the county including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Tower will provide communication services for all of Tulare County emergency services						
Project Status: Not started						
Project Name: Traver Radio Tower	TCICT	\$ 300,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: The implementation will allow for improved communications for all of the Tulare County emergency services. Installation will add to the public safety, including in remote communities. 2) Timeline: > 1 year 3) Delivery Mechanism: tbd						
Equity Measures: Describe how the project was designed with equity in mind. How does the project focus on underserved or disadvantaged groups? How will the project ensure accessibility and awareness of the services provided?						
Performance Indicators: 4) Intended Outcomes: Tower will provide communication services for all of Tulare County emergency services						
Project Status: Not started						

Attachment B - Project Inventory & Performance

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	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Project Name: Replace MTR2000/Repeaters	TCICT	\$ 40,000			X	
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: Replace MTR2000/Repeaters; If not replaced we risk equipment failure and end of life equipment. Needed to Improve Public Safety Communications 2) Timeline: tbd 3) Delivery Mechanism: tbd						
Equity Measures: To be determined at a later date.						
Performance Indicators: To be determined at a later date.						
Project Status: Not started						
Project Name: Handheld Radios (10)	TCICT	\$ 25,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: Handheld Radios (10). Individual Radios for staff to keep social distancing and avoid touching common equipment. 2) Timeline: tbd 3) Delivery Mechanism: tbd						
Equity Measures: To be determined at a later date.						
Performance Indicators: To be determined at a later date.						
Project Status: Not started						
Project Name: Upgraded Dispatch Firewall, 911 System	TCICT	\$ 1,764,559	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: This project will provide dispatch and emergency communications service to Tulare County Sheriff Department, Tulare County Fire Department, Medical Ambulance Services. The coverage if for the entire County of Tulare and cities within Tulare County. This also includes: •Eigna WAN and LAN •Firepower 2130 •911 System (for TCSO & Fire) •Radios and Base Stations •Motorola Dispatch Transport Network Configuration Tool (TNCT) •Installation, Configuration & Training •GrayBar For items above, this will includes configurations, engineering, documentation, inspections, training and sign off on all applicable items located at TCSO and TC Fire Headquarters in Visalia, Ca. 2) Timeline: The project completion is estimated to be done before October 15, 2021 and a go live date of November 2021. 3) Delivery Mechanism: tbd						
Equity Measures: The implementations of improved communications will add to the public safety for all of the Tulare County Fire stations including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Rollout of an updated dispatch system in the Cigna building.						
Project Status: Not Started						
Project Name: Equipment and licenses for use in telework, HIPAA compliance, privacy and security, and cloud based structures (O365 licenses, softphone licenses, and Zoom licenses.)	TCICT	\$ 3,000,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: This request is to have funds pay for an additional 1-2 years of annual license fees associated with the transition to O365 structure and softphone license renewals. At this time the figure reflected was a estimate as TCICT will have the total number of licenses and costs associated. By taking this approach it will assist Programs with determining overall costs moving forward for budgeting purposes of IT expenditures under the new direct-bill structure. Zoom licenses are also authorized to be used in telemedicine or other distance access to services.						
Equity Measures: Provides for continuity of services for public health (disease mitigation & pandemic response), behavioral health (services to address mental health & substance use disorder), and social services (benefits such as cash & food assistance, Medi-Cal, etc.) as well as protection for vulnerable populations (child welfare, foster kids, seniors, etc.) Continuity of services is particularly important for disproportionately impacted communities.						
Performance Indicators: These are in development.						
Project Status: Not Started						
Project Name: Earlimart Radio Tower & Microwave infrastructure for Earlimart Sub	TCICT	\$ 265,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) Description: The implementation will allow for improved communications, through additional of a new tower and microwave point to point, for all of the Tulare County emergency services. Installation will aid to public safety, including in remote communities. 2) Timeline: Targeted for the 2021 fiscal year 3) Delivery Mechanism: tbd						
Equity Measures: Effort will aid in Tulare Country's ability to respond to emergency situations throughout the county including in remote communities.						
Performance Indicators: 4) Intended Outcomes: Tower and microwave will provide communication services for all of Tulare County emergency services						
Project Status: Not started						
Project Name: OES-Video Conferencing	HHSA	\$ 35,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						

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	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: <i>To purchase and install additional components to the Audio/Video System for the Emergency Operations Center (EOC) in support of video conferencing and other remote collaboration tools. This deficiency was identified during COVID-19 and limited the County's ability to effectively coordinate a major disaster response (DR-4558-CA) within the COVID-19 emergency. This upgrade will allow for full integration of virtual participants while adhering to social distancing or isolation/quarantine measures, and will serve to improve coordination between incident facilities in future emergencies.</i>						
Equity Measures: <i>This project enhances the Emergency Operations Center which serves the entire County. Tulare County has numerous disadvantaged areas encompassing a large portion of the population. By virtue of serving a County-wide facility, this project serves the large disadvantaged population of Tulare County. Disadvantaged populations are more likely to live in disaster-prone locations (e.g. floodplains, high fire risk areas), making them the most likely beneficiaries of this investment.</i>						
Performance Indicators: <i>The video conferencing components will be installed in the Emergency Operations Center, and will be used in future emergency operations to incorporate off-site personnel and enhance collaboration / communication with other incident facilities (e.g. incident command posts, DOCs, REOC).</i>						
Project Status <i>Not Started</i>						
Project Name: <i>OES-Plotter Upgrade</i>	HHSA	\$ 15,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>To purchase a new high-speed plotter for printing maps and other visuals at the Emergency Operations Center (EOC). This will increase capacity for printing maps, temporary signage, and other visuals used for both internal and inter-agency coordination (e.g. road / aerial imagery maps of fire and flood-impacted or -threatened areas) as well as public communication (e.g. signage for shelters, vaccination PODs, Local Assistance Centers). This project is a short-duration activity as it entails only the procurement and deployment of the plotter hardware.</i>						
Equity Measures: <i>This project enhances the Emergency Operations Center which serves the entire County. Tulare County has numerous disadvantaged areas encompassing a large portion of the population. By virtue of serving a County-wide facility, this project serves the large disadvantaged population of Tulare County. Disadvantaged populations are more likely to live in disaster-prone locations (e.g. floodplains, high fire risk areas), making them the most likely beneficiaries of this investment.</i>						
Performance Indicators: <i>The plotter will be installed in the Emergency Operations Center, and will be used in future emergency operations to produce maps, signage, and other incident-related visuals.</i>						
Project Status <i>Not Started</i>						
Project Name: <i>Air purifiers and installation costs</i>	HHSA	\$ 1,500,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Purchase of air purification systems for deployment in HHSA facilities throughout Tulare County</i>						
Equity Measures: <i>Allows HHSA to serve communities throughout the County by keeping offices open and minimizing risk to both staff and clients. County of Tulare has offices throughout the County, and many of them located in disadvantage communities. Several are in leased facilities that may not comply with recommended air filtration standards needed to minimize transmission risk of COVID-19. In the recent past, we have been forced to close facilities due to known cases of contamination, which then limits access to needed services, which is especially problematic for disproportionately impacted populations.</i>						
Performance Indicators:						
Project Status <i>Not Started</i>						
1.8 Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)						
Project Name: <i>Addressing Homelessness - Isolation/Quarantine of Homeless Individuals & Households</i>	HHSA	\$ 1,010,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project will identify homeless individuals and their families at high-risk for negative health outcomes and provide isolation and quarantine through non-congregate shelter from March 3, 2021 - June 30, 2022 to protect human life, minimize strain on health care system capacity, provide safe housing to quarantine and isolate, while connecting homeless individuals and their families with SafetyNet programs.</i>						
Equity Measures: <i>Project works directly with the local Continuum of Care (CoC) to utilize the Coordinated Entry System via the Homeless Management Information System (HMIS) to identify individuals with medical and economic disparities. The project serves economically disadvantaged individuals with minimum eligibility criteria of homelessness and high-risk, such that over 25 percent of intended beneficiaries are below the federal poverty line</i>						
Performance Indicators: <i>a) Nightly stays of COVID positive and exposed individuals and b) Nightly stays of high-risk individuals, c) accessibility to government safety net programs, d) transition to stable housing vs return to street homelessness.</i>						
Project Status <i>Less than 50%</i>						
Project Name: <i>COVID-19 Vaccine and Testing Outreach</i>	HHSA	\$ 100,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Additional messaging and outreach activities may be necessary beyond activities planned in scope of the ELC Expansion project. ELC Expansion includes \$200K for outreach and messaging. Messaging and outreach efforts can reduce vaccine hesitancy and thereby possibly prevent or reduce potential resurgences of COVID-19.</i>						

Attachment B - Project Inventory & Performance

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Equity Measures: Outreach and media activities target the most disadvantaged and underserved communities in the County. For example, radio and TV ads are aired in both English and Spanish in order to reach the Spanish-speaking population, which has been identified as high-risk. Also, as a rural county, media are selected to ensure maximum accessibility to the remote populations (e.g. radio instead of the internet). The majority of the efforts with media and communication has been driven by the communities identified among the lower HPI quartiles. Tulare County has worked with billboard vendors to promote vaccination efforts and increase intention and health behavior surrounding vaccine hesitancy in 19 census tracts having the lowest HPI scores, under 25%. In addition to billboards, Tulare County's website has an accessible COVID-19 Tulare County Data and Information dashboard and links to vaccination and testing resources. In addition to this, the County uses Facebook, Twitter, and YouTube accounts to post vaccine events, vaccine/testing registration links, updates, advisories, and guidance that are made public. Collaborations with radio stations have been established and are continued to be worked with. This channel is used to promote the vaccine events in Tulare County and the Community-Based Organizations (CBO) efforts. CBO partnerships have been supporting the media outreach as well by reaching out to communities and promoting events on their media platforms. Overall, all efforts have been done collaboratively to continue promoting accessibility, affordability, and acceptability of testing and vaccination for COVID-19.						
Performance Indicators: As the outreach and media will be aimed at reducing vaccine hesitancy, vaccination rates will be measured in the targeted communities to measure the success of the project. Weekly reports are being compiled by Tulare County Epidemiology team to demonstrate the percentage of vaccination among the priority communities, to identify where the needs are and what planning should take place to increase/improve the percentage.						
Project Status Not started						
Project Name: Alpaugh Park	GSA	\$ 853,500	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Replace one (1) arbor and (3) grills. Install irrigation system and electrical system. Project Timeline: Replace arbor and grills by June 30, 2022, install irrigation system and electrical system by June 30, 2023. Intended Outcomes: Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The Park provides space and amenities for play and exercise for the Alpaugh community. Additionally, the park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452						
Equity Measures: Alpaugh Park is in a Qualified Census Tract. Alpaugh is a rural disadvantaged community with a population of 1,145 with limited access to services. Health outcomes are linked closely with poverty and the residents of Alpaugh experience elevated rates of poor health conditions as a result of limited access to services. By improving the Park, it gives greater opportunity to residents for exercise, children to play, and family and friends to gather. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics: 66.9% Hispanic White, 10.04% non-Hispanic White, 14.6% race other than White, 5.15% American Indian, 3.32% identify as two or more races, and .52% Asian.						
Performance Indicators: Compare number of arbor reservations pre and post improvements.						
Project Status Not started						
Project Name: Bartlett Park	GSA	\$ 1,553,200		X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Drill new water well, replace irrigation, and repair arbors. Replace arbors and picnic tables. Project Timeline: Repair arbors, and replace arbors and picnic table by June 30, 2022. Drill new water well and replace irrigation by June 30, 2023. Intended Outcomes: Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The Park does not currently have potable water. Drilling a new well will allow patrons to have access to drinking water and water for hand washing. The Park provides space and amenities for play and exercise for the Porterville community. Additionally, the park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452						

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Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: <i>Bartlett Park is located east of the City of Porterville which has a population of 59,427 and north of the Tule River Indian Reservation which has a population of 1,168. A large section of Porterville is a Qualified Census Tract. According to The U.S. Census Bureau, the median household income of Tule River Reservation and Off-Reservation Trust Land is \$35,536. Additionally, Tulare County has high rates of poverty, obesity, and food insecurity (University of CA, Cal Fresh Healthy Living). By improving the Park, it gives greater opportunity for residents to exercise, children to play, and family and friends to gather. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics of Porterville: 47.75% Hispanic White, 25.64% non-Hispanic White, 15.72% Other race, .63% Black or African American, 1.09% Native American, 3.76% identify as two or more races, 5.02% Asian, and .40% Native Hawaiian and Other Pacific Islander.</i>					
Performance Indicators: <i>Compare arbor reservations and entrance fees received pre and post improvements.</i>					
Project Status: <i>Not Started</i>					
Project Name: <i>Cutler Park</i>	GSA	\$ 2,523,100	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>					
Description: <i>Project: Replace irrigation, paving, electrical, arbors, picnic tables, and grills, repair arbors, remove stumps, address gopher damage, clean up brush pile, and restore potable water.</i> <i>Project timeline: Replace irrigation, paving, arbors, picnic tables, and grills, repair arbors, remove stumps, address gopher damage, clean up brush pile, and restore potable water by June 30, 2022. Replace electrical by June 30, 2023.</i> <i>Intended Outcomes: Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The Park does not currently have potable water. Installing a new backflow device will allow patrons to have access to clean drinking water. Additionally, the park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019).</i> <i>Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>					
Equity Measures: <i>Cutler Park is located on the northeast side of Visalia which has a population of 134,605. The Park provides space and amenities for play and exercise for the residents of Visalia and many rural communities in the surrounding area. Cutler Park is next to the St John's River. Residents utilize the Park for gatherings and to cool off in the river water. A large section of Visalia, west of the Park, is a Qualified Census Tract. By improving the Park, it gives greater opportunity to residents to exercise, children to play, and family and friends to gather. Tulare County has high rates of poverty, overweight/obesity, and food insecurity. (University of CA, Cal Fresh Healthy Living) By improving the park, residents will have a place to go for activity and exercise to attempt to offset poor health outcomes. Over 25% of intended beneficiaries are below the federal poverty line. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics of Visalia: 32.21% Hispanic White, 38.41% non-Hispanic White, 15.66% Other race, 2.26% Black or African American, 1.09% Native American, 4.20% identify as two or more races, 6.09% Asian, and .09% Native Hawaiian and Other Pacific Islander</i>					
Performance Indicators: <i>Compare arbor reservations and entrance fees received pre and post improvements.</i>					
Project Status: <i>Not Started</i>					
Project Name: <i>Goshen Park</i>	GSA	\$ 125,100	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>					
Description: <i>Project: Build an arbor, install picnic tables and grills.</i> <i>Project timeline: The project will be completed by June 30, 2023.</i> <i>Intended Outcomes: Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. Additionally, the park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019).</i> <i>Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>					

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Equity Measures: <i>Goshen is an unincorporated community west of Visalia, next to the 99 highway corridor with a population of 3,304. The average household income is \$41,580 with a poverty rate of 41.65%. By improving the Park, it gives greater opportunity for residents to exercise, children to play, and family and friends to gather. Residents will be made aware of any modification to the park via social media and through partner collaborations working in the community. Demographics of Goshen: 39.80% Hispanic White, 15.38% non-Hispanic White, 32.57% Other race, .61% Black or African American, 2.66% Native American, 2.45% identify as two or more races, 5.99% Asian, and .54% Native Hawaiian and Other Pacific Islander. Although Goshen is not in a Qualified Census Tract, the population of 2,850, within half a mile of the Park, is disadvantaged. The median household income for this area is \$25,424. Additionally, Tulare County has high rates of poverty, obesity, and food insecurity (University of CA, Cal Fresh Healthy Living). By improving the park, residents will have a place to go for activity and exercise to attempt to offset poor health outcomes. Over 25% of intended beneficiaries are below the federal poverty line.</i>						
Performance Indicators: <i>Conduct surveys to determine usage pre and post improvements.</i>						
Project Status <i>Not Started</i>						
Project Name: <i>Kings River Park</i>	GSA	\$ 109,600	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project: Pave new drive entrance and parking lot, install signage, build arbor and install picnic tables. Project timeline: Build arbor and install picnic tables by June 30, 2022. Pave new drive entrance and parking lot, and install signage by June 30, 2023. Intended Outcomes: Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>						
Equity Measures: <i>Kings River Park is located northwest of the unincorporated community of Traver which has a population 754. Traver and the surrounding area is a Qualified Census Tract. By improving the Park, it gives greater opportunity for residents to exercise and family and friends to gather. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics of Traver: 75.07% Hispanic White, 7.82% non-Hispanic White, 13.79% other race, 2.92% identify as two or more races, and .40% Asian.</i>						
Performance Indicators: <i>Conduct quarterly park patron head counts pre and post improvements.</i>						
Project Status <i>Not Started</i>						
Project Name: <i>Ledbetter Park</i>	GSA	\$ 700,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project: Repair arbors and stage, and replace arbors, picnic tables and grills. Project timeline: Repair arbors, and replace arbors, picnic tables and grills by June 30, 2022. Stage repair will be completed by June 30, 2023. Intended Outcomes: Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>						
Equity Measures: <i>Orosi is a disadvantaged community with limited access to services and a population of 8,300. Health outcomes are linked closely with poverty and the residents of Orasi experience elevated rates of poor health conditions as a result of limited access to services. By improving the Park, it gives greater opportunity for residents to exercise, children to play, and family and friends to gather. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics: 48.54% Hispanic White, 3.25% non-Hispanic White, 1.89% Black or African American, 29.07% race other than White, 4.72% American Indian, 4.46% identify as two or more races, and 8.06% Asian.</i>						
Performance Indicators: <i>Compare arbor reservations pre and post improvements.</i>						
Project Status <i>Not Started</i>						
Project Name: <i>Mooney Grove Park</i>	GSA	\$ 1,193,200	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: <i>Project: Replace electrical system, arbors, and picnic tables. Repair bridge and arbors.</i> Project timeline: <i>Repair and replace arbors and install picnic tables by June 30, 2022. Replace electrical system and repair bridge by June 30, 2023.</i> Intended Outcomes: <i>Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>						
Equity Measures: <i>Mooney Grove Park is located on the south end of the City of Visalia and north of the City of Tulare. A large section of Visalia and Tulare are in Qualified Census Tracts. The Park is utilized by residents all over the County, which has a population of 469,407, due to the size, location, and history. Mooney Grove is the oldest park in California. By improving the Park, it gives greater opportunity for residents to exercise, children to play, and family and friends to gather. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics of Tulare County: 45.19% Hispanic White, 28.52% non-Hispanic White, 16.23% Other race, 1.56% Black or African American, 1.32% Native American, 3.40% identify as two or more races, 3.61% Asian, and .17% Native Hawaiian and Other Pacific Islander.</i>						
Performance Indicators: <i>Compare arbor reservations and entrance fees received pre and post improvements.</i>						
Project Status <i>Not Started</i>						
Project Name: <i>Pixley Park</i>	GSA	\$ 1,153,800		X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Projects: Repair arbors and replace arbors, water distribution, irrigation, picnic tables, grills, and electrical system.</i> Project timeline: <i>Projected will be completed by June 30, 2023.</i> Intended outcomes: <i>Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. The Park provides space and amenities for play and exercise for the Pixley community. Additionally, the park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>						
Equity Measures: <i>Pixley Park is in a Qualified Census Tract. Pixley is a rural disadvantaged community, which has a population of 3,347, with limited access to services. Health outcomes are linked closely with poverty and the residents of Pixley experience elevated rates of poor health conditions as a result of limited access to services. By improving the Park, it gives greater opportunity for residents to exercise, children to play, and family and friends to gather. Residents will be made aware of any modifications to the park via social media and through partner collaborations working in the community. Demographics: 75.98% Hispanic White, 7.86% non-Hispanic White, 11.92% Other race, 4.24% Black or African American.</i>						
Performance Indicators: <i>Compare arbor reservations pre and post improvements.</i>						
Project Status <i>Not Started</i>						
Project Name: <i>Woodville Park</i>	GSA	\$ 50,500		X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project: Repair arbor, replace picnic tables and grills.</i> Project timeline: <i>The project will be completed by June 30, 2022.</i> Intended Outcomes: <i>Addressing health disparities and the social determinants of health, building stronger neighborhoods and communities, and promoting healthy childhood environments by improving the park. Additionally, the park is used for social gatherings which will assist in bringing the community back together as recovery efforts begin for the COVID-19 pandemic. Outdoor space and socialization can also assist in improving psychological health. An article published in the February 2019 issue of the International Journal of Environmental Research and Public Health states, "The presence of urban green spaces can encourage positive social interactions that cultivate social cohesion in ways that enhance health and well-being. Urban green spaces have also been linked to positive health behaviors and outcomes including increased physical activity and social engagement" (Jennings & Bamkole, 2019). Jennings, V., & Bamkole, O. (2019). The Relationship between Social Cohesion and Urban Green Space: An Avenue for Health Promotion. International Journal of Environmental Research and Public Health, 16(3), 452. doi:10.3390/ijerph16030452</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

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	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: <i>Woodville is a rural disadvantaged community with limited access to services which has a population of 1,763. The average household income is \$41,676 with a poverty rate of 39.85%. By improving the Park, it gives greater opportunity for residents to exercise, children to play, and family and friends to gather. Residents will be made aware of any modification to the park via social media and through partner collaborations working in the community. Demographics of Woodville: 77.54% Hispanic White, 6.29% non-Hispanic White, 11.12% Other race, 1.36% Native American, 3.29% identify as two or more races, and .40% Asian. Although Woodville is not in a Qualified Census Tract, the population of 1,245, within half a mile of the Park is disadvantaged. The median household income for this area is \$29,052. Additionally, Tulare County has high rates of poverty, obesity, and food insecurity (University of CA, Cal Fresh Healthy Living). By improving the park, residents will have a place to go for activity and exercise to attempt to offset poor health outcomes. Over 25% of intended beneficiaries are below the federal poverty line.</i>						
Performance Indicators: <i>Compare arbor reservations pre and post improvements.</i>						
Project Status: <i>Not Started</i>						
Project Name: <i>TCSO Isolation and Quarantine Measures</i>	TCSO	\$ 5,993,706	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>To mitigate the effects of the COVID-19 public health emergency within Tulare County jail facilities, the Sheriff's Office has dedicated five of eight housing modules at its Pre-Trial Jail Facility. The designated housing modules are utilized strictly for COVID-19 observation, quarantine, and isolation. All arrests are housed in observation units for a minimum of 14 days before qualifying to go to regular housing. Any deemed outbreak within any designated module at the Pre-Trial Facility becomes locked down. Inmates are medically screened/assessed; COVID-19 tests are administered on days 1, 7, and 14. If no signs/symptoms are present and results are negative for COVID-19, the affected module is taken off quarantine status. Suspect Forms and Contact Tracing are completed by medical, HHSA, HR&D, and/or designated Infectious Control Officer within the Sheriff's Office. Free COVID-19 education (verbal, pamphlet, and video) and free COVID-19 vaccinations for inmates are offered during bookings and while housed within any Sheriff's Office jail facility. Mandatory Personal Protective Equipment (PPE) is issued and regularly replaced and enforced within all jail facilities. Trainings for all staff with occasional repeat training as reminders to establish and/or any new State or County COVID-19 guidelines will be done regularly. Through the County Health Officer, Health & Human Services Agency, and jail medical provider, Wellpath, the Sheriff's Office created and will sustain best practice workflow charts for covid prevention amongst inmates, staff, and the public. All Sheriff's Office staff working in these designated units or exposed to the COVID-19 virus, use a special assignment code (C19, C19B, C19R) on their timecards to track all Salary and Benefits costs associated with this project.</i>						
Equity Measures: <i>All arrests, regardless of race, ethnicity, age, religious background, gender, medical ailment, education level, mental health needs, or other beliefs are received, booked, and classified for housing in observation units for a minimum of 14 days before qualifying to go to appropriate regular housing within one of three Sheriff's Office jail facilities. Placecards are posted in various locations in each housing units/modules in both English and Spanish that explain the categories of observation, quarantine, and isolation. All arrests brought into a Tulare County jail facility are educated about the Covid-19 vaccination by contracted medical staff and are offered the vaccination(s) at no cost to the inmate. All inmates brought in are also educated about the covid testing methods and tested via Rapid and PCR tests at no cost. Any inmate who becomes released before receiving the 2nd dose of the covid vaccination is provided a written referral. This project primarily serves disadvantaged and low-income communities throughout Tulare County. The County comprises approximately 34 towns and cities, of which 17 are in a qualified census tract. All arrests within Tulare County, regardless of where they are from or what community they are from, are tested for Covid-19, educated on Covid-19, offered the Covid-19 vaccination regiment, and housed in observation units for a minimum of 14 days before qualifying to go to regular housing. Inmates are not charged for any medical or mental health services or referrals.</i>						
Performance Indicators: <i>A Dashboard has been created and is sustained with daily statistics for any administered covid tests (positive, negative, or recovered) and for any covid vaccinations (1st dose, 2nd dose, refusals, or released prior to 2nd dose). The Dashboard also maintains any current numbers for those inmates who are in isolation, quarantine and/or positive. It is estimated that 4,500 inmates are booked into a Tulare County jail every three months or quarter. Through this project, the Sheriff's Office strives to have 100% adherence of all booking into a county jail facility screened through the observation/quarantine protocol.</i>						
Project Status: <i>Started</i>						
1.9 Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19						
Project Name: <i>HHSA Payroll</i>	HHSA	\$ 1,994,103	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						

Attachment B - Project Inventory & Performance

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	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: HS - CWS would like to hire 10-15 Extra Help staff. Due to COVID, IR/ER CWS staff have fallen behind on 10-day referrals. The onset of COVID created many obstacles for in-person response within 10-days, especially since there was not much information early on about COVID and the impact on it's spread and contraction. Also, keeping in mind staff safety and health. This created a back-log for staff, which leadership has identified a plan to address this area. However, it would be beneficial to incorporate extra help staff to address the back-log and ensure we are adhering to State mandates. COVID has also impacted staff going on LOAs, requesting accommodations due to child care, and office closures due to COVID positives which have contributed to the challenge of meeting this State mandate during the COVID pandemic. The calculation is based off of the salary of a SSW times 15 the requesting total. HS has reduced our request by half due to the time required to hire the extra help candidates. We have estimated about 6 months extra help staff. MH - As Mental Health personnel continue to aid in COVID-19 related activities, this funding will help pay for the positions since they will not be providing billable services. The amount is based on the recent cost with an estimated reduction of the cost by 60% as a contingency in the event PH is not able to fully take over the positions. Currently, there are two MH personnel that have continued to support COVID-19 related activities and these costs are not allowable through other MH funding. Fiscal Operations staff were pulled from their day-to-day activities to support COVID efforts. Additionally, COVID has also impacted staff going on LOA and requesting accommodations due to childcare. As a result, their daily activities have fallen behind. The funds would help hire extra help to catch up on fiscal activities that support HHSA financing of mandated programs.						
Equity Measures: Programs in HHSA provide safety net services and resources across the county, with a specific focus on equitable distribution of services						
Performance Indicators: Additional staff will be hired as extra help to						
Project Status Not Started						
Project Name: Payroll for OES Staff - EMPG Local Match	HHSA	\$ 195,000	X			
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: This project will fund additional staffing in the Office of Emergency Services necessary to address the increasing frequency, severity, complexity, duration, and overlap of natural and man-made disasters within the County. This was an identified deficiency during COVID-19 and the concurrent major disaster (DR-4558-CA) for wildfire, both of which were further complicated by excessive heat, power shortage / rolling blackouts, and excessive livestock mortality.						
Equity Measures: The Office of Emergency Services serves the entire County, which includes a significant number of disadvantaged communities and individuals. As these populations are more likely to live in disaster-prone areas, disadvantaged populations are the most likely beneficiaries.						
Performance Indicators: Emergency management staff will perform necessary duties in all-phase/all-hazard emergency management, which may include but is not limited to emergency preparedness (planning, training, exercise), emergency response (COVID-19, wildfire, drought, flooding, etc.), recovery (e.g. debris clean-up from DR-4558-CA), and mitigation (e.g. Local Hazard Mitigation Plan update).						
Project Status Not Started						
Project Name: Payroll for Sheriff Staff	TCSO	\$ 5,212,536	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: To mitigate the effects of the COVID-19 public health emergency within Tulare County jail facilities, the Sheriff's Office has dedicated five of eight housing modules at its Pre-Trial Jail Facility. The designated housing modules are utilized strictly for COVID-19 observation, quarantine, and isolation. All arrests are housed in observation units for a minimum of 14 days before qualifying to go to regular housing. Any deemed outbreak within any designated module at the Pre-Trial Facility becomes locked down. Inmates are medically screened/assessed; COVID-19 tests are administered on days 1, 7, and 14. If no signs/symptoms are present and results are negative for COVID-19, the affected module is taken off quarantine status. Suspect Forms and Contact Tracing are completed by medical, HHSA, HR&D, and/or designated Infectious Control Officer within the Sheriff's Office. Free COVID-19 education (verbal, pamphlet, and video) and free COVID-19 vaccinations for inmates are offered during bookings and while housed within any Sheriff's Office jail facility. Mandatory Personal Protective Equipment (PPE) is issued and regularly replaced and enforced within all jail facilities. Trainings for all staff with occasional repeat training as reminders to establish and/or any new State or County COVID-19 guidelines will be done regularly. Through the County Health Officer, Health & Human Services Agency, and jail medical provider, Wellpath, the Sheriff's Office created and will sustain best practice workflow charts for covid prevention amongst inmates, staff, and the public. All Sheriff's Office staff working in these designated units or exposed to the COVID-19 virus, use a special assignment code (C19, C19B, C19R) on their timecards to track all Salary and Benefits costs associated with this project.						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: <i>All arrests, regardless of race, ethnicity, age, religious background, gender, medical ailment, education level, mental health needs, or other beliefs are received, booked, and classified for housing in observation units for a minimum of 14 days before qualifying to go to appropriate regular housing within one of three Sheriff's Office jail facilities. Placecards are posted in various locations in each housing units/modules in both English and Spanish that explain the categories of observation, quarantine, and isolation.</i> <i>All arrests brought into a Tulare County jail facility are educated about the Covid-19 vaccination by contracted medical staff and are offered the vaccination(s) at no cost to the inmate. All inmates brought in are also educated about the covid testing methods and tested via Rapid and PCR tests at no cost. Any inmate who becomes released before receiving the 2nd dose of the covid vaccination is provided a written referral.</i>						
Performance Indicators: <i>A Dashboard has been created and is sustained with daily statistics for any administered covid tests (positive, negative, or recovered) and for any covid vaccinations (1st dose, 2nd dose, refusals, or released prior to 2nd dose). The Dashboard also maintains any current numbers for those inmates who are in isolation, quarantine and/or positive. It is estimated that 4,500 inmates are booked into a Tulare County jail every three months or quarter. Through this project, the Sheriff's Office strives to have 100% adherence of all booking into a county jail facility screened through the observation/quarantine protocol.</i>						
^ Serving disadvantaged communities: <i>This project primarily serves disadvantaged and low-income communities throughout Tulare County. The County comprises approximately 34 towns and cities, of which 17 are in a qualified census tract. All arrests within Tulare County, regardless of where they are from or what community they are from, are tested for Covid-19, educated on Covid-19, offered the Covid-19 vaccination regimen, and housed in observation units for a minimum of 14 days before qualifying to go to regular housing. Inmates are not charged for any medical or mental health services or referrals.</i>						
Project Status <i>Started</i>						
Project Name: <i>Payroll for Fire Staff</i>	FIRE	\$ 13,426,788	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Tulare County Fire Department (TCFD) provides emergency response service to underserved communities in need of medical aid attention while using universal precautions. TCFD has implemented operational strategies in mitigating COVID-19 exposure and the spread of the virus. The Department has purchased essential Personal Protective Equipment (PPE) and initiated decontamination procedures designed to keep employees and the community safe. When COVID-19 was declared a national pandemic during March 2020, the Department immediately adhered and continues to adhere to strict protocols as outlined by the Central California Emergency Medical Services Agency, FIRESCOPE, and the Centers for Disease Control. Utilizing Designated Infection Control Officers as the primary point, the Department implemented internal protocols to ensure the continuation of emergency services to the community. These protocols continue to be in place and include operational area coordination of PPE and decontamination procedures, daily employee self-health screenings, improved air filtration during oxygen therapy on emergency scenes, and Individual employee Personal Isolation Kits. Fire Dispatch has implemented caller queries for sick persons. Information gathered during a dispatched call is placed in the CAD comments and firefighters are asked to use universal precautions, including wearing N95 masks, gowns, gloves, and other PPE as needed when responding.</i>						
Equity Measures: <i>Tulare County Fire serves over 20 disadvantaged and low-income communities. As frontline professionals, Tulare County firefighters continue working through the COVID-19 pandemic to provide services and keep the community safe, regardless of race, ethnicity, age, religious background, gender, medical ailment, education level, mental health needs, or other beliefs. Additionally, Department EMTs have assisted with vaccination efforts and hosted vaccination clinics at various fire stations to reach all surrounding disadvantaged communities.</i>						
Performance Indicators: <i>The Tulare County Fire Department serves a population of more than 460,000. Between December 2020 and June 2021, the Department responded to 5,100 medical aid calls for service. It is anticipated the Department will respond to approximately 12,000 medical calls for service by the end of 2021. The Department will maintain 100% adherence to protocols as outlined by the Central California Emergency Medical Services Agency, FIRESCOPE, and the Centers for Disease Control while responding to medical aid calls for service.</i>						
^ Serving disadvantaged communities: <i>This project primarily serves disadvantaged and low-income communities throughout Tulare County. The County is comprised of approximately 34 towns and cities, of which 17 are in a qualified census tract.</i>						
Project Status <i>Started</i>						
1.10 Mental Health Services*						
1.11 Substance Use Services*						
1.12 Other Public Health Services						
Project Name: <i>Tech Equipment (Adobe Acrobat Licenses, iPad minis for vaccine pods)</i>	HHSA	\$ 250,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Laptops, monitors, docking stations, software licenses, mini-iPads, and Adobe licenses are needed to support HHSA employees as they work from home, in the field, and from the office. This item will cover the expenses incurred during the Vaccine POD activities such as iPad minis needed for registration and tracking. Remaining funds will be utilized to upgrade equipment reaching its end-of-life in HHSA programs.</i>						
Equity Measures: <i>Provides for continuity of services for public health (disease mitigation & pandemic response), behavioral health (services to address mental health & substance use disorder), and social services (benefits such as cash & food assistance, Medi-Cal, etc.) as well as protection for vulnerable populations (child welfare, foster kids, seniors, etc.) Continuity of services is particularly important for disproportionately impacted communities.</i>						
Performance Indicators: <i>Equipment and licenses will be purchases and implemented to support telework, HIPAA compliance, privacy and security, and cloud based structures</i>						
Project Status <i>Not started</i>						
Project Name: <i>ASSESSOR - Electronic Records - Property Folders - Scanning Project</i>	TCICT	\$ 500,000	X			

Attachment B - Project Inventory & Performance

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Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>					
Description: <i>1)Description / Major Project activities:</i> <i>Document Imaging and Electronic Records involves physical paper content capture into an electronic format, indexing it according to record type and importing to a custom-designed electronic records archive.</i> <i>2)Project Timeline: less than a year from project start</i> <i>3)Delivery mechanisms: Assessor and County ICT will provide project management; 3rd party contractors to perform document imaging and design of capture system and updates to ERM archive.</i>					
Equity Measures: <i>Electronic records help support services to all constituents over the phone or computer without traveling distances to the office, which could be a lengthy trip for those who reside in our rural disadvantaged communities. Electronic records systems that allow staff to work remotely also reduce the impact on our local air quality. The Assessor supports business and community development operations and ongoing County revenues through their work. In particular, the Assessor is making available re-assessments for business property losses tied to COVID-19.</i>					
Performance <i>Intended outcomes:</i> Indicators: • Having the Assessor's paper records digitized would help provide property information to taxpayers requesting information quicker. The public often has a need to access Assesses records when purchasing properties. The Assessor should aim to not cause any unnecessary delays in real estate transactions to keep the market robust. • If employees are sent home related to the COVID-19 Pandemic & do not have access to file records, they are unable to process exemptions without a delay in services. These various exemptions save taxpayers money & are vital to economic recovery. • Digitized records would allow staff to process deeds from home in the event of an office closure. This would allow the appraisal process to occur in a timely manner resulting in the issuance & collection of supplemental taxes to bring in revenues to the County.					
Project Status <i>Not started</i>					

2: Negative Economic Impacts

2.1	Household Assistance: Food Programs* ^		\$	4,425,000		
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^					
2.3	Household Assistance: Cash Transfers* ^					
2.4	Household Assistance: Internet Access Programs* ^					
2.5	Household Assistance: Eviction Prevention* ^					
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*					
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^					
2.8	Contributions to UI Trust Funds					
2.9	Small Business Economic Assistance (General)* ^					
	Project Name: <i>Assistance to Local Restaurants & Other Impacted Businesses - Refund/Waiver of Environmental Health Fees</i>	HHS	\$	925,000	X	
	Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>					
	Description: <i>Environmental Health will refund or waive all fees paid by restaurants, bars, and businesses related to body art, all of which were shut down substantially due to COVID-19 mitigation measures. For 1/27/2020 (the official start of the pandemic and the first day costs can be charged to ARPA SLFRF) through 1/31/2021, the cost would be \$442,422 and for the following year the cost would be \$481,724. ARPA SLFRF rules specifically encourage states, counties, and municipalities to use ARPA funds to render assistance to sectors that were disproportionately impacted by the pandemic.</i>					
	Equity Measures: <i>This project was designed to help businesses effected by the COVID-19 pandemic. These businesses employ people from the entire county and many are located in the unincorporated areas.</i>					
	Performance <i>It is estimated that 965 businesses will be eligible for fee reimbursement from 1/27/20 thru 1/27/21</i> Indicators: <i>and 983 businesses will be eligible the following year.</i>					
	Project Status <i>Not Started</i>					
	^ Serving <i>Several businesses that will be supported with these funds support underserved communities and are disadvantaged located in qualified census tracts.</i>					
	* Total funds allocated to evidence-based interventions:					
2.10	Aid to Nonprofit Organizations*					
	Project Name: <i>Aid for local nonprofit organizations</i>	CAO	\$	1,000,000	X	X
	Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>					
	Description: <i>Develop programs in collaboration with local nonprofit organizations to assist those in Tulare County impacted by the public health emergency. Project specifics to be determined at a later date.</i>					
	Equity Measures:					
	Performance					
	Indicators:					
	Project Status <i>In Development</i>					
	* Total funds allocated to evidence-based interventions:					
2.11	Aid to Tourism, Travel, or Hospitality					
	Project Name: <i>Assistance to Tourism</i>	CAO	\$	500,000	X	X
	Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>					

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	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: <i>Provide assistance to industries impacted by the public health emergency, that have not received other sources of pandemic relief. Project specifics to be determined at a later date.</i>						
Equity Measures:						
Performance Indicators:						
Project Status <i>In Development</i>						
2.12 Aid to Other Impacted Industries						
Project Name: <i>Assistance to Library for Modified Services</i>	CAO	\$ 500,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Provide assistance to the County libraries for modification of services that mitigate and prevent the spread of COVID-19. Project specifics to be determined at a later date.</i>						
Equity Measures:						
Performance Indicators:						
Project Status <i>In Development</i>						
Project Name: <i>Assistance to Museums, Memorial Districts, and other CSDs</i>	CAO	\$ 1,500,000	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Provide assistance to industries impacted by the public health emergency, that have not received other sources of pandemic relief. Project specifics to be determined at a later date.</i>						
Equity Measures:						
Performance Indicators:						
Project Status <i>In Development</i>						
2.13 Other Economic Support* ^						
2.14 Rehiring Public Sector Staff						
3: Services to Disproportionately Impacted Communities		\$ 5,600,000				
3.1 Education Assistance: Early Learning* ^						
3.2 Education Assistance: Aid to High-Poverty Districts ^						
3.3 Education Assistance: Academic Services* ^						
3.4 Education Assistance: Social, Emotional, and Mental Health Services* ^						
3.5 Education Assistance: Other* ^						
3.6 Healthy Childhood Environments: Child Care* ^						
3.7 Healthy Childhood Environments: Home Visiting* ^						
3.8 Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^						
3.9 Healthy Childhood Environments: Other* ^						
3.10 Housing Support: Affordable Housing* ^						
Project Name: <i>Addressing Homelessness - Tagus Gardens and Sequoia Lodge Renovations</i>	HHS	\$ 1,500,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Project includes acquisition and renovation of motel facilities to meet HUD Housing Habitability Standards from March 3, 2021 through June 30, 2022</i>						
Equity Measures: <i>Units will be offered individuals selected through the Coordinated Entry System utilizing HMIS and the VI-SPDAT to evaluate priority based upon health risk to determine eligibility and equitable engagement for placement.</i>						
Performance Indicators: <i>a) 50 units at Sequoia available for occupancy, b) 30 units at Tagus available for occupancy, c) units occupied by at least 20 occupants who are below the Federal Poverty Level.</i>						
Project Status <i>Not started</i>						
^ Serving <i>The project serves economically disadvantaged individuals with minimum eligibility criteria such that disadvantaged over 25 percent of intended beneficiaries are below the federal poverty line communities:</i>						
* Total funds allocated <i>Projects allocates 100% of funds for Housing First interventions, which prioritizes providing permanent to evidence-based housing to people experiencing homelessness, thus ending their homelessness and serving as a platform interventions: from which they can pursue personal goals and improve their quality of life.</i>						
3.11 Housing Support: Services for Unhoused Persons* ^						
Project Name: <i>Addressing Homelessness - Homeless Key Supports</i>	HHS	\$ 1,200,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) Services targeted to sheltered and unsheltered homeless individuals providing targeted high-intensity case management, navigation, and wrap-around services to obtain or maintain permanent supportive housing from September 1, 2021 - June 30, 2022</i>						
Equity Measures: <i>All renovated units will be targeted as low income units to serve a broad range of disadvantages individuals</i>						
Performance Indicators: <i>a) Participant nightly stays and b) transition to stable housing vs return to street homelessness.</i>						
Project Status <i>Not started</i>						
^ Serving <i>The project serves economically disadvantaged individuals with minimum eligibility criteria such that disadvantaged over 25 percent of intended beneficiaries are below the federal poverty line communities:</i>						
* Total funds allocated <i>The project uses the Housing First model, which is an evidence-based housing intervention to evidence-based interventions:</i>						
Project Name: <i>No Place Like Home, Housing Supports</i>	HHS	\$ 400,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: <i>The project will provide case management and other wrap around services to Four new construction projects throughout Tulare County providing integrated housing with supportive services targeted to individuals experiencing homelessness who also experience a need for coordinated care; 2Projects includes 1) Non-Competitive project in partnership with Self-Help Enterprises located in Dinuba; 2) Competitive project in partnership with UpHoldings Inc. located in Porterville; 3) Competitive project in partnership with Self-Help Enterprises located in Tulare; 4) Competitive project in partnership with Self-Help Enterprises located in Visalia</i>						
Equity Measures: <i>All renovated units will be targeted as low income units to serve individuals, such that who are at least 25% below the Federal Poverty Level.</i>						
Performance Indicators: <i>a) Occupancy for NPLH units within the projects will be 100% occupied by HHSA referrals; b) # of contacts/month by program staff; c) # of occupants enrolled in MH/SUD services; d) # of occupants enrolled or engaged in services with other partners including TulareWORKS, etc.; e) # of occupants transitioned to permanent supportive housing</i>						
Project Status: <i>Not Started</i>						
^ Serving disadvantaged communities: <i>The project serves economically disadvantaged individuals with minimum eligibility criteria such that over 25 percent of intended beneficiaries are below the federal poverty line</i>						
* Total funds allocated to evidence-based interventions: <i>The project uses the Housing First model, which is an evidence-based housing intervention</i>						
Project Name: <i>The Village Tiny Homes in Tulare and Goshen</i>	HHSA	\$ 500,000	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Support tiny home villages in Tulare and Goshen for those in our community experiencing homelessness. Project specifics to be determined at a later date.</i>						
Equity Measures:						
Performance Indicators:						
Project Status: <i>In Development</i>						
^ Serving disadvantaged communities:						
* Total funds allocated to evidence-based interventions:						
Project Name: <i>TC Hope Projects in Visalia, Tulare, and Porterville</i>	HHSA	\$ 2,000,000	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>Support the building of low-barrier navigation centers and shelters for those in our community experiencing homelessness. Project specifics to be determined at a later date.</i>						
Equity Measures:						
Performance Indicators:						
Project Status: <i>In Development</i>						
^ Serving disadvantaged communities:						
* Total funds allocated to evidence-based interventions:						
3.12 Housing Support: Other Housing Assistance* ^						
3.13 Social Determinants of Health: Other* ^						
3.14 Social Determinants of Health: Community Health Workers or Benefits Navigators* ^						
3.15 Social Determinants of Health: Lead Remediation ^						
3.16 Social Determinants of Health: Community Violence Interventions* ^						
4: Premium Pay		\$ 5,800,000				
4.1 Public Sector Employees						
Project Name: <i>County Essential Worker Premium Pay</i>	CAO	\$ 5,800,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

		Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Description: County employees that were deemed essential workers and eligible under the guidelines, set forth by the U.S. Department of the Treasury through their Compliance and Reporting Guidance and Interim Final Rule, were given premium pay for being essential workers for the County of Tulare. County workers are considered disaster workers under County Personnel Rule 23 and County Ordinance 1-15-1030 (f) (3) and were deemed essential workers by the County Administrative Officer/County Director of Emergency Services, per Resolution No. 2020-0143 and Emergency Order By The Tulare County Emergency Services Director For The Maintenance Of Critical Infrastructure And Closure Of County Facilities To Physical Access By The Public signed March 23, 2020, to continue to provide County services to the residents of Tulare County and maintained continuity of critical sectors and operations of the County to provide safety and protection of the health and wellbeing of the communities of the County. The order provided the following: 1. Identifies essential services to maintain critical infrastructure. 2. Identifies essential services necessary to support critical infrastructure. 3. Provides for County employees providing non-essential services to be utilized by other agencies providing essential services. 4. Orders all County-operated facilities, the Tulare County Employees Retirement Association, and the Tulare County Association of Governments to close physical public access, with exceptions as listed in section 4 of the order. 5. Identifies services that are non-essential to the County's critical infrastructure, which will be unavailable to the public.							
Equity Measures: Premium pay will be provided to County employees that, after earning \$1,500 in premium pay would earn less than 150% of the CA Annual Mean Wage for all occupations.							
Performance Indicators: 3,790 FTEs County employees will be eligible to receive premium pay as a one-time payment going forward prospectively from July 1, 2021.							
Project Status In Progress							
4.2 Private Sector: Grants to Other Employers							
5: Infrastructure			\$ 14,558,000				
5.1 Clean Water: Centralized Wastewater Treatment							
Project Name: Ivanhoe PUD - Disposal Pond Improvements		WATER	\$ 650,000		X	X	
Project ID #: The Project Identification Number will be assigned by the Auditor's Office							
Description: 1) This project provides much needed wastewater effluent capacity to the community of Ivanhoe. The District is currently under restrictions to discharge the effluent from its wastewater treatment plant. The Proposed Project consists of the completion of bidding, award, construction and placing on-line a new treated effluent storage facility complete with interconnecting piping and pumps to pump treated effluent into storage and to discharge treated effluent to the pasture areas. 2) This Project will take approximately 18 months to complete, once funded. 3) This is a wastewater infrastructure construction project that will be contracted to an appropriate contractor. 4) The Project would provide groundwater quality protection as it will allow the District to meet the Waste Discharge Requirements by reducing the nitrate load.							
Equity Measures: Ivanhoe is a Severely Disadvantaged Community with approximately 4,495 people. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.							
Performance Indicators: There are two project partners- The County and Ivanhoe PUD. The Project will meet its goal when the District meets the Waste Discharge Requirements.							
Project Status Design Engineering and CEQA Complete.							
Project Name: Tipton CSD - Wastewater Treatment Plant Improvements		WATER	\$ 296,000		X	X	
Project ID #: The Project Identification Number will be assigned by the Auditor's Office							
Description: 1) This project provides upgrades to the wastewater treatment facility to address a Compliance Order and worker safety. The Project will install a flow meter to satisfy the Compliance Order and a connection to the District's water main to provide potable water at the facility to address worker safety. 2) This Project will take approximately 12 months to complete, once funded. 3) This is a wastewater and water infrastructure construction project that will be contracted to an appropriate contractor. 4) The Project would provide groundwater quality protection as it will allow the District to meet the Waste Discharge Requirements by monitoring its flow.							
Equity Measures: Ivanhoe is a Severely Disadvantaged Community with approximately 4,495 people.							
Performance Indicators: There are two project partners- The County and Ivanhoe PUD. The Project will meet its goal when the District meets the Waste Discharge Requirements.							
Project Status Design Engineering and CEQA Complete.							
5.2 Clean Water: Centralized Wastewater Collection and Conveyance							
Project Name: Earlimart PUD Sewer - Interceptor & Relief Sewer Project		WATER	\$ 1,600,000		X	X	
Project ID #: The Project Identification Number will be assigned by the Auditor's Office							
Description: 1) This project provides much needed wastewater collection capacity to the community of Earlimart. The District operates and maintains the wastewater collection, treatment and disposal facilities that serve the unincorporated community of Earlimart. The District is divided by Highway 99, which poses a number of unique sewer utility service issues. The largest portion of the District lies to the east of Highway 99. This Project will construct a new larger interceptor and improvements to the collection system that will lead to correction of flow problems due to the existing pipeline configuration. 2) This Project will take approximately 18 months to complete once funded 3) This is a wastewater infrastructure construction project that will be contracted to an appropriate contractor. 4) Address the 60-year age issue of the existing sewer interceptor pipeline and the full flow issues related to the existing interceptor. It is also to provide additional wastewater collection capacity to address the existing waiting list and the capability to address the acute need for housing. Housing starts are at a halt due to the impacts of the sewer connection moratorium.							

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: Earlimart is a Severely Disadvantaged Community with approximately 8,800 people. The community is 91.4 percent Hispanic/Latino and 40 percent are under the age of 18. The community currently has a moratorium for new sewer connections, due to a lack of collection capacity. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.						
Performance Indicators: There are two project partners- The County and Earlimart PUD. The Project will meet its goal when the Front Street Well produces water that meets drinking water quality standards.						
Project Status Design Engineering and CEQA Complete.						
5.3 Clean Water: Decentralized Wastewater						
5.4 Clean Water: Combined Sewer Overflows						
5.5 Clean Water: Other Sewer Infrastructure						
5.6 Clean Water: Stormwater						
5.7 Clean Water: Energy Conservation						
5.8 Clean Water: Water Conservation						
5.9 Clean Water: Nonpoint Source						
5.10 Drinking water: Treatment						
5.11 Drinking water: Transmission & Distribution						
Project Name: Tipton CSD - North Burnett Rd Water Line Replacement	WATER	\$ 500,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) The project provides much needed permanent pipeline to a portion of the community of Tipton. The Tipton Community Services District (District) provides water and sewer services for the unincorporated community of Tipton. The District has approximately 601 connections, serving 1,792 people. The District's water system currently has a temporary pipeline serving eleven homes on North Burnett Road. The temporary pipeline impairs the water system's ability to deliver adequate water to those residents 2) This Project will take approximately six months to complete 3) This is a drinking water infrastructure project that will be contracted to a qualified contractor. 4) Provide safe drinking water to homes currently being served by a temporary pipeline.						
Equity Measures: Tipton is a severely disadvantaged community and this Projects serves eleven residences that cannot afford to replace the temporary pipeline. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.						
Performance Indicators: There are two project partners- The County and Tipton CSD. The Project will meet its goal when the residents on North Burnet Road receive water that meets drinking water quality standards.						
Project Status Design Engineering and CEQA Complete.						
Project Name: Ave 264 Water Main Extension	WATER	\$ 500,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) The project provides water supply from Cal Water to approximately 30 homes on private domestic wells. This area has longstanding issues with well failures due to drought conditions. Cal Water has agreed to extend their water main across State Route 63 to provide safe and reliable drinking water for the community 2) This Project will take approximately six months to complete 3) This is a drinking water infrastructure project that will be contracted to a qualified contractor. 4) Provide safe drinking water to homes currently being served by a failing private domestic wells.						
Equity Measures: The residents served are disadvantaged.						
Performance Indicators: There are two project partners- The County and Cal Water. The Project will meet its goal when the residents receive water that meets drinking water quality standards.						
Project Status Design Engineering is Complete.						
Project Name: Pixley PUD - Water Main Extension	WATER	\$ 2,000,000		X	X	
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: 1) The project provides a water main improvement and extension to provide safe reliable drinking water for residents served by the Pixley PUD. Improvements include a larger water main crossing State Route 99, new connection in the community to cure a dead-end line, and improved fire flow capacity. 2) This Project will take approximately 18 months to complete 3) This is a drinking water infrastructure project that will be contracted to a qualified contractor. 4) Provide safe and reliable drinking water to homes currently being served by a temporary pipeline.						
Equity Measures: Pixley is a severely disadvantaged community.						
Performance Indicators: There are two project partners- The County and Pixley PUD. The Project will meet its goal when the residents receive water that meets drinking water quality standards.						
Project Status Design Engineering and CEQA Complete.						
5.12 Drinking water: Transmission & Distribution: Lead Remediation						
5.13 Drinking water: Source						
Project Name: Capital Project - Cal Water Connection	GSA	\$ 1,000,000	X	X		
Project ID #: The Project Identification Number will be assigned by the Auditor's Office						
Description: Project: Connect Civic Center Campus to California Water Service (Cal Water). Project timeline: Connect to Cal Water by June 30, 2023. Intended outcomes: The Civic Center Campus is comprised of multiple County facilities providing key services to the public including the Visalia Courthouse, Human Resources and Development, County Counsel, the General Services Agency, the County Administrative Office, and Board of Supervisors. The campus is currently provided potable water through Public Water System (PWS) ID CA5401039. This small system is maintained and operated by County Facilities Staff and is nearing the end of its serviceable life. In the last several years, it has experienced repeated well failures which resulted in facility closures and the inability to provide critical services to the public. By connecting to Cal Water, the County will remediate failing and inadequate potable water infrastructure and maintain continuity of services to the public.						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: <i>The Civic Center Campus includes multiple facilities housing 704 employees providing services to hundreds of Tulare County residents on a daily basis. Over 25% of intended beneficiaries that receive services at these locations are below the federal poverty line.</i>						
Performance Indicators: N/A						
Project Status <i>Not Started</i>						
Project Name: Poplar CSD - Well Replacement	WATER	\$ 499,000	X	X	X	
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) The Poplar Community Services District provides water service to the community of Poplar. The District's wells are over forty years old and need to be replaced with a reliable water source. The Project will provide a new well for the community. The District received a grant from USDA Rural Development, but needs the identified funding for fully complete the Project. 2) This Project will take approximately 20 months to complete. 3) This is a drinking water infrastructure project that will be contracted to a qualified contractor. 4) Provide safe drinking water to the community.</i>						
Equity Measures: <i>As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>						
Performance Indicators: <i>Provide safe drinking water to the community.</i>						
Project Status <i>Design Engineering and CEQA Complete.</i>						
Project Name: Earlimart PUD - Front Street Well	WATER	\$ 2,200,000	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) This project provides much needed water quality and quantity to the community of Earlimart. The community currently has 1,2,3 TCP contamination and is need of a treatment system. The treatment improvements will consist of two granular activated carbon (GAC) contactors, a 50,000 gallon backwash waste storage tank, chlorination, metering and storage system, interconnecting piping, valves and appurtenances. The GAC contactors will be connected to the discharge of the well and operate in series. Treated water will be disinfected and flow into the existing hydropneumatic tank. Monitoring of the treated water for 1,2,3-TCP will be used to establish the need to exchange the GAC. 2) This project can be completed in approximately 18 months, once funded. 3) Water infrastructure construction project contracted to an appropriate contractor. 4) There is opportunity for new affordable housing in the community, which would meet both a housing need and improve the economies of scale for the existing residents. The housing is on hold due to lack of capacity in the water system due to contamination. Due to the lack of new housing, the Earlimart School District has experienced a decrease in enrollment by nearly 5%, which negatively impacts the School District's revenue</i>						
Equity Measures: <i>Earlimart is a Severely Disadvantaged Community with approximately 8,800 people. The community is 91.4 percent Hispanic/Latino and 40 percent are under the age of 18.</i>						
Performance Indicators: <i>There are two project partners- The County and Earlimart PUD. The Project will meet its goal when the Front Street Well produces water that meets drinking water quality standards.</i>						
Project Status <i>Design Engineering and CEQA Complete.</i>						
Project Name: Tipton CSD - Well No. 6	WATER	\$ 1,700,000	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) This Project provides much needed water quality security to the community of Tipton. The District's oldest well is 62 years old, the second-oldest well is under a State compliance order due to high nitrate, and the newest well has arsenic concentrations above the Maximum Contaminant Level (MCL). The loss of a well either temporarily or for a longer period of time due to repairs or normal maintenance, results in the entire community being served by severely curtailed water supply capacity and risk of bacteriological contamination. The Proposed Project consists of the drilling of a new production well for the District. The Proposed Project will include the drilling of a test well to facilitate final design of the production well features. 2) This Project can be completed in approximately 18 months once funded. 3) This is a water infrastructure construction project contracted to an appropriate contractor. 4) This project will provide reliable access to safe drinking water for the community of Tipton</i>						
Equity Measures: <i>The District has approximately 601 connections, serving 1,792 people. The community is a severely disadvantaged community. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>						
Performance Indicators: <i>There are two project partners- The County and Tipton CSD. The Project will meet its goal when the District can consistently deliver water that meets drinking water quality standards.</i>						
Project Status <i>The Project has 90% design complete.</i>						
Project Name: Cutler PUD - Well No. 10	WATER	\$ 700,000	X	X		
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) The proposed Project consists of completing the Well No. 10 Project, consisting of securing and installing a deep well turbine pump, motor, appurtenant electrical service, booster pumps, a building housing the electrical power generator set and automatic transfer switch, electrical service and power distribution equipment, and on-site features including surfacing and fencing. 2) The Project can be completed in approximately 9 months, once funded. 3) This is a water infrastructure construction project that will be contracted to an appropriate contractor. 4) This Project will assist the District in providing adequate drinking water that meets both quantity and quality standards.</i>						
Equity Measures: <i>Cutler is a Severely Disadvantaged Community, with a Median Household Income of only \$29,655. The Cutler Public Utility District (District) has approximately 1,218 connections, serving 6,200 people.</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:

* Must identify total funds allocated to evidence-based interventions:

	Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Performance <i>There are two project partners- The County and Cutler PUD. The Project will meet its goal when the</i> Indicators: <i>District can consistently deliver water that meets drinking water quality standards.</i>						
Project Status <i>Design Engineering and CEQA Complete.</i>						
Project Name: Strathmore Public Utilities District - Well and Treatment.	WATER	\$ 2,150,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) The Strathmore Public Utility District relies primarily on surface water treated to supply drinking water to the community of Strathmore. The District's supply from the Friant-Kern Canal has diminished due to environmental challenges affiliated with that supply. This project addresses the District's supply needs by providing a safe water supply that meets drinking water standards. 2) This Project is estimated to be complete within 90 days, once awarded. 3) This is a water infrastructure construction project that will be contracted to an appropriate contractor. 4)This Project will assist the District in providing adequate drinking water that meets both quantity and quality standards.</i>						
Equity Measures: <i>Strathmore is a Severely Disadvantaged Community. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>						
Performance <i>There are two project partners- The County and Strathmore PUD. The Project will meet its goal when</i> Indicators: <i>the District can consistently deliver water that meets drinking water quality standards.</i>						
Project Status <i>The Project Design, Engineering, & CEQA are complete</i>						
5.14 Drinking water: Storage						
Project Name: Strathmore Public Utilities District - Tank Repair	WATER	\$ 150,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) The roof on the groundwater storage tank for the District's water storage tank has deteriorated and need replacement. This Project would make that repair and retrofit the clarifier components. 2) This Project is estimated to be completed in less than 90 days, once funded. 3) This is a water infrastructure construction project that will be contracted to an appropriate contractor. 4)This Project will assist the District in providing adequate drinking water that meets both quantity and quality standards.</i>						
Equity Measures: <i>Strathmore is a Severely Disadvantaged Community.</i>						
Performance <i>There are two project partners- The County and Strathmore PUD. The Project will meet its goal when</i> Indicators: <i>the District can consistently deliver water that meets drinking water quality standards. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>						
Project Status <i>The Project Design, Engineering, & CEQA are complete</i>						
5.15 Drinking water: Other water infrastructure						
Project Name: Chinowith Fire Hydrant	WATER	\$ 38,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) Cal Water extended water service to the Chinowith Apartments following the 2012-2016 drought. During the drought, the Chinowith Apartment's experienced a dry well leaving the residents without water. A water main was extended and connected to the apartment complex, however a fire hydrant was not included in the project. This Project will provide a fire hydrant to satisfy fire code and provide water in case of a fire. 2) This Project is estimated to be completed in less than 90 days, once funded. 3) This is a water infrastructure construction project that will be contracted to an appropriate contractor. 4)This Project will provide necessary fire protection for the residents of the Chinowith Apartments.</i>						
Equity Measures: <i>The residents of the apartment complex are Disadvantaged. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>						
Performance <i>There are two project partners- The County and Cal Water. The Project will meet its goal when the</i> Indicators: <i>hydrant is installed and operational.</i>						
Project Status <i>The Project Design, Engineering, & CEQA are complete</i>						
Project Name: Earlimart PUD Clay West Well Sound Wall	WATER	\$ 75,000	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1) The well located on Clay St. is the subject of neighbors' noise complaints. Constructing a sound wall will improve the District's ability to utilize the well, which provides the most compliant water for the District's residents. 2) This Project is estimated to be completed in 6 months, once funded. 3) This is a water infrastructure construction project that will be contracted to an appropriate contractor. 4)This Project will provide sufficient noise reduction to allow the District to utilize the well.</i>						
Equity Measures: <i>Pixley is a Severely Disadvantaged Community. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>						
Performance <i>There are two project partners- The County and Pixley PUD. The Project will meet its goal when the</i> Indicators: <i>sound wall is installed.</i>						
Project Status <i>The Project Design, Engineering, & CEQA are complete</i>						
Project Name: Orosi Public Utility District Well No. 5 Auxiliary Power Project**	WATER	\$ 500,000		X	X	
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>						
Description: <i>1)During power outages, the District struggles to provide sufficient water in their drinking water system. The District is also under a mandatory consolidation order with the East Orosi CSD Water System. This Project includes design, bidding, and construction of auxiliary power at the District's Well No. 5. 2) This Project is estimated to be completed in 18 months, once funded. 3) This is a water infrastructure construction project that will be contracted to an appropriate contractor. 4)This Project will provide auxiliary power during outages to keep its system in water.</i>						

Attachment B - Project Inventory & Performance

^ Must report if projects are primarily serving disadvantaged communities:
* Must identify total funds allocated to evidence-based interventions:

		Dept	Total Project Cost	PHASE I	PHASE II	PHASE III	PHASE IV
Equity Measures: <i>Orosi is a Severely Disadvantaged Community. As established by the State under section 1452(d)(3) of the Safe Drinking Water Act, the community Median Household Income is < 80% MHI.</i>							
Performance <i>There are two project partners- The County and Orosi PUD. The Project will meet its goal when the</i>							
Indicators: <i>auxiliary power installation functions.</i>							
Project Status <i>The Project is at 25% Design</i>							
5.16 Broadband: "Last Mile" projects							
5.17 Broadband: Other projects							
6: Revenue Replacement			\$ -				
6.1 Provision of Government Services							
7: Administrative			\$ 674,232				
7.1 Administrative Expenses							
Project Name: <i>Administration</i>		CAO	\$ 674,232	X			
Project ID #: <i>The Project Identification Number will be assigned by the Auditor's Office</i>							
Description: <i>The County will fund direct and indirect SLFRF award as administrative costs for implementation of projects and programs. Administering and developing the County's Recovery Plan will require the oversight of the County Administrative Office, Auditor's Office, and County Cost Centers (e.g. Health and Human Services Agency, Information and Communications Technology Department, and the General Services Agency). Administrative funds may also be used to hire a consultant to take over administration, monitoring, and reporting associated with the County's Recovery Plan. The proposed consultant would support effective management and oversight, ensuring compliance with legal, regulatory, statutory, and other requirements.</i>							
Project Status <i>In Progress</i>							
7.2 Evaluation and Data Analysis							
7.3 Transfers to Other Units of Government							
7.4 Transfers to Non-entitlement Units (States and territories only)							
Grand Total:			\$ 90,552,914				

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected

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

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of

COVID-19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID-19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic’s impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

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

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

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

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

³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS>, May 7, 2021.

⁴ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;U.S.CensusBureau,HouseholdPulseSurvey:MeasuringSocialandEconomicImpactsduringtheCoronavirusPandemic,https://www.census.gov/programs-surveys/household-pulse-survey.html> (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

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

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

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

⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

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

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

also has reversed many gains made by communities of color in the prior economic expansion.¹⁵

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.¹⁶ Section 9901 of ARPA amended Title VI of the Social Security Act¹⁷ (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).¹⁸ The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).¹⁹

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

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

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

¹⁷ 42 U.S.C. 801 *et seq.*

¹⁸ Sections 602, 603 of the Act.

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

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

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

(b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include “directly or indirectly offset[ing] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.”

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

⁹ Tracy Gordon, *State and Local Budgets and the Great Recession*, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁰ Sebastian D. Romano et al., *Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States*, March–December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

¹¹ Center on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and> (last visited May 4, 2021).

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

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

¹⁴ Emma Dorn et al., *COVID-19 and student learning in the United States: The hurt could last*

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

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

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION.** Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting

requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

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

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

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service "responds to" the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

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

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

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

1. Responding to COVID-19

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

²¹ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

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

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

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

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational

needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.²⁵

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.²⁶ The proportion of children’s emergency department visits related to mental health has also risen noticeably.²⁷ Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.²⁸ Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access

services.²⁹ Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.³⁰

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.³¹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.³²

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.³³ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.³⁴

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

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

³¹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

³² In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Romano, *supra* note 10.

³³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁴ The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases

²³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

²⁴ *Id.*

²⁵ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited May 8, 2021).

²⁶ Panchal, *supra* note 4; Mark E. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

²⁷ Leeb, *supra* note 4.

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

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.³⁵ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.³⁶

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.³⁷ Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.³⁸ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.³⁹

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

³⁵ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Apr. 26, 2021).

³⁶ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited Apr. 26, 2021).

³⁷ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, *JAMA* 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

³⁸ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, *January–May 2020*, *Morb. Mort. Wkly. Rep.* 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hlbg20200319.757883/full/>.

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

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

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

- *COVID-19 Mitigation and Prevention*. A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;⁴⁰ ventilation improvements in

note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁴⁰ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational

congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.⁴¹ They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.⁴²

- *Medical Expenses*. The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.⁴³ Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.⁴⁴ State and local governments may need to continue to provide care and services to address these near- and longer-term needs.⁴⁵

Strategy for K–12 Schools through Phased Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>.

⁴¹ Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

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

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

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

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

- *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

- *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.⁴⁶ Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on

the COVID-19 response. Recipients need not routinely track staff hours.

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

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

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

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

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

specific populations, households, or geographic areas to be served.

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

- Funding community health workers to help community members access health services and services to address the social determinants of health;⁴⁹
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;
- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.⁵⁰

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

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

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

⁴⁶ In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.⁵¹ Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,⁵² and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.⁵³

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.⁵⁴ Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁵⁵ A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.⁵⁶ Over the course of the pandemic,

inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.⁵⁷ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ and 2.0 percentage points for White women.⁶⁰

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁶¹ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores⁶² and reduced familial and childhood wellbeing.⁶³

Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

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

⁵² U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited May 8, 2021).

⁵³ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited May 8, 2021).

⁵⁵ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁵⁶ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

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

These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment⁶⁴ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.⁶⁵ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.⁶⁶ Sectors with a large share of small business employment have been among those with the most drastic drops in employment.⁶⁷ The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.⁶⁸

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.⁶⁹ In general, small businesses can face greater hurdles in accessing credit,⁷⁰ and many small businesses were already financially fragile at the outset of the pandemic.⁷¹ Non-profits, which provide vital services to communities, have similarly faced

Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

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

⁶⁵ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

⁶⁶ Biden, *supra* note 6.

⁶⁷ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

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

⁶⁹ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

⁷⁰ See e.g., Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

⁷¹ Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

⁵¹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited May 8, 2021).

⁵² *Id.*

⁵³ U.S. Bureau of Labor Statistics, Civilian Labor Force Level (CLF16OV), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CLF16OV> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), <https://www.bls.gov/web/empsit/cpseaa04.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), <https://www.bls.gov/web/empsit/cpseaa05.htm> (last visited May 8, 2021).

⁵⁵ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on

economic and financial challenges due to the pandemic.⁷²

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

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

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,⁷⁴ and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID-19.⁷⁵ Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,⁷⁶ raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor

neighborhoods more than doubling by 2010–2014 relative to 2000.⁷⁷ Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.⁷⁸ Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.⁷⁹ Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.⁸⁰ Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,⁸¹ an

effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.⁸² Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.⁸³

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

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

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

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

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

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

⁸¹ A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. See Institute of Education Sciences, Monthly School Survey Dashboard, <https://ies.ed.gov/schoolsurvey/> (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only.

See Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), <https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07> (last visited May 4, 2021).

⁸² HHS, *supra* note 79.

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

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

⁸⁵ Moreno & Sobrepenna, *supra* note 73.

⁷² Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf>.

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

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

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

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

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.⁸⁶ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

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

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

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began

and remain so due to the negative economic impacts of the pandemic.

- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic’s negative economic impacts on unemployed workers.

- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker’s occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative

economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor’s benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.

- *Small Businesses and Non-profits.*

As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical

⁸⁶ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

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

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

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.⁸⁷

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

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the

pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

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

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

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including

tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

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

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.⁹⁰ Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

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

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

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

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

⁹⁰ HUD, *supra* note 48.

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

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

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and

- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.⁹³

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

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

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

- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other

extended learning and enrichment programs; and

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

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

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

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

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

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

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

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

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

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

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

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

⁹⁴ See *supra* notes 52 and 84.

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

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

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

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

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

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

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

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries"

affected by the COVID-19 public health emergency?

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

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

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

B. Premium Pay

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

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have

contracted or died of COVID-19.⁹⁶ Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.⁹⁷ In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.⁹⁸ Furthermore, many essential workers are people of color or low-wage workers.⁹⁹ These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

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

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

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

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

⁹⁸ *Id.*

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

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

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

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

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

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.”¹⁰³ The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.¹⁰⁴ These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others

as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

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

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

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

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

of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_links.htm (last visited May 1, 2021).

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

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

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*

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

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

¹⁰⁵ County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. See U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrcst.htm> (last visited May 1, 2021); U.S. Bureau

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

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

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

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

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

C. Revenue Loss

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

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same

period 2019.¹⁰⁹ At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.¹¹⁰ Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.¹¹¹ These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.¹¹² Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,¹¹³ while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID-19 public health emergency began.¹¹⁴

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

¹¹⁰ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

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

¹¹² *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

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

¹¹⁴ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001],

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

General Revenue. The interim final rule adopts a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.¹¹⁵ By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

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

retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited Apr. 27, 2021).

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

¹¹⁶ The interim final rule would define tax revenue in a manner consistent with the Census Bureau’s definition of tax revenue, with certain changes (*i.e.*, inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

¹⁰⁸ ARPA, *supra* note 16.

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

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

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

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in

intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.¹¹⁹ For purposes of measuring loss in general revenue due to the COVID-19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.¹²⁰

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

reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.¹²² This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- **Step 1:** Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.

- **Step 2:** Estimate *counterfactual revenue*, which is equal to *base year revenue* * $[(1 + \text{growth adjustment})^{\wedge} (n/12)]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

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

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

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

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

¹¹⁸ *Supra* note 116.

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

years prior to the COVID-19 public health emergency.

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

- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual*

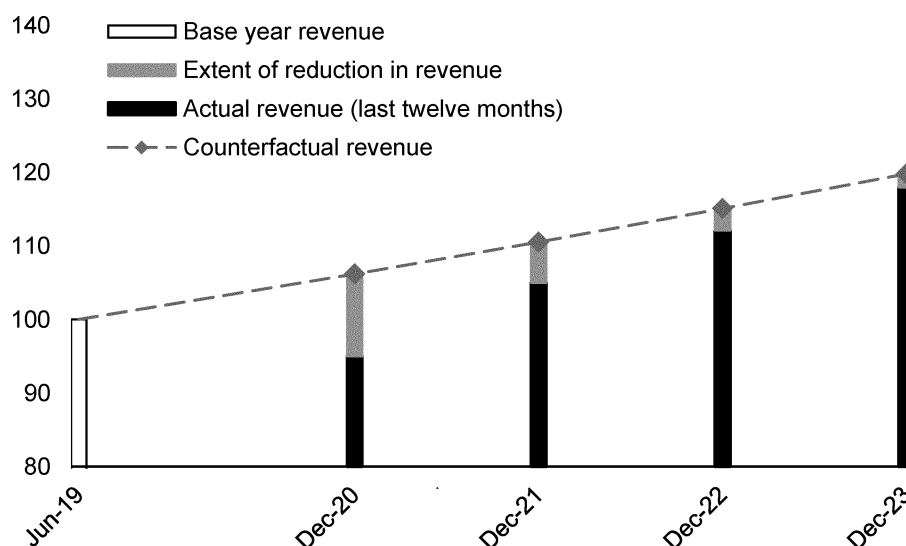
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1

percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue</i> :	106.2	110.6	115.1	119.8

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



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

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building¹²³ of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for

borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would

not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

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

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID-

¹²³ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

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

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

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

D. Investments in Infrastructure

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

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to

ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

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

1. Water and Sewer Infrastructure

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

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

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

Established by the 1987 amendments¹²⁷ to the Clean Water Act (CWA),¹²⁸ the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.¹²⁹ Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.¹³⁰

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

¹²⁷ Water Quality Act of 1987, Public Law 100-4.

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

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

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

¹³¹ 42 U.S.C. 300j-12.

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

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

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

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

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

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also

support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

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

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

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

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

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

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 42 U.S.C. 300j–12(b)(3)(A).

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

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

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

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

2. Broadband Infrastructure

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.¹³⁹ With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.¹⁴⁰ By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure

exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹⁴¹ There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.¹⁴² Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.¹⁴³

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to

a minimum of 100 Mbps symmetrical for download and upload speeds.¹⁴⁴ In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.¹⁴⁵ In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017¹⁴⁶ and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,¹⁴⁷ attributable, in part to a shift to using broadband and the internet by individuals and businesses

¹³⁹ See, e.g., <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹⁴⁰ As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

¹⁴¹ How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹⁴² See, e.g., Federal Communications Commission, Fourteenth Broadband Deployment Report, available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

¹⁴³ See, e.g., Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), <https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>; Kansas Office of Broadband Development, Broadband Acceleration Grant, <https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf> (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), [https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

¹⁴⁴ This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

¹⁴⁵ Federal Communications Commission, Broadband Speed Guide, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 30, 2021).

¹⁴⁶ Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, available at <https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf>. Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide*, Apr. 29, 2021.

¹⁴⁷ *Id.* See also United States's Mobile and Broadband internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

to create and share content using video sharing, video conferencing, and other applications.¹⁴⁸

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.¹⁴⁹ As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.¹⁵⁰ For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others.¹⁵¹ These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8

gigabytes.¹⁵² OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.¹⁵³ According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.¹⁵⁴

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the “above baseline” performance tier set by the FCC.¹⁵⁵ The Broadband Infrastructure Program (BBIP)¹⁵⁶ of the Department of Commerce, which provides Federal funding to deploy broadband

infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.¹⁵⁷

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC’s benchmark for an “advanced telecommunications capability.”¹⁵⁸ This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC’s RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.¹⁵⁹ The Department of Commerce’s BBIP also considers households to be “unserved” generally if they lack access to broadband service

¹⁵² OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), available at <https://openvault.com/ovbi-covid-19-drove-15-increase-in-broadband-traffic-in-2020>; See OpenVault’s data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4*, Quarterly Advisory (Feb. 10, 2021), available at <https://openvault.com/complimentary-report-4q20/>.

¹⁵³ OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 2020), available at <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/>; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, available at <https://openvault.com/upstream-whitepaper/>.

¹⁵⁴ Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), <https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls> [www.oecd.org/sti/broadband-statistics](https://www.oecd.org/sti/broadband/broadband-statistics).

¹⁵⁵ Rural Digital Opportunity Fund, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

¹⁵⁶ The BBIP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

¹⁵⁷ Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

¹⁵⁸ *Deployment Report*, *supra* note 142.

¹⁵⁹ Rural Digital Opportunity Fund, *supra* note 156.

¹⁴⁸ *Id.*

¹⁴⁹ One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

¹⁵⁰ See, e.g., Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

¹⁵¹ By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org*: What is Symmetrical internet? (March 2020).

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These

four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a predetermined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments¹⁶⁰), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation¹⁶¹ during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—

i.e., cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision.

The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is

offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:

- State or territory tax changes that would increase any source of general

¹⁶⁰ In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

¹⁶¹ For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this

SUPPLEMENTARY INFORMATION.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. See Section IV of this **SUPPLEMENTARY INFORMATION**.

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation.” A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute

or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.¹⁶² This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.¹⁶³

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–

19 public health emergency.¹⁶⁴ This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,¹⁶⁵ suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines “reporting year” as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (“in-year” value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term “reporting year” refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of “tax revenue” is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.¹⁶⁶ It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

¹⁶⁴ Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. See section 602(c)(1)(C).

¹⁶⁵ Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), available at <https://www.cbo.gov/publication/56965>.

¹⁶⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

¹⁶² See, e.g., Tax Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

¹⁶³ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited May 9, 2021).

revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States

and territories already consider tax changes.¹⁶⁷

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.¹⁶⁸ The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that

such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

¹⁶⁷ See, e.g., Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

¹⁶⁸ Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an

offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to “indirectly” offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.¹⁶⁹ In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by \$1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth \$500 million, it need only pay for the remaining \$500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this

approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

¹⁶⁹ This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.¹⁷⁰

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.¹⁷¹ The

definition of “incurred” does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of “obligation” that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).¹⁷² As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to “respond to” the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing

grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.¹⁷³

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.¹⁷⁴ The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

¹⁷⁰ See 42 CFR 433.51 and 45 CFR 75.306.

¹⁷¹ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

¹⁷² Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

¹⁷³ Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, i.e., those incurred prior to March 3, 2021.

¹⁷⁴ Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.¹⁷⁵ This process will allow the Secretary to respond to the

issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.¹⁷⁶

¹⁷⁶ With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements

Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.¹⁷⁷ For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

¹⁷⁷ The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID-19 pandemic, *J. of Public Econ.* (Nov. 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389>.

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

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.¹⁷⁸ Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021¹⁷⁹) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan

cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."¹⁸⁰ Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and

regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID-19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

¹⁷⁸ Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, <https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions> (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited Apr. 27, 2021).

¹⁷⁹ U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, <https://www.bls.gov/news.release/laus.t01.htm> (last visited Apr. 30, 2021).

¹⁸⁰ Section 602(c)(3) of the Act.

“public benefit corporation” that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for \$19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID-19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury’s implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU’s use of Fiscal Recovery Funds based on the NEU’s proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU’s distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.*, requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for

complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU’s most recent budget. The most recent budget is defined as the NEU’s most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury’s implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.*, a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government’s NEU allocation under section 603(b)(2) but not to the consolidated government’s county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local

government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient’s expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient’s utilization of the award funds. The reports will include the same general data (*e.g.*, on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As

discussed below, the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.”¹⁸¹ The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁸² This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID-19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID-19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory

action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as “economically significant” regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available

¹⁸¹ 5 U.S.C. 553(a)(2).

¹⁸² 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”).

techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB’s Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the \$350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers \$350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond

to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined \$350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.¹⁸³ Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.¹⁸⁴

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID-19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

¹⁸³ Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, *American Econ. J.: Econ. Policy*, 4:3 118–45 (Aug. 2012), available at <https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118>.

¹⁸⁴ See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients’ overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury’s approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- **Revenue Loss:** Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury’s decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients’ pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury’s approach provides a more accurate representation of the effect of the pandemic on overall revenues.

- **Premium Pay:** Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker’s annual pay above a certain threshold. To set this threshold, Treasury analyzed data

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

• *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

• *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need,

particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID-19 crisis. Targeting relief is in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹⁸⁵ To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;¹⁸⁶ and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many

have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

¹⁸⁵ Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (last visited May 9, 2021).

¹⁸⁶ David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, <https://www.epi.org/publication/bp339-public-sector-jobs-crisis> (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus “both clearly and directly related to a federal grant program.” *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the “process necessary to maintain state . . . eligibility for federal funds,” *id.*, as well as the “method[s] by which states can . . . qualify for federal aid,” and other “integral part[s] of the grant program,” *Center for Auto Safety v. Tiemann*, 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553’s requirements. The ARPA is a law responding to a historic economic and

public health emergency; it is “extraordinary” legislation about which “both Congress and the President articulated a profound sense of ‘urgency.’” *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to “respond to the public health emergency,” and the urgency is further exemplified by Congress’s command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, “[t]o the extent practicable,” funds must be provided to Tribes and cities “not later than 60 days after the date of enactment.” *See Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been “virtually impossible”). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA “covered period” began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the

Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.*, payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes) ...	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes) ...	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	† 20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

**5,050–TBD.

***Per year after first year.

† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report

and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the www.regulations.gov docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to oira_submission@omb.eop.gov.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule

pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

- 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

- 2. Revise the part heading to read as set forth above.

- 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

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

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et*

seq.) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

- (1) Begins on March 3, 2021; and
- (2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

- (1) Is not performed while teleworking from a residence; and
- (2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into

contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

- (1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and
- (2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID-19 response and prevention.* Expenditures for the mitigation and prevention of COVID-19, including:

(i) Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID-19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID-19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(vi) Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID-19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment;

(ix) Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.*

Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance

or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(8) *Assistance to households.*

Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

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

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory

resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the

requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance

with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

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Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds



June 24, 2021

Version: 1.1



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

This guidance provides additional detail and clarification for each recipient’s compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [SLFRF implementing regulation](#), and other regulatory and statutory requirements, including regulatory requirements under [the Uniform Guidance \(2 CFR Part 200\)](#). Please see the [Assistance Listing](#) in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund (“CRF”) established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients’ compliance responsibilities and the U.S. Department of the Treasury’s (“Treasury”) expectations and recommends best practices where appropriate under the SLFRF Program.

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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.



Treasury adopted an [Interim Final Rule](#) to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.¹ It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's [Interim Final Rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
- Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
- A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative

¹ Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule.
<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>



interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a “rainy day” fund. Recipients should refer to Treasury’s Interim Final Rule for more information on these restrictions.

- 2. Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury’s Interim Final Rule.

Recipients may use SLFRF award funds to provide assistance to households, businesses, and individuals within the eligible use categories described in Treasury’s Interim Final Rule for costs that those households, businesses and individuals incurred prior to March 3, 2021. For example,

- a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
- c. Revenue Loss: Treasury’s Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors. For the purposes of determining expenditure eligibility, Treasury’s Interim Final Rule provides that “incurred” has the same meaning given to “financial obligation” in 2 CFR § 200.1.

- 3. Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.



Assistance Listing

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, [2 CFR Part 200](#) (the “Uniform Guidance”). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the [2020 OMB Compliance Supplement Part 3. Compliance Requirements \(issued August 18, 2020\)](#). Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

- 1. Allowable Activities.** Each recipient should review program requirements, including Treasury’s Interim Final Rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.
- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.



SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.²

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed, or not in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. **Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.³ Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.⁴⁵ Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).
- b. **Salaries and Expenses:** In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's Interim Final Rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9).

As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and record retention, to determine and monitor implementation of criteria for

² See 42 CFR 433.51 and 45 CFR 75.306.

³ Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).

⁴ 2 CFR 200.413 Direct Costs.

⁵ 2 CFR 200.414 Indirect Costs.



determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

- 5. Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
- 6. Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.
- 7. Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.
- 8. Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.⁶ Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.
- 9. Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds

⁶ 2 CFR 200.320(c)(1)-(3) and (5)



should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

- 10. Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

- 11. Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as defined under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

- 12. Special Tests and Provisions.** Treasury has set a deadline of July 16, 2021, for receipt of public comment on its Interim Final Rule and will adopt a final rule responding to these comments. In addition, Treasury may add clarifications to the implementing guidance.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and example of each best practice.

**Table 1: Internal controls best practices**

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury’s Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁷
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office (“GAO”), Treasury’s Office of Inspector General (“OIG”), and the Pandemic Relief Accountability Committee (“PRAC”).
- 3. Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁸ Recipients and subrecipients may also refer to the [Office of](#)

⁷ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.

⁸ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, the PRAC and the Treasury’s OIG.



[Management and Budget \(OMB\) Compliance Supplements for audits of federal funds and related guidance](#) and the [Federal Audit Clearinghouse](#) to see examples and single audit submissions.

4. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42](#), provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. [See Section A, page 13.](#)
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over \$50,000, and other information. [See Section B, page 15.](#)
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the “Recovery Plan”) will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. [See Section C, page 23.](#)

Table 2: Reporting requirements by recipient type

Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then 30 days after the end of each quarter thereafter ⁹	By August 31, 2021, and annually thereafter by July 31 ¹⁰
Metropolitan cities and counties with a population below 250,000 residents which received more than \$5 million in SLFRF funding			Not required
Tribal Governments		By October 31, 2021, and then annually thereafter ¹¹	
Metropolitan cities and counties with a population below 250,000 residents which received less than \$5 million in SLFRF funding			
NEUs	Not required		

The remainder of this document describes these reporting requirements. A users’ guide will be provided with additional information on how and where to submit required reports.

⁹ Interim Final Rule Page 111

¹⁰ Interim Final Rule page 112

¹¹ Interim Final Rule Page 111



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Changes from CRF to SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter. SLFRF quarterly reporting will be due 30 days from quarter end.
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures¹² by Expenditure Category from the date of award to July 31, 2021. The recipient will be required to enter obligations¹³ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

- a. Revenue replacement (EC 6.1¹⁴): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020
 - Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
 - An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions and/or template to be provided in users' guide)

¹² For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

¹³ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

¹⁴ See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.



In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

- b. Distributions to NEUs - States and territories only (EC 7.4):** Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
- NEU name
 - NEU DUNS number
 - NEU Taxpayer Identification Number (TIN)
 - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
 - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
 - NEU authorized representative name and email address
 - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
 - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)



- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States, U.S. territories, and Tribal governments
- Metropolitan cities and counties that received more than \$5 million in SLFRF funding

For these recipients, the initial quarterly Project and Expenditure Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 and 3	Award Date – September 30	October 31, 2021
2	2021	4	October 1 – December 31	January 31, 2022
3	2022	1	January 1 – March 31	April 30, 2022
4	2022	2	April 1 – June 30	July 31, 2022
5	2022	3	July 1 – September 30	October 31, 2022
6	2022	4	October 1 – December 31	January 31, 2023
7	2023	1	January 1 – March 31	April 30, 2023
8	2023	2	April 1 – June 30	July 31, 2023
9	2023	3	July 1 – September 30	October 31, 2023
10	2023	4	October 1 – December 31	January 31, 2024
11	2024	1	January 1 – March 31	April 30, 2024
12	2024	2	April 1 – June 30	July 31, 2024
13	2024	3	July 1 – September 30	October 31, 2024
14	2024	4	October 1 – December 31	January 31, 2025
15	2025	1	January 1 – March 31	April 30, 2025
16	2025	2	April 1 – June 30	July 31, 2025
17	2025	3	July 1 – September 30	October 31, 2025
18	2025	4	October 1 – December 31	January 31, 2026
19	2026	1	January 1 – March 31	April 30, 2026
20	2026	2	April 1 – June 30	July 31, 2026



Report	Year	Quarter	Period Covered	Due Date
21	2026	3	July 1 – September 30	October 31, 2026
22	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Metropolitan cities and counties that received less than \$5 million in SLFRF funding.
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by October 31. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	Award Date – September 30, 2021	October 31, 2021
2	October 1, 2021 – September 30, 2022	October 31, 2022
3	October 1, 2022 – September 30, 2023	October 31, 2023
4	October 1, 2023 – September 30, 2024	October 31, 2024
5	October 1, 2024 – September 30, 2025	October 31, 2025
6	October 1, 2025 – September 30, 2026	October 31, 2026
7	October 1, 2026 – December 31, 2026	March 31, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports:

- Projects:** Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. In particular, recipients should review the Required Programmatic Data described below and define their projects at a sufficient level of granularity to report these metrics for a reasonably specific activity or set of activities in each project.

Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

- Expenditures:** Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
 - Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure



- c. **Project Status:** Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. **Project Demographic Distribution:** Recognizing the disproportionate impact of the pandemic-related recession on low-income communities, recipients must report whether certain types of projects¹⁵ are targeted to economically disadvantaged communities, as defined by HUD's [Qualified Census Tract](#).¹⁶ Recipients will be asked to identify whether or not the project is serving an economically disadvantaged community. To minimize the administrative burden on recipients while ensuring that this important aspect of program performance is tracked, recipients may assume that the funds for a project count as being targeted towards economically disadvantaged communities if the project funds are spent on:
- A program or service is provided at a physical location in a Qualified Census Tract (for multi-site projects, if a majority of sites are within Qualified Census Tracts);
 - A program or service where the primary intended beneficiaries live within a Qualified Census Tract;
 - A program or service for which the eligibility criteria are such that the primary intended beneficiaries earn less than 60 percent of the median income for the relevant jurisdiction (e.g., State, county, metropolitan area, or other jurisdiction); or
 - A program or service for which the eligibility criteria are such that over 25 percent of intended beneficiaries are below the federal poverty line.

Recipients may use reasonable estimates to determine if a project meets one of these criteria, including identifying the intended beneficiaries of a program or service in terms of income characteristics, geographic location, or otherwise estimating the beneficiaries of a program based on its eligibility criteria. Recipients do not need to track information on each individual beneficiary to make the determination of whether or not the project is serving an economically disadvantaged community. If a recipient is unable to measure economic characteristics of the primary intended beneficiaries of a program or service due to data limitations or for other reasons, that program or service may not be counted as targeted to economically disadvantaged communities. Treasury recognizes that in some circumstances, recipients may fund eligible programs or services that benefit economically disadvantaged communities but may lack adequate data to assess conclusively that such a program or service is targeted to economically disadvantaged communities based on the criteria described above.

- e. **Subawards:** Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than or equal to \$50,000.

¹⁵ Specifically recipients must report this information for projects in the Expenditure Categories that are marked with "A" in the expenditure category listing in Appendix 1 of this guidance

¹⁶ HUD defines as a QCT as having "50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more." To view median income area for their jurisdiction, recipients may visit the U.S. Census [website](#) on median incomes and select the geography for their jurisdiction and relevant unit of measurement (household or individual) for the project.



Recipients do not also need to submit separate monthly subaward reports to FSRs.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRs.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than or equal to \$50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below \$50,000. This information will be accounted for by expenditure category at the project level.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF Recipients are governmental entities with executive salaries that are already disclosed, so no additional information must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- f. **Civil Rights Compliance:** Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.



- g. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.
1. Payroll for Public Health and Safety Employees (EC 1.9):
 - Number of government FTEs responding to COVID-19 supported under this authority
 2. Household Assistance (EC 2.1-2.5):
 - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
 - Number of individuals served (by program if recipient establishes multiple separate household assistance programs)
 - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule
 3. Small Business Economic Assistance (EC 2.9):
 - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
 - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
 - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule
 4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12):
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
 - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic
 - For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
 5. Rehiring Public Sector Staff (EC 2.14):
 - Number of FTEs rehired by governments under this authority
 6. Education Assistance (EC 3.1-3.5):
 - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁷

¹⁷ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).



7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2):

- List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
- Number of workers to be served
- Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
- For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's¹⁸ average annual wage, whichever is higher, on an annual basis:
 - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy.

8. Revenue replacement (EC 6.1):

Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:

- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021);
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

- h. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

¹⁸ *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.



1. All infrastructure projects (EC 5):

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)
- For projects over \$10 million:
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.¹⁹Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
 - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
 - c. Whether the project prioritizes local hires.
 - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

¹⁹ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.



2. Water and sewer projects (EC 5.1-5.15):
 - National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
 - Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
3. Broadband projects (EC 5.16-5.17):
 - Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
 - Technology to be deployed
 - Miles of fiber
 - Cost per mile
 - Cost per passing
 - Number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload
 - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download
 - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
 - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
 - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
- i. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
 - NEU name
 - NEU DUNS number
 - NEU Taxpayer Identification Number (TIN)
 - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
 - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
 - NEU authorized representative name and email address
 - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
 - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)
 - Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
 - Payment amount(s)
 - Payment date(s)



For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).

States with “weak” minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

- j. **NEU Documentation (NEUs only):** Each NEU will also be asked to provide the following information with their first report submitted by October 31, 2021:
- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
 - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
 - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report (“Recovery Plan”). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027



The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

- a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
- c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
- e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
- f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as the Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

- a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
- b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
- c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?



- d. Outcomes: Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

- a. Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
- b. Services to Disproportionately Impacted Communities (EC 3): services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is defined in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.



6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions²⁰ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.²¹

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's [What Works Clearinghouse](#), the U.S. Department of Labor's [CLEAR](#), and the [Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness](#) clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).²² Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²³

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

²⁰As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

²¹ Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.

²² For more information on the required standards for program evaluation, see [OMB M-20-12](#).

²³ For more information on learning agendas, please see [OMB M-19-23](#)



7. Table of Expenses by Expenditure Category

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²⁴ to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the

²⁴ A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.



section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

- a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
 - Number of people or households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Negative Economic Impacts (EC 2):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Education Assistance (EC 3.1-3.5):
 - Number of students participating in evidence-based tutoring programs²⁵
- d. Healthy Childhood Environments (EC 3.6-3.9):
 - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)

The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision 31 CFR 35.8, as detailed below. As indicated in the Interim Final Rule, Treasury is seeking comment on reporting requirements related to the Tax Offset Provision, including ways to better rely on information already produced by States and territories and to minimize burden.

The terms “reporting year,” “baseline,” “covered change,” “net reduction in total spending,” and “tax revenue” are defined in the Interim Final Rule, 31 CFR 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3. Similarly, for purposes of calculating baseline, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3.

For purposes of reporting actual tax revenue and calculating tax revenue for the fiscal year ending 2019,²⁶ (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating

²⁵ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education’s [2021 ED COVID-19 Handbook \(Volume 2\)](#), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).

²⁶ Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient’s baseline.



a net reduction in total spending, recipients should report data using audited financials where available.

a. Revenue-reducing Covered Changes:

For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

b. Baseline Revenue:

Baseline has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

Whether the revenue-reducing covered changes are in excess of the *de minimis*.

Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue.

c. Actual Tax Revenue:

Actual tax revenue means the actual tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

d. Reduction in Net Tax Revenue:

The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

e. Any revenue-increasing covered changes:

A recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes.



Recipients should maintain records regarding revenue-reducing covered changes and estimates of such changes.

f. Net reduction in total spending, and tables of specific spending cuts:

Recipients must report on spending cuts. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As in the Interim Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States. If that subtraction yields a positive value, there has been a net reduction; if it yields zero or a negative value, there has not been a net reduction. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit," as defined below. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit, and (3) the amount by which the reduction in spending exceeds the Fiscal Recovery funds spent in the reporting unit. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in aggregate spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate of spending cuts.

To align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Recipients may also choose to report at a more granular sub-department level. Recipients are encouraged to define and report spending in departments, sub-departments (e.g., bureaus), agencies, or authorities (each a "reporting unit") in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. For example, if a State health department maintains separate budgets for different units (e.g., medical and public health units), those units may be reported and considered separately. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts. As discussed in the Interim Final Rule, in order to help ensure governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. Evasions of the Tax Offset Provision may be subject to recoupment.



Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term “Expenditure Category” refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^



3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure²⁷	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: “Last Mile” projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)

²⁷ Definitions for water and sewer Expenditure Categories can be found in the EPA’s handbooks. For “clean water” expenditure category definitions, please see: <https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf>. For “drinking water” expenditure category definitions, please see: <https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports>.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means the evidence base that can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.



Revision Log

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	• Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. • Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.



REVISED

COUNTY OF TULARE AMERICAN RESCUE PLAN ACT INTERIM RECOVERY PLAN

AUGUST 24, 2021



BRIEF HISTORY

- On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law.
 - Legislation authorized more than \$1.9 trillion
 - ARPA established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF)
 - Appropriated \$350 billion to SLFRF
- On May 25, 2021, your Board authorized and ratified the County Administrative Officer's signature and submission of certification for receipt of American Rescue Plan funding up to \$90,552,914.
 - Ratified signature and submission of certification for ARPA funding from the U.S. Department of the Treasury on May 19, 2021.
 - Directed the County Administrative Officer to establish a spending plan for State and Local Recovery Funds
- On June 14, 2021, the County received its first of two tranches of the allocated \$90,552,914.
 - First Tranche, \$45,276,457
 - Second tranche, \$45,276,457, will be sent 12 months after the first tranche has been spent

COUNTY CERTIFICATION

The County's certification and allocation are subject to the Interim Final Rule, Final Rule (when adopted), and the compliance and reporting guidance provided by the U.S. Department of the Treasury for the statutory eligible uses of ARPA funds.

Funds may be used for the four statutory purposes:

- 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.
- To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.
- 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.
- To make necessary investments in water, sewer, or broadband infrastructure.

GUIDING PRINCIPLES

In addition to facilitating the County's response to COVID-19 and addressing its negative impacts on residents the County established the following principles to guide the allocation and use of ARPA Funds:

- **Be Transformational.** Pursue projects or programs that solve an ongoing problem and make a long-term and sustainable difference in the community.
- **One-Time Uses.** Consistent with the County's budget protocols, allocate one-time ARPA dollars to projects or programs with a defined funding period that do not create an ongoing fiscal obligation for the County.
- **Health & Safety.** Support the public health and safety response to COVID-19, which includes addressing the pandemic's ongoing health and safety impacts and building resiliency to better prepare the County for future disasters.
- **Equitable Outcomes.** Prioritize projects or programs that aim to increase equitable recovery and future resilience for disadvantaged or unincorporated communities.
- **Data-Driven.** Prioritize evidence-based projects or programs or contain the necessary data to demonstrate how they will address the impacts of the COVID-19 pandemic or assist in recovery.
- **Shovel-Ready.** Prioritize shovel-ready infrastructure projects that can be completed within the defined funding period.
- **Close Funding Gaps.** Prioritize funding for industries that experienced negative economic impacts due to the pandemic but did not receive other sources of funding or relief.
- **Avoid Duplication.** Ensure funded projects or programs do not duplicate services approved or administered by the state or federal government, including duplication of efforts of cities.

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

The County's ARPA Interim Recovery Plan allocates the \$90.6 million into the following expenditure categories:

1. Public Health: \$59,495,682
2. Negative Economic Impacts: \$4,425,000
3. Services to disproportionately Impacted Communities: \$5,600,000
4. Premium Pay: \$5,800,000
5. Infrastructure: \$14,558,000
6. Revenue Replacement: \$0
7. Administrative: \$674,232

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

	Department	Total Project Cost
1: Public Health		\$ 59,495,682
1.1 COVID-19 Vaccination ^		\$ 2,526,711
<i>HHSA support for vaccine administration by community partners</i>	<i>HHSA</i>	<i>\$ 2,500,000</i>
<i>Response Team Support</i>	<i>HHSA</i>	<i>\$ 26,711</i>
1.2 COVID-19 Testing ^		\$ 200,000
<i>HRD Color Testing for County Employees</i>	<i>HHSA</i>	<i>\$ 200,000</i>
1.5 Personal Protective Equipment		\$ 2,595,279
<i>PPE for HHSA Staff</i>	<i>HHSA</i>	<i>\$ 1,073,279</i>
<i>Distribution of PPE for other Tulare County institutions responding to COVID-19</i>	<i>HHSA</i>	<i>\$ 1,522,000</i>
1.6 Medical Expenses (including Alternative Care Facilities)		\$ 3,000,000
<i>Hospitals</i>	<i>HHSA</i>	<i>\$ 3,000,000</i>
1.7 Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health		\$ 14,229,559
<i>HVAC Project - Visalia Government Plaza</i>	<i>GSA</i>	<i>\$ 375,000</i>
<i>HVAC Project - Hillman TulareWORKS and WIC (Women, Infants, and Children)</i>	<i>GSA</i>	<i>\$ 200,000</i>
<i>HVAC Project - Hillman Annex/Immunization Clinic</i>	<i>GSA</i>	<i>\$ 70,000</i>
<i>HVAC Project - Lindsay TulareWorks</i>	<i>GSA</i>	<i>\$ 270,000</i>
<i>HVAC Project - Agricultural Commissioner</i>	<i>GSA</i>	<i>\$ 30,000</i>
<i>HVAC Project - Tulare County Libraries</i>	<i>GSA</i>	<i>\$ 1,040,000</i>
<i>HVAC Project - Fire Stations</i>	<i>GSA</i>	<i>\$ 1,620,000</i>
<i>HVAC Project - Tulare Hillman Health Center</i>	<i>GSA</i>	<i>\$ 700,000</i>

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

<i>HVAC Project - Museum</i>	<i>GSA</i>	\$ 30,000
<i>Lewis Hill Tower Relocation</i>	<i>TCiCT</i>	\$ 800,000
<i>Exeter Rocky Hill Radio Tower</i>	<i>TCiCT</i>	\$ 500,000
<i>Porterville Rocky Hill Radio Tower</i>	<i>TCiCT</i>	\$ 750,000
<i>Goshen Radio Tower</i>	<i>TCiCT</i>	\$ 300,000
<i>Richgrove Radio Tower</i>	<i>TCiCT</i>	\$ 300,000
<i>Tipton Radio Tower</i>	<i>TCiCT</i>	\$ 300,000
<i>Traver Radio Tower</i>	<i>TCiCT</i>	\$ 300,000
<i>Replace MTR2000/Repeaters</i>	<i>TCiCT</i>	\$ 40,000
<i>Handheld Radios (10)</i>	<i>TCiCT</i>	\$ 25,000
<i>TCSO & FIRE - Upgraded Dispatch Firewall, 911 System</i>	<i>TCiCT</i>	\$ 1,764,559
<i>HHSA - Equipment and licenses for use in telework, HIPAA compliance, privacy and security, and cloud based structures</i>	<i>TCiCT</i>	\$ 3,000,000
<i>TCSO - Earlimart Radio Tower & Microwave infrastructure for Earlimart Sub</i>	<i>TCiCT</i>	\$ 265,000
<i>OES - Video Conferencing</i>	<i>HHSA</i>	\$ 35,000
<i>OES - Plotter upgrade</i>	<i>HHSA</i>	\$ 15,000
<i>HHSA - Air Purifiers and Installation Cost</i>	<i>HHSA</i>	\$ 1,500,000

1.8 Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine) \$ 15,365,706

<i>Project Roomkey/Homekey Site Operations - quarantine facilities for homeless</i>	<i>HHSA</i>	\$ 1,010,000
<i>COVID-19 Vaccine and testing outreach</i>	<i>HHSA</i>	\$ 100,000
<i>Alpaugh Park</i>	<i>GSA</i>	\$ 853,500
<i>Bartlett Park</i>	<i>GSA</i>	\$ 1,553,200
<i>Cutler Park</i>	<i>GSA</i>	\$ 2,523,100
<i>Goshen Park</i>	<i>GSA</i>	\$ 125,100

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

<i>Kings River Park</i>	<i>GSA</i>	\$ 109,600
<i>Ledbetter Park</i>	<i>GSA</i>	\$ 700,000
<i>Mooney Grove Park</i>	<i>GSA</i>	\$ 1,193,200
<i>Pixely Park</i>	<i>GSA</i>	\$ 1,153,800
<i>Woodville Park</i>	<i>GSA</i>	\$ 50,500
<i>TCSO Isolation and Quarantine Measures</i>	<i>TCSO</i>	\$ 5,993,706
1.9 Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19		\$ 20,828,427
<i>Payroll for HHSA Staff</i>	<i>HHSA</i>	\$ 1,994,103
<i>Payroll for OES Staff - EMPG Local Match</i>	<i>HHSA</i>	\$ 195,000
<i>Payroll for Sheriff Staff</i>	<i>TCSO</i>	\$ 5,212,536
<i>Payroll for Fire Staff</i>	<i>FIRE</i>	\$ 13,426,788
1.12 Other Public Health Services		\$ 750,000
<i>Tech Equipment (Adobe Acrobat Licenses, iPad minis for vaccine pods)</i>	<i>HHSA</i>	\$ 250,000
<i>ASSESSOR - Electronic Records - Property Folders - Scanning Project</i>	<i>TCICT</i>	\$ 500,000
2: Negative Economic Impacts		\$ 4,425,000
2.9 Small Business Economic Assistance (General)* ^		\$ 925,000
<i>Assistance to Local Restaurants & Other Impacted Businesses - Environmental Health Fee Waiv</i>	<i>HHSA</i>	\$ 925,000
2.10 Aid to Nonprofit Organizations*		\$ 1,000,000
<i>Aid for local nonprofit organizations</i>	<i>CAO</i>	\$ 1,000,000

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

2.11 Aid to Tourism, Travel, or Hospitality		\$ 500,000
<i>Aid for tourism and economic development</i>	<i>CAO</i>	<i>\$ 500,000</i>
2.12 Aid to Other Impacted Industries		\$ 2,000,000
<i>Assistance to Library for Modified Services</i>	<i>CAO</i>	<i>\$ 500,000</i>
<i>Assistance to Museums, Memorial Districts, and other CSDs</i>	<i>CAO</i>	<i>\$ 1,500,000</i>
3: Services to Disproportionately Impacted Communities		\$ 5,600,000
3.10 Housing Support: Affordable Housing* ^		\$ 1,500,000
<i>Addressing Homelessness - Tagus Gardens and Sequoia Lodge Renovations</i>	<i>HHSA</i>	<i>\$ 1,500,000</i>
3.11 Housing Support: Services for Unhoused Persons* ^		\$ 4,100,000
<i>Addressing Homelessness - Homeless Key Supports</i>	<i>HHSA</i>	<i>\$ 1,200,000</i>
<i>No Place Like Home</i>	<i>HHSA</i>	<i>\$ 400,000</i>
<i>The Village Tiny Homes in Tulare and Goshen</i>	<i>HHSA</i>	<i>\$ 500,000</i>
<i>TC Hope Projects in Visalia, Tulare, and Porterville</i>	<i>HHSA</i>	<i>\$ 2,000,000</i>
4: Premium Pay		\$ 5,800,000
4.1 Public Sector Employees		\$ 5,800,000
<i>County Premium Pay - \$1,500</i>	<i>CAO</i>	<i>\$ 5,800,000</i>

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

5: Infrastructure		\$ 14,558,000
5.1 Clean Water: Centralized Wastewater Treatment		\$ 946,000
<i>Ivanhoe PUD - Disposal Pond Improvements</i>	<i>WATER</i>	<i>\$ 650,000</i>
<i>Tipton CSD - Wastewater Treatment Plant Improvements</i>	<i>WATER</i>	<i>\$ 296,000</i>
5.2 Clean Water: Centralized Wastewater Collection and Conveyance		\$ 1,600,000
<i>Earlimart PUD Sewer - Interceptor & Relief Sewer Project</i>	<i>WATER</i>	<i>\$ 1,600,000</i>
5.11 Drinking water: Transmission & Distribution		\$ 3,000,000
<i>Tipton CSD - North Burnett Rd Water Line Replacement</i>	<i>WATER</i>	<i>\$ 500,000</i>
<i>Ave 264 Water Main Extension</i>	<i>WATER</i>	<i>\$ 500,000</i>
<i>Pixley PUD - Water Main Extension</i>	<i>WATER</i>	<i>\$ 2,000,000</i>
5.13 Drinking water: Source		\$ 8,249,000
<i>Capital Project - CalWater Connection</i>	<i>GSA</i>	<i>\$ 1,000,000</i>
<i>Poplar CSD - Well Replacement</i>	<i>WATER</i>	<i>\$ 499,000</i>
<i>Earlimart PUD - Front Street Well</i>	<i>WATER</i>	<i>\$ 2,200,000</i>
<i>Tipton CSD - Well No. 6</i>	<i>WATER</i>	<i>\$ 1,700,000</i>
<i>Cutler PUD - Well No. 10</i>	<i>WATER</i>	<i>\$ 700,000</i>
<i>Strathmore Public Utilities District - Well and Treatment.</i>	<i>WATER</i>	<i>\$ 2,150,000</i>
5.14 Drinking water: Storage		\$ 150,000
<i>Strathmore Public Utilities District - Tank Repair</i>	<i>WATER</i>	<i>\$ 150,000</i>

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN SUMMARY

5.15 Drinking water: Other water infrastructure		\$ 613,000
<i>Chinowith Fire Hydrant</i>	<i>WATER</i>	\$ 38,000
<i>Earlimart PUD Clay West Well Sound Wall</i>	<i>WATER</i>	\$ 75,000
<i>Orosi Public Utility District Well No. 5 Auxiliary Power Project</i>	<i>WATER</i>	\$ 500,000
6: Revenue Replacement		\$ -
7: Administrative		\$ 674,232
7.1 Administrative Expenses		\$ 674,232
<i>ARPA Administration</i>	<i>CAO</i>	\$ 674,232
Grand Total:		\$ 90,552,914

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN

PROJECT AND PROGRAM PHASES

Projects and programs will be completed in their assigned phase unless otherwise noted. Due to scope and complexity, some projects and programs may be completed over multiple phases. Other projects may be developed at a later date, currently noted as “To Be Determined.” The phases outlined below are projected start and completion timeframes and are subject to change, as determined by the County Administrative Officer, based on direction from the Board of Supervisors and the U.S. Treasury’s Final Rule, guidance, and clarification.

- **Phase I:** March 2021 through June 2022.
- **Phase II:** July 2022 through June 2023.
- **Phase III:** July 2023 through June 2024.
- **Phase IV:** July 2024 through December 31, 2024. If funds are obligated by December 31, 2024, they may be expended by December 31, 2026.

COUNTY OF TULARE

ARPA INTERIM RECOVERY PLAN

The County intends to use the SLFRF funds to respond to the COVID-19 emergency; address the negative economic impacts caused by the public health emergency; provide services to underserved populations and communities disproportionately impacted by COVID-19; provide premium pay to county essential workers; and improve County and community infrastructure to respond effectively and efficiently to the current and future public health emergencies.

Proposed projects and programs included in this plan are subject to change based on guidance and clarification from the U.S. Department of the Treasury, and changes in resource demands associated with the pandemic. Throughout the ARPA funding cycle, the County intends to prioritize COVID-19 testing, vaccination, and other emergency response activities. Should these activities require additional funds to address County needs, ARPA funding will be redirected away from other proposed projects and toward these specific public health activities.

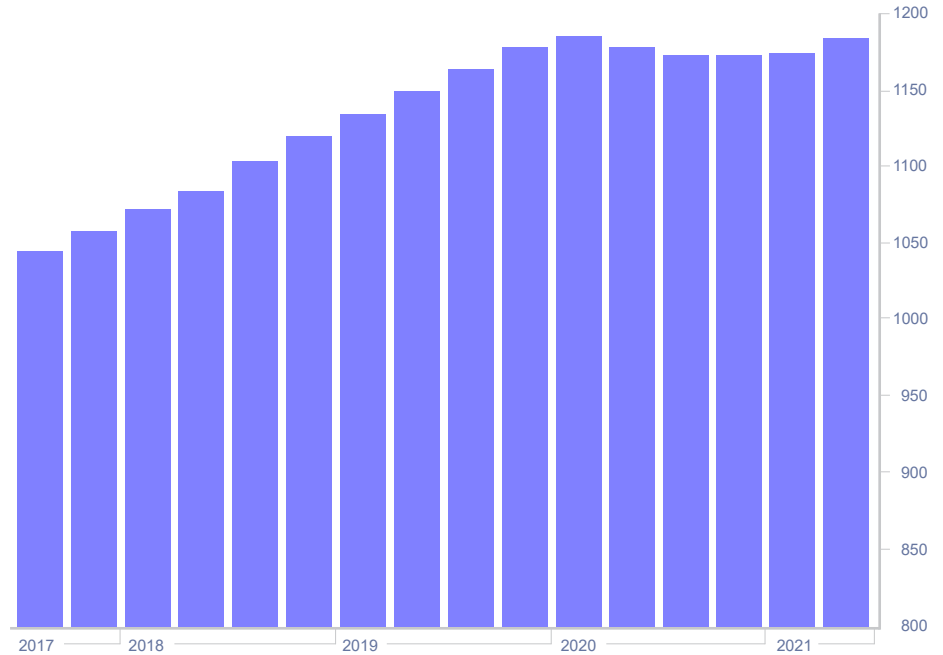
Major modifications, such as, adding new projects or programs, removing projects and programs, or any change in dollar amount allocations greater than +/- 5% per ARPA Expenditure Category will be brought back to the Board of Supervisors for direction and approval.

REQUESTED ACTIONS

1. Approve the County of Tulare American Rescue Plan Act (ARPA) Interim Recovery Plan for initial usage of \$90,552,914 of the ARPA funds received to support the County in responding to the economic and public health impacts of COVID-19.
2. Approve all budgetary and accounting transactions necessary to process transfers and reimbursements to cover County of Tulare ARPA Interim Recovery Plan costs for Fiscal Years 2020/21 through 2023/24, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.
3. Authorize the County Administrative Officer discretionary authority for minor adjustments or changes to the County of Tulare ARPA Interim Recovery Plan projects and programs up to +/- 5% of each expenditure category, as determined by the County Administrative Officer with Auditor-Controller concurrence, and in accordance with U.S. Department of the Treasury compliance and reporting guidelines and Interim Final Rule.
4. Direct the County Administrative Officer to finalize and submit the County of Tulare ARPA Interim Recovery Plan to the U.S. Department of the Treasury.

“An increase in demand for construction services combined with pandemic related supply chain disruptions led to a spike in construction costs for material including lumber, steel, copper, aluminum, PVC and gypsum.”

Attilio Rivetti
Vice President



adidas East Village Expansion
Portland, Oregon

Quarter	Index	△%
2nd Quarter 2021	1187	1.28
1st Quarter 2021	1172	0.09
4th Quarter 2020	1171	0.00
3rd Quarter 2020	1171	- 0.51

Year	Average Index	△%
2020	1177	1.8
2019	1156	5.5
2018	1096	5.6
2017	1038	5.0
2016	989	4.8
2015	943	4.5
2014	902	4.4
2013	864	4.1
2012	830	2.1
2011	812	1.6
2010	799	-4.0
2009	832	-8.4
2008	908	6.3

The Turner Building Cost Index is determined by the following factors considered on a nationwide basis: labor rates and productivity, material prices and the competitive condition of the marketplace.

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury

ACTION: Interim Final Rule

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this Interim Final Rule are effective [____], 2021.

Comment date: Comments must be received on or before [____], 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal:

<http://www.regulations.gov> [(if hard copy, preferably an original and two copies to the [Office of the Undersecretary for Domestic Finance], Attention: [Name], Room [#####] MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.] All comments should be captioned with “Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments.” Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary (no more than [#] single-spaced pages).] In general, comments received will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public

disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT:

[Name], [Title], [Office], 202-622-[#####], or [Name], [Title], [Office], 202-622-[#####].

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

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

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

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

³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS>, May 7, 2021.

⁴ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental->

local governments, and businesses of all sizes.⁵ As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.⁶

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

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance;

health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, <https://www.census.gov/programs-surveys/household-pulse-survey.html> (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic – United States, January 1 – October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675-80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

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

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

rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.⁷ Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.⁸ These cuts to State, local, and Tribal government workforces come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.⁹

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

⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

⁹ Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

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

¹⁰ Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region – United States, March-December 2020, *MMWR Morb Mortal Wkly Rep* 2021, 70:560-565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

¹¹ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and> (last visited May 4, 2021).

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

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

learning models.¹⁴ Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.¹⁵

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.¹⁶ Section 9901 of ARPA amended Title VI of the Social Security Act¹⁷ (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).¹⁸ The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).¹⁹

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

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

¹⁶ American Rescue Plan Act of 2021 (ARPA) § 9901, Pub. L. No. 117-2, codified at 42 U.S.C. § 802 *et seq.*

¹⁷ 42 U.S.C. 801 *et seq.*

¹⁸ §§ 602, 603 of the Act.

¹⁹ The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020).

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

- a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include:

“directly or indirectly offset[ing] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.”

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID-19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID-19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The Interim Final Rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They

also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID-19 public health emergency on certain populations, geographies, and economic sectors. The Interim Final Rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID-19 public health emergency.

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

II. Eligible Uses

A. Public Health and Economic Impacts

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

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

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service “responds to” the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

²⁰ §§602(c)(1)(A), 603(c)(1)(A) of the Act.

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

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

1. Responding to COVID-19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.²¹ By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.²² This wave brought acute strain on health care and public health systems: hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID-19 waves that brought many similar challenges: the second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.²³ By early May 2021, the United States has experienced over 32 million confirmed COVID-19 cases and over 575,000 deaths.²⁴

²¹ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

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

²³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

²⁴ *Id.*

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

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.²⁵

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for

²⁵ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited May 8, 2021).

youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.²⁶ The proportion of children’s emergency department visits related to mental health has also risen noticeably.²⁷ Similarly, rates of substance misuse and overdose deaths have spiked: preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.²⁸ Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.²⁹

²⁶ Panchal, *supra* note 4; Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic— United States, June 24-30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049-57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

²⁷ Leeb, *supra* note 4.

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

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

Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.³⁰

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.³¹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.³²

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.³³ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national

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

³¹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

³² In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See Romano, supra* note 10.

³³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

average, with 211 deaths per 100,000 as of May 2021.³⁴ Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.³⁵ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.³⁶

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.³⁷ Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while

³⁴ The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁵ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Apr. 26, 2021).

³⁶ *See, e.g.*, Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited Apr. 26, 2021).

³⁷ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, *JAMA* 324(4):388-90 (2020), *available at* <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

screenings for elevated blood lead levels declined during the pandemic.³⁸ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.³⁹

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the Interim Final Rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

³⁸ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19 – 34 Jurisdictions, January-May 2020, *Morb. Mort. Wkly. Rep.* 70(5):155-61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

³⁹ See, e.g., Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation – Utah, March 3-July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369-73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

The Interim Final Rule identifies a non-exclusive list of uses that address the effects of the COVID-19 public health emergency, including:

- *COVID-19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;⁴⁰ ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.⁴¹ They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations

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

⁴¹ Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions), with the following two exceptions: 1) the standard for eligibility of public health and safety payrolls has been updated (see details on page 20) and 2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service on page 44).

to public buildings to implement COVID-19 mitigation tactics. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.⁴²

- *Medical Expenses.* The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.⁴³ Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.⁴⁴ State and local governments may need to continue to provide care and services to address these near- and longer-term needs.⁴⁵
- *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or

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

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

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

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

warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

- *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.⁴⁶ Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to

⁴⁶ In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response. Recipients need not routinely track staff hours.

- *Expenses to Improve the Design and Execution of Health and Public Health Programs.*

State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID-19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the Interim Final Rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),⁴⁷ to families living in QCTs, or when these services are provided

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

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

by Tribal governments.⁴⁸ Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

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

- Funding community health workers to help community members access health services and services to address the social determinants of health;⁴⁹
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

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

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

- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.⁵⁰

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.⁵¹ Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,⁵² and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.⁵³

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United

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

⁵¹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited May 8, 2021).

⁵² *Id.*

⁵³ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CLF16OV> (last visited May 8, 2021).

States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.⁵⁴ Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁵⁵ A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.⁵⁶ Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.⁵⁷ Women of color have been hit especially hard: the

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), <https://www.bls.gov/web/empsit/cpseea04.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), <https://www.bls.gov/web/empsit/cpseea05.htm> (last visited May 8, 2021).

⁵⁵ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. *See also*, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

⁵⁷ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. *See, e.g.*, Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11-40 (2021), *available at* <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at* <https://www.nber.org/papers/w26947>.

labor force participation rate for Black women has fallen by 3.2 percentage points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ and 2.0 percentage points for White women.⁶⁰

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁶¹ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores⁶² and reduced familial and childhood wellbeing.⁶³ These potential long-term economic consequences underscore the continued need for robust policy support.

⁵⁸ U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited May 8, 2021).

⁵⁹ U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited May 8, 2021).

⁶⁰ U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited May 8, 2021).

⁶¹ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

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

⁶³ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment⁶⁴ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.⁶⁵ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.⁶⁶ Sectors with a large share of small business employment have been among those with the most drastic drops in employment.⁶⁷ The negative outlook for small businesses has continued: as of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.⁶⁸

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.⁶⁹ In general, small businesses can face greater hurdles in accessing credit,⁷⁰ and many small businesses were

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

⁶⁵ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

⁶⁶ Biden, *supra* note 6.

⁶⁷ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at* <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

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

⁶⁹ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

⁷⁰ *See e.g.*, Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at* <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

already financially fragile at the outset of the pandemic.⁷¹ Non-profits, which provide vital services to communities, have similarly faced economic and financial challenges due to the pandemic.⁷²

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

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

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,⁷⁴ and jobs that require in-person frontline work, which

⁷¹ Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656-66 (July 28, 2020), *available at* <https://www.pnas.org/content/117/30/17656>.

⁷² Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf>.

⁷³ Wolfe & Kassa, *supra* note 7; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

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

are exposed to greater risk of contracting COVID-19.⁷⁵ Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,⁷⁶ raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007-2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010-2014 relative to 2000.⁷⁷ Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.⁷⁸ Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all

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

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

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

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

of which contribute to long-term economic outcomes.⁷⁹ Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.⁸⁰ Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,⁸¹ an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.⁸² Evidence suggests

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

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

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

⁸² HHS, *supra* note 79.

that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.⁸³

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

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been

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

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

⁸⁵ Moreno & Sobrepena, *supra* note 73.

an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.⁸⁶ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

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

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

⁸⁶ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.

- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and

Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under section 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:
 - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;

- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
- Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.⁸⁷

- *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower

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

in April 2021 than prior to the pandemic.⁸⁸ Employment losses decrease a state or local government's ability to effectively administer services. Thus, the Interim Final Rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID-19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

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

To facilitate transparency and accountability, the Interim Final Rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative

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

economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

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

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.⁹⁰ Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The Interim Final Rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

⁹⁰ HUD, *supra* note 48.

- *Building Stronger Communities through Investments in Housing and Neighborhoods*. The economic impacts of COVID-19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.⁹¹ Services in this category alleviate the immediate economic impacts of the COVID-19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.⁹² Eligible services include:
 - Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
 - Affordable housing development to increase supply of affordable and high-quality living units; and
 - Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.⁹³

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

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

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

- *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children’s educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:
 - New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
 - Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
 - Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and
 - Evidence-based practices to address the social, emotional, and mental health needs of students;
- *Promoting Healthy Childhood Environments.* Children’s economic and family circumstances have a long-term impact on their future economic outcomes.⁹⁴ Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today’s children due to the pandemic. Eligible services to address this challenge include:

⁹⁴ See supra notes 52 and 84.

- New or expanded high-quality childcare to provide safe and supportive care for children;
- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

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

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

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

the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID-19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID-19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

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

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

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

Question 3: The Interim Final Rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2021. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

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

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

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

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

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

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

B. Premium Pay

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

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID-19.⁹⁶ Several examples reflect the severity of the health impacts

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

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

for essential workers. Meat processing plants became “hotspots” for transmission, with 700 new cases reported at a single plant on a single day in May 2020.⁹⁷ In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.⁹⁸ Furthermore, many essential workers are people of color or low-wage workers.⁹⁹ These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

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

During the public health emergency, employers’ policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened

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

⁹⁸ *Id.*

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

risks they have faced and continue to face.¹⁰⁰ Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.¹⁰¹ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.¹⁰² The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID-19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

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

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*

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

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

¹⁰³ §§602(g)(2), 603(g)(2) of the Act.

¹⁰⁴ The list of critical infrastructure sectors provided in the Interim Final Rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

Final Rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

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

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the Interim Final Rule.¹⁰⁶ For these

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

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

occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the misalignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

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

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

emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

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

Question 10: Are there additional sectors beyond those listed in the Interim Final Rule that should be considered essential critical infrastructure sectors?

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

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

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19

public health emergency.¹⁰⁸ Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.¹⁰⁹ At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.¹¹⁰ Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.¹¹¹ These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

¹⁰⁸ ARPA, *supra* note 16.

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

¹¹⁰ National League of Cities, City Fiscal Conditions (2020), *available at* https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf

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

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007-2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.¹¹² Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,¹¹³ while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019 – just a few months before the COVID-19 public health emergency began.¹¹⁴

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

¹¹² See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at* <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

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

¹¹⁴ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited Apr. 27, 2021).

General Revenue. The Interim Final Rule adopts a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances, and for purposes of this Interim Final Rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.¹¹⁵ By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The Interim Final Rule defines the term “general revenue” to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.¹¹⁶ In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of the COVID-19 public health emergency on a recipient’s revenue, rather than relying

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

¹¹⁶ The Interim Final Rule would define tax revenue in a manner consistent with the Census Bureau’s definition of tax revenue, with certain changes (i.e., inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (i.e., other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.¹¹⁷

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

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal

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

¹¹⁸ *Supra* note 116.

governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

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

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in

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

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

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

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

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

of available data.¹²² This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- Step 1: Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue*.
- Step 2: Estimate *counterfactual revenue*, which is equal to *base year revenue* * $[(1 + \text{growth adjustment})^{(n/12)}]$, where n is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.
- Step 3: Identify *actual revenue*, which equals revenues collected over the past twelve months as of the calculation date.

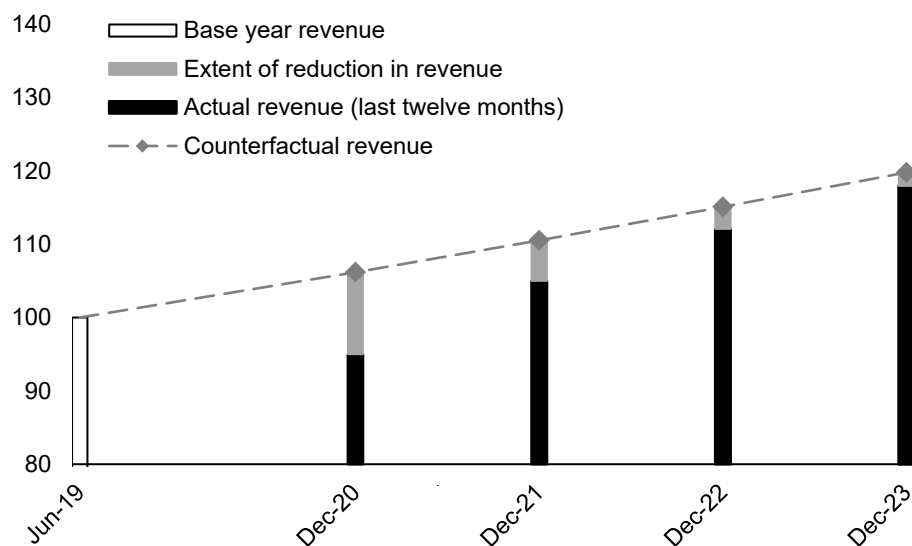
¹²² Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers.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

- Step 4: The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue</i> :	106.2	110.6	115.1	119.8

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



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

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building¹²³ of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a

¹²³ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

government service, since such expenses do not directly relate to the provision of government services.

Question 13: Are there sources of revenue that either should or should not be included in the Interim Final Rule’s measure of “general revenue” for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the Interim Final Rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are “due to” the COVID-19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID-19 public health emergency.

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

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

D. Investments in Infrastructure

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

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of

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

skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

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

1. Water and Sewer Infrastructure

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

¹²⁵ §§ 602(c)(1)(D), 603(c)(1)(D) of the Act.

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

Established by the 1987 amendments¹²⁷ to the Clean Water Act (CWA),¹²⁸ the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.¹²⁹ Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.¹³⁰

¹²⁷ Water Quality Act of 1987, P.L. 100-4.

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

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

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

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),¹³¹ with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.¹³² Like the CWSRF, the DWSRF provides States with the flexibility to meet the needs of their populations.¹³³ The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.¹³⁴ In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.¹³⁵

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the Interim Final Rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health

¹³¹ 42 U.S.C. 300j-12.

¹³² Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf; Environmental Protection Agency, Drinking Water Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 42 U.S.C. 300j-12(b)(3)(A).

standards.¹³⁶ The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can be deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the Interim Final Rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

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

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

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

the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.¹³⁸

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly,

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

projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

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

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

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

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible infrastructure under the Interim Final Rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure.

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband Internet access service for every facet of daily life including work, study, and healthcare.¹³⁹ With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

¹³⁹ See, e.g., <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, <https://www.ntia.gov/data/digital-nation-data-explorer>.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.¹⁴⁰ By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹⁴¹ There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.¹⁴² Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.¹⁴³

¹⁴⁰ As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

¹⁴¹ How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at* <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹⁴² See, e.g., Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at* <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

¹⁴³ See, e.g., Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), <https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>; Kansas Office of Broadband Development, Broadband Acceleration Grant, <https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf> (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), [https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

The Interim Final Rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the Interim Final Rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the Interim Final Rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.¹⁴⁴ In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

¹⁴⁴ This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.¹⁴⁵ In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017¹⁴⁶ and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,¹⁴⁷ attributable, in part to a shift to using broadband and the internet by individuals and businesses to create and share content using video sharing, video conferencing, and other applications.¹⁴⁸

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater

¹⁴⁵ Federal Communications Commission, Broadband Speed Guide, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 30, 2021).

¹⁴⁶ Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, available at <https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf>.

Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide*, Apr. 29, 2021.

¹⁴⁷ *Id.* See also United States's Mobile and Broadband Internet Speeds - Speedtest Global Index, available at <https://www.speedtest.net/global-index/united-states#fixed>.

¹⁴⁸ *Id.*

internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.¹⁴⁹ As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.¹⁵⁰ For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others.¹⁵¹ These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of

¹⁴⁹ One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

¹⁵⁰ See, e.g., Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

¹⁵¹ By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. Reviews.org: What is Symmetrical Internet? (March 2020).

383.8 gigabytes.¹⁵² OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent – from 19 gigabytes to 31 gigabytes – between December, 2019 and December, 2020.¹⁵³ According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.¹⁵⁴

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and

¹⁵² OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at* <https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020>; See OpenVault’s data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4*, Quarterly Advisory (Feb. 10, 2021), *available at* <https://openvault.com/complimentary-report-4q20/>.

¹⁵³ OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 2021), *available at* <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/>; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, *available at* <https://openvault.com/upstream-whitepaper/>.

¹⁵⁴ Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), <https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls> www.oecd.org/sti/broadband/broadband-statistics.

20 Mbps upload being included in the “above baseline” performance tier set by the FCC.¹⁵⁵ The Broadband Infrastructure Program (BBIP)¹⁵⁶ of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.¹⁵⁷

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the Interim Final Rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the Interim Final Rule, eligible projects are expected to focus on locations that are unserved or underserved. The Interim Final Rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds

¹⁵⁵ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at* <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

¹⁵⁶ The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020).

¹⁵⁷ Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC’s benchmark for an “advanced telecommunications capability.”¹⁵⁸ This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC’s RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.¹⁵⁹ The Department of Commerce’s BBIP also considers households to be “unserved” generally if they lack access to broadband service with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with

¹⁵⁸ *Deployment Report*, *supra* note 142.

¹⁵⁹ *Rural Digital Opportunity Fund*, *supra* note 156.

local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds ... to either directly or indirectly offset a reduction in ... net tax revenue ... resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax ... or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health

emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The Interim Final Rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this Supplementary Information, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for “deposit into any pension fund.” For the reasons discussed below, Treasury interprets “deposit” in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the Interim Final Rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a “deposit” is distinct from a “payroll contribution,” which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of “deposit” to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee’s wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee’s covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers’ compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees’ covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a “deposit” and a “payroll contribution,” are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments¹⁶⁰), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation¹⁶¹ during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this Supplementary Information. As discussed below Section IV of this Supplementary Information, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The Interim Final Rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—i.e., cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the

¹⁶⁰ In this sub-section, “recipient governments” refers only to States and territories. In other sections, “recipient governments” refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

¹⁶¹ For brevity, referred to as “changes in law, regulation, or interpretation” for the remainder of this preamble.

recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The Interim Final Rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (e.g., an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the Interim Final Rule’s approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State’s or territory’s covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for

the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the Interim Final Rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to “pay for” with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).
- Second, the Interim Final Rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is

greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government’s actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:
 - State or territory tax changes that would increase any source of general fund revenue, such as a change that would increase a tax rate; and
 - Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government’s actual tax revenue shortfall relative to the baseline (i.e., fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The Interim Final Rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this Supplementary Information.

The Interim Final Rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered

period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal government’s expansion of the EITC in the ARPA.¹⁶² This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the Interim Final Rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in

¹⁶² See, e.g., Tax Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.¹⁶³

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID-19 public health emergency.¹⁶⁴ This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,¹⁶⁵ suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The Interim Final Rule defines “reporting year” as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (“in-year” value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term “reporting year”

¹⁶³ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited May 9, 2021).

¹⁶⁴ Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

¹⁶⁵ Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at* <https://www.cbo.gov/publication/56965>.

refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The Interim Final Rule’s definition of “tax revenue” is based on the Census Bureau’s definition of taxes, used for its Annual Survey of State Government Finances.¹⁶⁶ It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this Supplementary Information describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this Supplementary Information, tax revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The Interim Final Rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State’s or territory’s use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government’s existing approach for measuring the

¹⁶⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.¹⁶⁷

(2) *In excess of the de minimis*. The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de

¹⁶⁷ See, e.g., Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at* https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.¹⁶⁸ The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor*. The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not

¹⁶⁸ Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004-2017.

been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the Interim Final Rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a

spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to “indirectly” offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.¹⁶⁹ In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by \$1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth \$500 million, it need only pay for the remaining \$500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this Supplementary Information, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated

¹⁶⁹ This cap is applied in section 35.8(c) of the Interim Final Rule, calculating the amount of funds used in violation of the tax offset provision.

on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the Interim Final Rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the Interim Final Rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The Interim Final Rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to

ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the Interim Final Rule take into consideration differences in approaches? Please discuss the use of practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the Interim Final Rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the Interim Final Rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the Interim Final Rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet

matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.¹⁷⁰

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.¹⁷¹ The definition of “incurred” does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting

¹⁷⁰ See 42 CFR 433.51 and 45 CFR 75.306.

¹⁷¹ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The Interim Final Rule adopts a definition of “obligation” that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID-19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).¹⁷² As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to “respond to” the COVID-19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID-19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use

¹⁷² §§ 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The Interim Final Rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.¹⁷³

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

¹⁷³ Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.¹⁷⁴ The Interim Final Rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the recipient. As discussed further in Sections III.B and VIII of this Supplementary Information, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the Interim Final Rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The Interim Final Rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the

¹⁷⁴ §§ 602(e) and 603(e) of the Act.

Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the Interim Final Rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.¹⁷⁵ This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the Interim Final Rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the Interim Final Rule. What, if any, challenges does this timeline present?

¹⁷⁵ The Interim Final Rule also provides that Treasury may extend any deadlines.

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this Interim Final Rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (i.e., February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this Interim Final Rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.¹⁷⁶ Splitting payments to States into two tranches will help

¹⁷⁶ With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.¹⁷⁷ For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the Interim Final Rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in

¹⁷⁷ The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.,* Dave Altig et al., Economic uncertainty before and during the COVID-19 pandemic, *J. of Public Econ.* (Nov. 2020), *available at* <https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389>

their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.¹⁷⁸ Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021¹⁷⁹) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in

¹⁷⁸ Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, <https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions> (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/UNRATE> (last visited Apr. 27, 2021).

¹⁷⁹ U.S. Bureau of Labor Statistics, Economic News Release – Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, <https://www.bls.gov/news.release/laus.t01.htm> (last visited Apr. 30, 2021).

unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as “local governments”) to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a “private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.”¹⁸⁰ Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The Interim Final Rule clarifies that the lists of transferees in Sections 602(c)(3) and 603(c)(3) are not exclusive. The Interim Final Rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or

¹⁸⁰ § 602(c)(3) of the Act.

private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (e.g., a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are “recipients.” A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient’s Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient’s use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients’ use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID-19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county’s goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in

county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining “special-purpose unit of State or local government” and “public benefit corporation” that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for \$19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal government during the COVID-19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The Interim Final Rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—e.g., requiring NEUs to pay for project costs up front before being

reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the Interim Final Rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on

distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (e.g., a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter

quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (e.g., on obligations, expenditures, contracts, grants, and sub-awards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This Interim Final Rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.”¹⁸¹ The Interim Final Rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁸² This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this Interim Final Rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the Interim Final Rule.

These comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

¹⁸¹ 5 U.S.C. 553(a)(2).

¹⁸² 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”).

X. Regulatory Analyses

Executive Orders 12866 and 13563

This Interim Final Rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID-19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID-19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as “economically significant” regulations);
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

- (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);
- (2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;
- (3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);
- (4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and
- (5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may

include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this Interim Final Rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this Interim Final Rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This Interim Final Rule implements the \$350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this Interim Final Rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress’ mandate for targeted fiscal relief. This Interim Final Rule is primarily a transfer rule: it transfers \$350 billion in aid from the Federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing

its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined \$350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.¹⁸³ Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007-09 recession.¹⁸⁴

This Interim Final Rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: strengthening the response to the COVID-19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government

¹⁸³ Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, *American Econ. J.: Econ. Policy*, 4:3 118-45 (Aug. 2012), available at <https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118>

¹⁸⁴ See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the Interim Final Rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

These benefits are achieved in the Interim Final Rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the Interim Final Rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the Interim Final Rule will contribute to greater realization of benefits from the program.

- Revenue Loss: Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss

at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.

- Premium Pay: Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the Interim Final Rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the Interim Final Rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The Interim Final Rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of

financial resources for those who have endured the heightened risk of performing essential work.

- Withholding of Payments to Recipients: Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.
- Hiring Public Sector Employees: The Interim Final Rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the Interim Final Rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID-19

crisis. Targeting relief is in line with Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which laid out an Administration-wide priority to support “equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”¹⁸⁵ To this end, the Interim Final Rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;¹⁸⁶ and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

¹⁸⁵ Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (last visited May 9, 2021).

¹⁸⁶ David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, <https://www.epi.org/publication/bp339-public-sector-jobs-crisis> (last visited May 9, 2021).

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments —along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this Interim Final Rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This Interim Final Rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The

compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the Interim Final Rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency . . . grants.” The Interim Final Rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus “both clearly and directly related to a federal grant program.” *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the “process necessary to maintain state . . . eligibility for federal funds,” *id.*, as well as the “method[s] by which states can . . . qualify for federal aid,” and other “integral part[s] of the grant program,” *Center for Auto Safety v. Tiemann*, 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C.

553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule “for good cause found and published with the rule”). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553’s requirements. The ARPA is a law responding to a historic economic and public health emergency; it is “extraordinary” legislation about which “both Congress and the President articulated a profound sense of ‘urgency.’” *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this Interim Final Rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to “respond to the public health emergency,” and the urgency is further exemplified by Congress’s command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, “[t]o the extent practicable,” funds must be provided to Tribes and cities “not later than 60 days after the date of enactment.” See *Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been “virtually impossible”). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA “covered period” began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the

Congressional Review Act or CRA) (5 U.S.C. 804(2) et seq.). Under the CRA, a major rule takes effect 60 days after the rule is published in the Federal Register. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (e.g., payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) emergency processing procedures and assigned control number 1505-0271. The information collections related to ongoing reporting requirements, as discussed in this Interim Final Rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	# Respondents (Estimated)	# Responses Per Respondent	Total Responses	Hours per response	Total Burden in Hours	Cost to Respondent (\$48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	\$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	\$61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	\$123,220
Quarterly Project and Expenditure Report	5,050	4 per year after first year	20,200	25	505,000	\$24,644,000
Annual Project and Expenditure Report from NEUs	TBD	1 per year	20,000-40,000 (Estimate only)	15	300,000 – 600,000	\$14,640,000 - \$29,280,000
Annual Recovery Plan Performance report	418	1 per year	418	100	41,800	\$2,039,840
Total	5,050 – TBD	N/A	55,768 - 75,768	141	851,850 - 1,151,850	\$41,570,280 - \$56,210,280

* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the Internet at <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (visited March 28, 2020). Base wage of \$33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of \$48.80.

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the Interim Final Rule.

As discussed in Section VIII of this Supplementary Information, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August 31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the www.regulations.gov docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to oira_submission@omb.eop.gov.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

RULE TEXT

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

Title 31—Money and Finance: Treasury

Part 35 - PANDEMIC RELIEF PROGRAMS

1. The authority citation for Part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Consolidated Appropriations Act, 2021 (Pub. L. 116-260), Division N, Title V, Subtitle B; Community Development Banking and Financial Institutions Act of 1994 (enacted as part of the Riegle Community and Regulatory Improvement Act of 1994 (Pub. L. 103-325)), as amended (12 U.S.C. 4701 et seq.), Section 104A; Pub. L. 117-2.

2. Revise the part heading as shown above.

3. Add Subpart A to read as follows:

Subpart A— CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Sec.

35.1 Purpose.

35.2 Applicability.

35.3 Definitions.

35.4 Reservation of Authority, Reporting.

35.5 Use of Funds.

35.6 Eligible Uses.

35.7 Pensions.

35.8 Tax.

35.9. Compliance with Applicable Laws.

35.10. Recoupment.

35.11 Payments to States.

35.12. Distributions to Nonentitlement Units of Local Government and Units of General Local Government.

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 Public Law 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.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative

interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID-19 means the Coronavirus Disease 2019.

COVID-19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 et. seq.).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and

diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a “city,” as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to \$13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker’s previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to \$13 that is in addition to the eligible worker’s regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers’ current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax Revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of Authority, Reporting.

(a) *Reservation of authority.* Nothing in this 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 covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In General.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable,

including those enumerated in section § 35.6 of this subpart, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In General.* Subject to §§ 35.7 and 35.8 of this subpart, a recipient may use funds for one or more of the purposes described in paragraphs (b)-(e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID-19 response and prevention.* Expenditures for the mitigation and prevention of COVID-19, including:

(i) Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID-19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID-19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(vi) Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID-19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment;

(ix) Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public Health and Safety Staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) *Hiring State and Local Government Staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to Unemployed Workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work;

(5) *Contributions to State Unemployment Insurance Trust Funds.* Contributions to an Unemployment Trust Fund up to the level required to restore the Unemployment Trust Fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER];

(6) *Small Businesses*. Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency;

(7) *Nonprofits*. Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency;

(8) *Assistance to Households*. Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency;

(9) *Aid to Impacted Industries*. Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency;

(10) *Expenses to Improve Efficacy of Public Health or Economic Relief Programs*. Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's Benefits*. Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19;

(12) *Disproportionately Impacted Populations and Communities*. A program, service, or other assistance that is provided in a Qualified Census Tract, that is provided to households and populations living in a Qualified Census Tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

- (i) Programs or services that facilitate access to health and social services, including:
 - (A) Assistance accessing or applying for public benefits or services;
 - (B) Remediation of lead paint or other lead hazards; and
 - (C) Community violence intervention programs;
- (ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:
 - (A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;
 - (B) Development of affordable housing to increase supply of affordable and high-quality living units; and
 - (C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;
- (iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:
 - (A) New or expanded early learning services;
 - (B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and
 - (C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students;
- (iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:
 - (A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing Premium Pay to Eligible Workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing Government Services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (d)(2).

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

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

Where:

(i) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

(ii) Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

(iii) n equals the number of months elapsed from the end of the base year to the calculation date.

(iv) Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

(v) Subscript t denotes the specific calculation date.

(e) *To Make Necessary Investments in Infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(A) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds;
or

(B) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(A) of this section:

(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.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered Change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered

change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the De Minimis Threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in Net Tax Revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of Other Changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and Revenue Reduction Cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i)-(ii).

§ 35.9. Compliance with Applicable Laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this Subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10. Recoupment.

(a) *Identification of Violations – (1) In general.* Any amount used in violation of §§ 35.6 or 35.7 of this subpart 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 of this subpart.

(b) *Calculation of Amounts Subject to Recoupment – (1) In general.* Except as provided in paragraph (b)(2), Treasury will calculate any amounts subject to recoupment resulting from a violation of §§ 35.6 or 35.7 of this subpart as the amounts used in violation of such restrictions.

(2) *Violations of Section 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8 of this subpart, equal to the lesser of:

- (i) The amount set forth in § 35.8(c) of this subpart; and,
- (ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for Reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

- (i) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and
- (ii) A discussion of supporting reasons, along with any additional information.

(e) *Final Amount Subject to Recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an

explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of Funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(i) 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

(ii) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In General.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of Withheld Amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(i) 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,

(ii) 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 Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget Cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this subsection.

(c) *Units of General Local Government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an

(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.

[]



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Internal City Audit Committee - Porterville Chamber of Commerce Agreement Review

SOURCE: City Manager's Office

COMMENT: At its Special Meeting on May 24, 2021, the City Council conducted a Study Session with representatives of the Porterville Chamber of Commerce toward potential modifications to the Agreement between the City and Chamber in support of community promotion and promoting local tourism. As an outcome of the Study Session, the Council directed the Internal City Audit Committee to review the Agreement between the City and the Chamber and provide recommendations to the Council for consideration.

The Committee initially considered the Agreement at its meeting on June 7, 2021, and made the determination to schedule a meeting of the Committee with Chamber representatives to further review the Agreement.

The Committee and Chamber representatives met on July 26, 2021, in review of the current Agreement and began the drafting of a revised Agreement. The Committee and Chamber representatives met again on August 31, 2021, and September 28, 2021, resulting in the draft modified Agreement as attached.

Beyond some minor edits, the draft Agreement makes several notable modifications as follows:

1. Provision to require the Chamber to coordinate with the City in the provision of City logistical and other support concerning all Chamber activities when City assistance is necessary or appropriate.
2. Provision for the Chamber to program activities in Centennial Park on Friday night's in April, May and June with City logistical support, with the exception of the week of the Porterville Fair and other community festival weekends.
3. Provision for the Chamber to plan a Fall Community Festival at Centennial Park annually in October with City logistical support, in lieu of Music on Main on Friday night's in September and October.
4. Provision for the Chamber to promote and support the City as a gateway to the Sequoia National Forest and Giant Sequoia National Monument, including the "Mighty 190" program.

5. Provision for the Chamber to assist local businesses, particularly small businesses, in navigating current events and issues, and engaging with customers in light of the existent economic conditions.
6. Provision for the Chamber to provide an annual financial and activity report to the City by April 15th of each year covering the programs and activities for the prior year, and a written plan concerning the programs and activities planned for the upcoming year.
7. Provision for the City to make equal quarterly payments of the annual contract payment on July 31, October 31, January 31 and April 30 of each year, contingent upon the Chamber providing a quarterly activity report for the preceding period.
8. Provision for the City to coordinate with the Chamber to provide logistical support, permitting, permissions and authority concerning Chamber activities.
9. Provision for a City representative(s) to provide status reports to the Chamber's Government Affairs Committee.
10. Provision for a City staff member to serve in the Chamber Ambassador Program.
11. Provision for the City Manager and the Chamber Executive Director to personally meet on a monthly basis to discuss needs of the parties, improve communication, and coordinate action to promote business development in the city.
12. Provision for the Agreement to be terminated by either party providing written notice on or before May 1 of the fiscal year for termination effective June 30.
13. Provision for the Agreement to be reviewed annually on or before April 15 whether it should be amended to increase or decrease the amount of consideration required of either party, including the amount payable to the Chamber by the City.

During its meetings with the Committee, the Chamber indicated that it would like for the City to consider an increase of \$10,000 in the Agreement's annual payment from \$35,000 to \$45,000, which would be requested by the Chamber for consideration by the Council as part of City's budget deliberations for the upcoming 2022-2023 fiscal year.

To further improve communication and coordination with the Chamber, the Committee also discussed the designation by Council of two of its Members to meet with the Chamber Board of Directors.

RECOMMENDATION: That the City Council consider the recommendations of the

Internal City Audit Committee for modifications to the City's Agreement with the Porterville Chamber of Commerce.

ATTACHMENTS:

1. Draft Chamber of Commerce Agreement
2. Draft Chamber of Commerce Agreement - Edited
3. Porterville Chamber of Commerce Agreement Amendment - October 2019
4. Porterville Chamber of Commerce Agreement - September 2006

Appropriated/Funded:

Review By:

Department Director:

John Lollis, City Manager

Final Approver: John Lollis, City Manager

AGREEMENT BETWEEN
THE **CITY OF PORTERVILLE** AND
THE **PORTERVILLE CHAMBER OF COMMERCE**

This agreement is made and entered into as of the last date of execution as set forth below, by and between the CITY OF PORTERVILLE, hereinafter referred to as “City”, and the PORTERVILLE CHAMBER OF COMMERCE, hereinafter referred to as “Chamber”, both of whom understand and agree as follows:

WHEREAS, the City is desirous of maintaining and asserting positive community values, of disseminating information relative to promoting the advantages of Porterville, and of supporting public interest activities; and

WHEREAS, the City is authorized by law to approve the expenditure of monies accruing to the General Fund in any one fiscal year for music and promotional activities, including promotion of city- affiliated programs, and to promote and support activities that assist the general welfare of its community members and

WHEREAS, the Chamber is actively engaged in promoting civic, social, and cultural events, programs and activities, and is organized, equipped, and capable of conducting such activities on behalf of and/or benefitting the City; and

WHEREAS, it is not the intent of the City to fully underwrite, subsidize, or sponsor any particular program or activity, but to provide contributing support towards the maintenance and continuance of certain existing programs and activities of the Chamber, which best achieve the lawful objectives of the City.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

I. Chamber Responsibilities.

The Chamber shall undertake or maintain a variety of programs and activities every year that support the City's and its mutual goals of assisting and benefitting the Porterville business community. These can include, but are not limited to, the following:

- A. Continue to carry on programs and promotional activities that include:
 - 1. Informational solicitations, information pool, referral services, and the visitor information bureau.
 - 2. Holiday advertising campaigns, and the design and construction of the Porterville booth for regional fairs and expositions.
 - 3. Printing and distribution of informational pamphlets and brochures.
- B. All duties and responsibilities relating to the following:
 - 1. Locating, scheduling, coordinating, and programming for Centennial Park's Friday night activities for April, May, and June except for Fair and community Festival weekends. The City will provide logistical support.
 - 2. Planning and coordinating the Fall Community Festival, at Centennial Park, in October. The City will provide logistical support.
 - 3. Providing any other assistance as may be mutually agreed upon from time to time during the period of this Agreement.
- C. Chamber shall coordinate with the City in its provision of its logistical and other support concerning all Chamber activities, jointly sponsored activities, or other events, where City assistance is necessary or appropriate.
- D. Activities promoting and supporting the City of Porterville as a gateway to the Sequoia National Forest and Giant Sequoia National Monument,

including not limited to efforts such as the “Mighty 190” program.

- E. Activities providing support and assistance to the local businesses in the community aiding in navigating the current events/issues. For example, the development of tools and programs to assist local businesses, particularly smaller businesses, in continuing to engage with customers in light of the existent economic conditions.
- F. By April 15th of each year, furnish annual financial and activity reports to the City covering the programs and activities under for the prior year, and a written plan concerning the programs and activities planned for the upcoming year, with specific emphasis on sufficient relevant information to satisfy the terms and intent of this Agreement as heretofore enumerated. The Chamber shall also furnish the City with copies of its annual financial reports within thirty (30) days after they are prepared.

II. City Responsibilities. As consideration for the above-mentioned responsibilities, the City shall:

A. Commencing July 1, 2022, pay the Chamber the sum of _____ per year, with said payment made quarterly in four equal payments of \$ _____ by July 31, October 31, January 31, and April 30. However, such annual payments shall not be made until receipt by the City of the quarterly activity reports referred to in paragraph I(C) for the preceding reporting period, and presentation to the City Council, at the next available regular City Council meeting (taking into account agenda legal noticing requirements).

B. Engage on a regular basis with the Chamber as follows:

- 1. City shall coordinate with the Chamber to provide logistical support, permitting, permissions, and authority concerning chamber activities.
- 2. A City representative(s) shall provide status reports to the Chamber at and attend the regularly scheduled Governmental Affairs Committee (GAC) meeting.

4. Enlist a member of the City staff to service in the Chamber Ambassador Program.

III. Monthly Meetings. The City Manager and the Chamber Executive Director shall personally meet on at least a monthly basis to discuss the needs of the parties, improve communication, and coordinate action (or the procedures for such action) to promote business development in Porterville. From time to time, the parties may designate alternative staff members for the meetings, if and when the need arises.

IV. Term. This agreement shall be in effect commencing date of execution of this Agreement and shall continue in effect until June 30, 2023, and thereafter on a year-to-year basis, beginning on July 1 of each year, until terminated according to paragraph IV of this Agreement.

V. Unilateral Termination. This Agreement may be terminated by either party, and for any reason, providing written notice to the other on or before May 1 of the fiscal year prior to such Termination. This Agreement shall terminate on June 30 following the date such notice is received by the non-terminating party.

VI. Annual Review. This Agreement shall be reviewed annually on or before April 15 to determine whether it should be amended to increase or decrease the amount of consideration required of either party, including the amount payable to the Chamber. Subject to City budgetary limitations, any increases or decreases shall be based on services provided and expected to be provided during the then current and next fiscal years by the Chamber, and the expected tax revenues to the City from business activities during the then current and next fiscal years.

VII. Amendment. This Agreement may be amended or modified only by a writing signed by both parties. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provisions.

VIII. Insurance Requirements. Chamber shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services provided under this agreement. Coverage shall be as broad as required below.

A. Commercial General Liability (CGL) insurance on an “occurrence” basis, including property damage, bodily injury and personal injury with limits no less than \$1,000,000 per occurrence, and an aggregate limit of \$2,000,000. This CGL coverage is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City.

B. Workers Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

The City, its officers, officials, employees, and volunteers are to covered as insureds with respect to liability arising out of or in connection with the services provided by Chamber under this agreement.

Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all rights of subrogation against the City. Further, the policies required above shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days’ prior written notice (10 days for non-payment) has been given to the City.

Chamber shall furnish the City with certificates of coverage and amendatory endorsements or copies of the applicable policy language.

IX. Indemnification. To the fullest extent permitted by law, the Chamber shall indemnify, defend and hold harmless the City, its officers, employees, agents, and volunteers (“City indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of Chamber’s performance of its obligations under this agreement or out of the operations conducted by the Chamber, including the City’s active or passive negligence except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from the Chamber’s performance of this agreement, the Chamber shall provide a defense to the City indemnitees, or at the City’s option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels’ fees, incurred in defense of such claims.

This indemnification obligation shall continue beyond the term of this agreement and

any amendments as to any acts or omissions occurring under this agreement and any amendments, or an extension of this agreement.

X. Assignment. This Agreement shall not be assigned by the Chamber without the written consent of the City, and such consent may be withheld for any reason.

XI. Notices. All notices required by the Agreement shall be in writing and delivered in person or sent by registered mail, postage prepaid.

XII. Relationship of Parties. It is understood that the contractual relationship of the Chamber to the City is that of an independent contractor.

CITY:

Date: _____

Adrian Monte Reyes, Mayor

ATTEST
John Lollis

By: _____
John Lollis, City Clerk

CHAMBER:

Date: _____

Christina Clausen, Interim CEO

ATTEST

By: _____
Dennis Ickes, President
Chamber Board of Directors

APPROVED AS TO FORM:

Julia Lew, City Attorney

AGREEMENT BETWEEN
THE **CITY OF PORTERVILLE** AND
THE **PORTERVILLE CHAMBER OF COMMERCE**

This agreement is made and entered into ~~on~~ as of the last date of execution as
set forth below, the _____ day of _____, 2021, by and between the CITY
OF PORTERVILLE, hereinafter referred to as "A City", and the PORTERVILLE
CHAMBER OF COMMERCE, hereinafter referred to as "A Chamber", both of whom
understand and agree as follows:

WHEREAS, the City is desirous of maintaining and asserting positive community
values, of disseminating information relative to promoting the advantages of Porterville,
and of supporting public interest activities; and

WHEREAS, the City is authorized by law to approve the expenditure of monies
accruing to the General Fund in any one fiscal year for music and promotional activities,
including promotion of city- affiliated programs, and to promote and support activities
that assist the general welfare of its community members and

WHEREAS, the Chamber is actively engaged in promoting civic, social, and
cultural events, programs and activities, and is organized, equipped, and capable of
conducting such activities on behalf of and/or benefitting the City; and

WHEREAS, it is not the intent of the City to fully underwrite, subsidize, or sponsor

any particular program or activity, but to provide contributing support towards the maintenance and continuance of certain existing programs and activities of the Chamber, which best achieve the lawful objectives of the City.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

I. Chamber Responsibilities.

The Chamber shall undertake or maintain a variety of programs and activities every year that support the City's and its mutual goals of assisting and benefitting the Porterville business community. These can include, but are not limited to, the following:

- A. Continue to carry on programs and promotional activities that include:
 - 1. Informational solicitations, information pool, referral services, and the visitor information bureau.
 - 2. Holiday advertising campaigns, and the design and construction of the Porterville booth for regional fairs and expositions.
 - 3. Printing and distribution of informational pamphlets and brochures.
- B. All duties and responsibilities relating to the following:
 - 1. Locating, scheduling, coordinating, and programming for Centennial Park's Friday night activities for April, May, and June except for Fair and community Festival weekends. The City will provide logistical support.
 - 2. Planning and coordinating the Fall Community Festival, at Centennial Park, in October. The City will provide logistical support.
 - 3. Providing any other assistance as may be mutually agreed upon from time to time during the period of this Agreement.

C. Chamber shall coordinate with the City in its provision of its logistical and other support concerning all Chamber activities, jointly sponsored activities, or other events, where City assistance is necessary or appropriate.

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D. Activities promoting and supporting the City of Porterville as a gateway to the Sequoia National Forest and Giant Sequoia National Monument, including not limited to efforts such as the "Mighty 190" program.

~~G.E.~~ Activities providing support and assistance to the local businesses in the community aiding in navigating the current events/issues. For example, the development of tools and programs to assist local businesses, particularly smaller businesses, in continuing to engage with customers in light of the the existent economic conditions.

~~D.F.~~ By April 15th of each year, furnish annual financial and activity reports to the City covering the programs and activities under for the prior year, and a written plan concerning the programs and activities planned for the upcoming year, with specific emphasis on sufficient relevant information to satisfy the terms and intent of this Agreement as heretofore enumerated. The Chamber shall also furnish the City with copies of its annual financial reports within thirty (30) days after they are prepared.

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II. City Responsibilities. As consideration for the above-mentioned responsibilities, the City shall:

A. ~~uring the term of this agreement~~ Commencing July 1, 2022, pay the Chamber the sum of _____, per year, with said payment made quarterly in four equal payments of \$ _____ by July 31, October 31, January 31, and April 30. However, such annual payments shall not be made until receipt by the City of the quarterly activity reports referred to in paragraph I(C) for the preceding reporting period, and presentation to the City Council, at the next available regular City Council meeting (taking into account agenda legal noticing requirements).

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B. Engage on a regular basis with the Chamber as follows:

1. City shall coordinate with the Chamber to provide logistical support, permitting, permissions, and authority concerning chamber activities.
2. A City representative(s) shall provide status reports to the Chamber at and attend the regularly scheduled Governmental Affairs Committee (GAC) meeting.
3. ~~A City representative(s) shall meet personally with a Chamber designee at least on a monthly basis to discuss the needs of the parties, improve communication, and coordinate action (or the procedures for such action) to promote business development in Porterville.~~
4. Enlist a member of the City staff to service in the Chamber Ambassador Program.

III. Monthly Meetings. The City Manager and the Chamber Executive Director shall personally meet on at least a monthly basis to discuss the needs of the parties, improve communication, and coordinate action (or the procedures for such action) to promote business development in Porterville. From time to time, the parties may designate alternative staff members for the meetings, if and when the need arises.

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IIIIV. Term. This agreement shall be in effect commencing date of execution of this Agreement and shall continue in effect until June 30, 2024³, and thereafter on a year-to-year basis, beginning on July 1 of each year, until terminated according to paragraph IV of this Agreement.

IV. Unilateral Termination. This Agreement may be terminated by either party, and for any reason, providing written notice to the other on or before May 1 of the fiscal year prior to such Termination. This Agreement shall terminate on June 30 following the date such notice is received by the non-terminating party.

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VI. Annual Review. This Agreement shall be reviewed annually on or before April 15 to determine whether it should be amended to increase or decrease the amount of consideration required of either party, including the amount payable to the Chamber.

Subject to City budgetary limitations, any increases or decreases shall be based on services provided and expected to be provided during the then current and next fiscal years by the Chamber, and the expected tax revenues to the City from business activities during the then current and next fiscal years.

VII. Amendment. This Agreement may be amended or modified only by a writing signed by both parties. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provisions.

VIII. Insurance Requirements. Chamber shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services provided under this agreement. Coverage shall be as broad as required below.

A. Commercial General Liability (CGL) insurance on an "occurrence" basis, including property damage, bodily injury and personal injury with limits no less than \$1,000,000 per occurrence, and an aggregate limit of \$2,000,000. This CGL coverage is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

B. Workers Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

The City, its officers, officials, employees, and volunteers are to covered as insureds with respect to liability arising out of or in connection with the services provided by Chamber under this agreement.

Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all rights of subrogation against the City. Further, the policies required above shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Chamber shall furnish the City with certificates of coverage and amendatory endorsements or copies of the applicable policy language.

VIIIIX. Indemnification. To the fullest extent permitted by law, the Chamber shall indemnify, defend and hold harmless the City, its officers, employees, agents, and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of Chamber's performance of its obligations under this agreement or out of the operations conducted by the Chamber, including the City's active or passive negligence except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from the Chamber's performance of this agreement, the Chamber shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

This indemnification obligation shall continue beyond the term of this agreement and any amendments as to any acts or omissions occurring under this agreement and any amendments, or an extension of this agreement.

IX. Assignment. This Agreement shall not be assigned by the Chamber without the written consent of the City, and such consent may be withheld for any reason.

XI. Notices. All notices required by the Agreement shall be in writing and delivered in person or sent by registered mail, postage prepaid.

XII. Relationship of Parties. It is understood that the contractual relationship of the Chamber to the City is that of an independent contractor.

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CITY:

Date: _____

Adrian Monte Reyes, Mayor

ATTEST
John Lollisagley

By: _____

| John Lollis, City Clerk-

CHAMBER:

| Date: _____

Christina Clausen, Interim CEO

ATTEST

By: _____
Dennis Ickes, President
Chamber Board of Directors

APPROVED AS TO FORM:

Julia Lew, City Attorney

**AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN
THE CITY OF PORTERVILLE AND
THE PORTERVILLE CHAMBER OF COMMERCE**

Pursuant to “Article VI. Amendment” of the Agreement between the CITY OF PORTERVILLE, hereinafter referred to as “City”, and the PORTERVILLE CHAMBER OF COMMERCE, hereinafter referred to as “Chamber,” both of whom understand and agree to amend its Agreement as follows:

I. Chamber Responsibilities. The Chamber shall:

- A. Continue to carry on programs and promotional activities that include:
 - 1. Mail solicitations, information pool, referral services, and the visitor information bureau.
 - 2. Holiday advertising campaigns, and the business showcase.
 - 3. Printing and distribution of informational pamphlets and brochures.
- B. Assume all duties and responsibilities relating to the following:
 - 1. Locating, scheduling, coordinating, and programming for Centennial Park’s Friday night activities for September, October, April, May, and June except for the Fridays coinciding with the Porterville Fair, local high school and college graduations, and weeks coinciding with KJUG free concert series events. Events will include music venues at the Centennial Gazebo, and special themes (e.g. Farmer’s Market, Art in the Park, Halloween Movie in the Park, Arts & Crafts Booths, and Community Focus). The City will provide logistical support, including attendee seating, promotional signage, and park reservation.
 - 2. Providing any other assistance as may be mutually agreed upon from time to time during the period of this Agreement.

- C. At the first City Council meeting of each quarter (July, October, January, and April), furnish an activity report to the City covering the prior quarter's promotional programs and activities, with specific emphasis on sufficient relevant information to satisfy the terms and intent of this Agreement as heretofore enumerated. The Chamber shall also furnish the City with copies of its annual financial reports within thirty (30) days after they are prepared.

II. Payment by City. As consideration for the above-mentioned responsibilities, the City shall, during the term of this Agreement, pay the Chamber the sum of Thirty-Five Thousand Dollars (\$35,000) per year, which quarterly payments of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750) shall be made on or before the first of the month following the furnishing of the quarterly activity report to the City Council, commencing in 2019.

III. Insurance Requirements. Chamber shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services provided under this agreement. Coverage shall be as broad as required below.

- A. Commercial General Liability (CGL) insurance on an "occurrence" basis, including property damage, bodily injury and personal injury with limits no less than \$1,000,000 per occurrence, and an aggregate limit of \$2,000,000. This CGL coverage is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.
- B. Workers Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of or in connection with the services provided by Chamber under this agreement.

Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all rights of subrogation against the City. Further, the policies required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Chamber shall furnish the City with certificates of coverage and amendatory endorsements or copies of the applicable policy language.

IV. Indemnification. To the fullest extent permitted by law, the Chamber shall hold harmless, defend and indemnify the City, its agents, officers, employees and volunteers ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Chamber's performance of obligations under this Agreement and Amendment or out of the operations conducted by the Chamber, including the City's active or passive negligence, except for such loss or damages arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from the Chamber's performance of this Agreement and Amendment, the Chamber shall provide a defense to the City's Indemnitees, or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims. This indemnification obligation shall continue beyond the term of this Agreement and Amendment as to any acts or omissions occurring under this Agreement and Amendment or any extension of this Agreement.

V. Effective Date. This Amendment shall be in effect as the latest execution date indicated below.

VI. Prior Agreement. All other terms and conditions of the Agreement between the City and the Chamber, not inconsistent with this Amendment, shall remain in full force and effect.

CITY:

DATE:



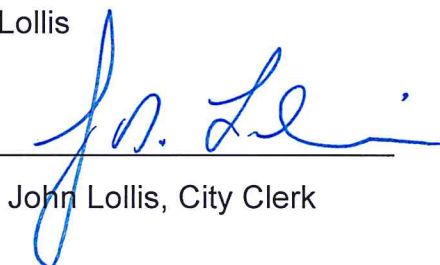
10/15/19

Martha A. Flores, Mayor

ATTEST

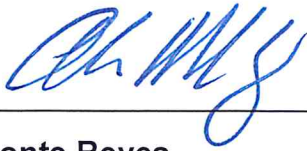
John Lollis

By:



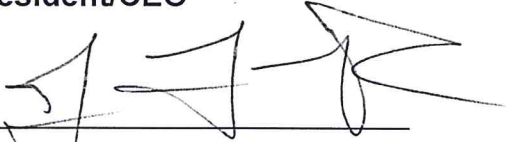
John Lollis, City Clerk

CHAMBER:



Monte Reyes

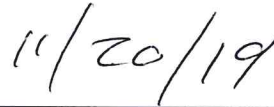
President/CEO



Jason Pommier, Chair

Chamber Board of Directors

DATE:



APPROVED AS TO FORM:



Julia Lew, City Attorney

AGREEMENT BETWEEN
THE **CITY OF PORTERVILLE** AND
THE **PORTERVILLE CHAMBER OF COMMERCE**

This agreement is made and entered into on the 4th day of September, 2006, by and between the CITY OF PORTERVILLE, hereinafter referred to as "City", and the PORTERVILLE CHAMBER OF COMMERCE, hereinafter referred to as "Chamber," both of whom understand and agree as follows:

WHEREAS, the City is desirous of maintaining and asserting positive community values, of disseminating information relative to promoting the advantages of Porterville, and of supporting public interest activities; and

WHEREAS, Section 37110 of the Government Code of the State of California authorizes the expenditure of not more than five percent (5%) of monies accruing to the General Fund in any one fiscal year for music and promotional activities, including promotion of sister city and town affiliation programs; and

WHEREAS, the Chamber is actively engaged in promoting civic, social, and cultural events and activities, and is therefore believed to be organized, equipped, and capable of conducting promotional activities on behalf of the City; and

WHEREAS, it is not the intent of the City to fully underwrite, subsidize, or sponsor any particular program or activity, but to provide contributing support towards the maintenance and continuance of certain existing programs and activities of the Chamber, which best achieve the promotional objectives of the City.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

I. Chamber Responsibilities. The Chamber shall:

- A. Continue to carry on programs and promotional activities that include:
 - 1. Mail solicitations, information pool, referral services, and the visitor information bureau.
 - 2. Holiday advertising campaigns, and the design and construction of the Porterville booth for the Tulare County Fair.
 - 3. Printing and distribution of informational pamphlets and brochures.
- B. Assume all duties and responsibilities relating to the following:
 - 1. Locating, scheduling, coordinating, and programming for Centennial Park's Friday night activities for September, October, April, May, and June except for the two Fridays coinciding with the Porterville Fair and local high school graduations. Events will include music venues at the Centennial Gazebo, and special themes (i.e. Farmer's Market, Art in the Park, Arts & Crafts Booths, and Community Focus). The City will provide logistical support.
 - 2. Providing any other assistance as may be mutually agreed upon from time to time during the period of this Agreement.
- C. By May 15 of each year, furnish an annual activity report to the City covering the prior year's promotional programs and activities for the reporting period from May 1 through April 30, with specific emphasis on sufficient relevant information to satisfy the terms and intent of this Agreement as heretofore enumerated. The Chamber shall also furnish the City with copies of its annual financial reports within thirty (30) days after they are prepared.

II. Payment By City. As consideration for the above-mentioned responsibilities, the City shall, during the term of this agreement, pay the Chamber the sum of Thirty-Five Thousand Dollars (\$35,000.00) per year. Such annual payments shall be made on or

before September 1 of each year, commencing in 2006. However, such annual payments shall not be made until the City receives and reviews the annual activity report referred to in paragraph I(C) for the proceeding reporting period (May 1 through April 30).

III. Term. This agreement shall be in effect commencing date of execution of this Agreement and shall continue in effect until June 31, 2007, and thereafter on a year-to-year basis, beginning on July 1 of each year, until terminated according to paragraph IV of this Agreement.

IV. Unilateral Termination. This Agreement may be terminated by either party, and for any reason, providing thirty (30) days written notice to the other. This Agreement shall terminate forthwith thirty (30) days following the date such notice is received by the non-terminating party.

V. Annual Review. This Agreement shall be reviewed annually to determine whether it should be amended to increase or decrease the amount of consideration required of either party, including the amount payable to the Chamber. Subject to City budgetary limitations, any increases or decreases shall be based on services provided and expected to be provided during the then current and next fiscal years by the Chamber, and the expected tax revenues to the City from business activities during the then current and next fiscal years.

VI. Amendment. This Agreement may be amended or modified only by a writing signed by both parties. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provisions.

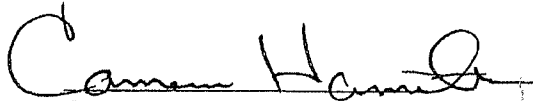
VII. Assignment. This Agreement shall not be assigned by the Chamber without the written consent of the City, and such consent may be withheld for any reason.

VIII. Notices. All notices required by the Agreement shall be in writing and delivered in person or sent by registered mail, postage prepaid.

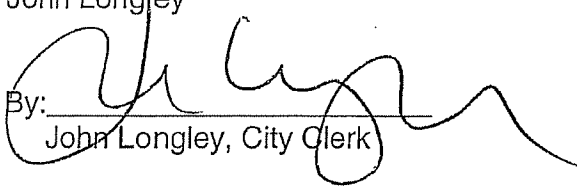
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IX. Relationship of Parties. It is understood that the contractual relationship of the Chamber to the City is that of an independent contractor.

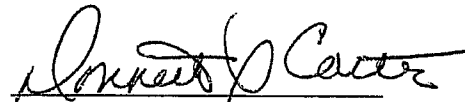
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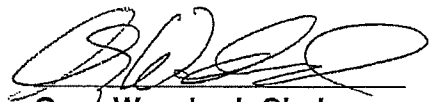

Cameron Hamilton, Mayor

ATTEST
John Longley

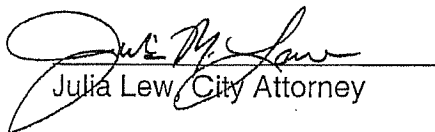
By: 
John Longley, City Clerk

CHAMBER:


Donnette Silva Carter
President/CEO


Greg Woodard, Chair
Chamber Board of Directors

APPROVED AS TO FORM:


Julia Lew, City Attorney

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CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Consideration of Proposals for 2020 Census Redistricting Services for Council Member Districts

SOURCE: City Manager's Office

COMMENT: As the City Council is aware, every ten (10) years following receipt of updated population data from the U.S. Census, electoral districts across the country are required to update its district boundaries. With the City transitioning to by-district elections in 2018, this requirement now applies to the City of Porterville.

The redistricting process is complex and must adhere to local, state and federal law. The recently enacted Fair Maps Act (AB 849 and clean-up bill AB 1276) sets forth specific provisions related to timing, boundary drawing criteria and public participation requirements in California.

Timing

The Fair Maps Act generally prohibits cities from releasing any draft district boundary maps until at least three weeks after the 2020 Census data is published by the State. As the Council is aware, the U.S. Census Bureau was to deliver the 2020 data to the states by March 31, 2021; however, the Census data was pushed to a September 2021 release date due to the COVID-19 pandemic. The City must complete its redistricting by April 17, 2022.

Criteria for Drawing Boundaries

State and federal law set forth criteria that cities must follow when drawing electoral maps, including:

- To the extent practicable, Council districts must be geographically contiguous;
- To the extent practicable, the geographic integrity of any local neighborhood or local “community of interest” must be respected in a manner that minimizes its division;
- Boundaries should be easily identifiable and understandable by residents, and to the extent practicable, Council districts must be bounded by natural and artificial barriers, by streets, or by the boundaries of the City;
- To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, Council districts must be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

Public Participation Requirements

Before adopting a final redistricting Ordinance, the Fair Maps Act requires the City to hold at least four Public Hearings for the public to provide input about the composition of the districts. The criteria for these hearings include:

- At least one Hearing must occur before any maps are drawn;
- At least two Hearings must occur after maps are drawn; and
- At least one Hearing or workshop must be held on a Saturday, Sunday, or after 6:00 P.M. on a weekday.

The City must also make a good faith effort to encourage residents, including those underrepresented and non-English speaking communities, to participate in the redistricting public review process. These efforts must include:

- Providing information to media organizations that offer City news coverage, including those serving language-minority communities;
- Providing information through good government, civil rights, civic engagement and community groups or organizations that are active in the City, including those active in language minority communities and those that have requested to be notified about City redistricting;
- Conducting Public Hearings with live translation into an “applicable language” if requested at least seventy-two (72) hours in advance of a meeting. An “applicable language” is defined as any language that is spoken by a group of City residents with limited English proficiency who constitute three percent (3%) or more of the City’s population, as determined by the Secretary of State;
- Publishing the date, time, and location of any Public Hearing or workshop on the internet at least five (5) days before the Hearing; and publishing draft maps at least seven (7) days prior to adoption.

While some larger agencies form citizen-based redistricting committees to hold Public Hearings and make recommendations to the governing body, it is not a legal requirement.

Website

Additionally, the City is required to establish and maintain a page on its website dedicated to redistricting that includes: 1) a general explanation of the redistricting process; 2) procedures for a member of public to testify during a Public Hearing or to submit written testimony; 3) a calendar of all Public Hearings; 4) the notice and agendas for those Hearings; 5) recordings or written summaries of all Hearings; and 6) all draft and final maps considered and adopted by the City Council. The general description of redistricting and procedures on how to testify must be in English and any applicable language.

Proposals

To assist the City in its redistricting process, City staff sought proposals from five consultants specializing in this field. Of the five firms, two submitted proposals; two were unresponsive; and one declined to quote due to lack of availability. These firms were as follows:

Consultant	Response
Best Best & Krieger LLP	\$42,000
Redistricting Partners	\$42,000
National Demographics Corporation	Unresponsive
Q2 Data & Research, LLC	Unresponsive
Lapkoff & Gobalet Demographic	Declined to Quote

Best Best & Krieger LLP (“BB&K”) is a law firm specializing in the representation of public agencies throughout the state of California and has vast experience in election law. Given the above, staff believes that BB&K would provide the most comprehensive services for the City's redistricting efforts and thereby recommends that the Council approve this proposal and scope of services.

RECOMMENDATION: That the City Council:

- 1) Consider the consultant proposals for redistricting services;
- 2) Approve the proposed agreement and scope of services from Best, Best & Krieger for full redistricting services in the amount of \$42,000;
- 3) Authorize a budget adjustment in the amount of \$42,000 to be paid from the General Fund; and
- 4) Authorize the Mayor to sign said agreement.

ATTACHMENTS:

1. Assembly Bill No. 849 (Bonta)
2. Assembly Bill No. 1276 (Bonta)
3. Best Best & Krieger Proposal
4. Redistricting Partners Proposal

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Deputy City Manager

Final Approver: John Lollis, City Manager



AB-849 Elections: city and county redistricting. (2019-2020)

SHARE THIS:



Date Published: 10/09/2019 09:00 PM

Assembly Bill No. 849

CHAPTER 557

An act to amend Sections 21500, 21501, 21506, 21507, 21600, 21601, 21606, and 21607 of, to add Sections 21500.1, 21507.1, 21508, 21509, 21605, 21607.1, 21608, 21609, 21622, 21623, 21625, 21626, 21627, 21627.1, 21628, and 21629 to, to repeal Sections 21502, 21504, and 21604 of, and to repeal and add Sections 21503, 21602, 21603, 21620, and 21621 of, the Elections Code, and to amend Sections 34874, 34877.5, 34884, and 34886 of the Government Code, relating to elections.

[Approved by Governor October 08, 2019. Filed with Secretary of State
October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 849, Bonta. Elections: city and county redistricting.

Existing law establishes criteria and procedures pursuant to which cities and counties adjust or adopt council and supervisorial district area boundaries, as applicable, for the purpose of electing members of the governing body of each of those local jurisdictions.

This bill would revise and recast these provisions. The bill would require the governing body of each local jurisdiction described above to adopt new district boundaries after each federal decennial census, except as specified. The bill would specify redistricting criteria and deadlines for the adoption of new boundaries by the governing body. The bill would specify hearing procedures that would allow the public to provide input on the placement of boundaries and on proposed boundary maps. The bill would require the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process. By increasing the duties of these local jurisdictions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act.

SEC. 2. Section 21500 of the Elections Code is amended to read:

21500. (a) Following each federal decennial census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the supervisorial districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the county as determined by that census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted as part of a county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The board shall adopt supervisorial district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The board shall adopt supervisorial district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, supervisorial districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single supervisorial district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) To the extent practicable, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division.

(4) Supervisorial district boundaries should be easily identifiable and understandable by residents. To the extent practicable, supervisorial districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the county.

(5) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The board shall not adopt supervisorial district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 3. Section 21500.1 is added to the Elections Code, to read:

21500.1. (a) This chapter applies only to counties electing members of the board of supervisors by districts or from districts.

(b) This chapter shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 4. Section 21501 of the Elections Code is amended to read:

21501. The boundaries of the supervisorial districts shall be adopted by the board no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but no later than 151 days before the county's next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this section does not prohibit the board from holding public hearings or workshops on the placement of supervisorial district boundaries before August 1.

SEC. 5. Section 21502 of the Elections Code is repealed.

SEC. 6. Section 21503 of the Elections Code is repealed.

SEC. 7. Section 21503 is added to the Elections Code, to read:

21503. (a) After redistricting or districting pursuant to Section 21500, a board shall not adopt new supervisorial district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the board to redistrict.

(2) The board is settling a legal claim that its supervisorial district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this chapter.

(3) The boundaries of the county change by the addition or subtraction of territory.

(b) This section does not prohibit a board from adopting supervisorial districts between federal decennial censuses if the board is adopting supervisorial districts for the first time, including when a board adopts supervisorial districts for the purpose of transitioning from electing its supervisors in at-large elections to elections by districts or from districts.

SEC. 8. Section 21504 of the Elections Code is repealed.

SEC. 9. Section 21506 of the Elections Code is amended to read:

21506. (a) The term of office of any supervisor who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the supervisor was elected.

(b) At the first election for county supervisors in each county following adoption of the boundaries of supervisorial districts, a supervisor shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) A change in the boundaries of a supervisorial district shall not be made between the direct primary election and the general election.

(d) The successor to the office of supervisor in a supervisorial district for which the district boundaries have been changed shall be a resident and voter of that supervisorial district.

SEC. 10. Section 21507 of the Elections Code is amended to read:

21507. Before adjusting the boundaries of a district pursuant to Section 21501 or 21503, or for any other reason, the board shall hold public hearings on the proposal in accordance with Section 21507.1. This section does not apply when a county transitions from at-large to district-based elections.

SEC. 11. Section 21507.1 is added to the Elections Code, to read:

21507.1. (a) Before adopting a final map, the board shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more supervisorial districts.

(1) At least one public hearing shall be held before the board draws a draft map or maps of the proposed supervisorial district boundaries.

(2) At least two public hearings shall be held after the board has drawn a draft map or maps of the proposed supervisorial district boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the board that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the board may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The board may have county staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The board may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 12. Section 21508 is added to the Elections Code, to read:

21508. (a) The board shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. A good faith effort satisfies the requirements of this subdivision. These steps shall include the following:

(1) Providing information to media organizations that provide county news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the county, including those active in language minority communities, or that have requested to be notified concerning county redistricting.

(b) The board shall arrange for the live translation in an applicable language of a public hearing or workshop held pursuant to this chapter if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the board shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the county's next regular election, the board may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the board provided that, if there are fewer than 179 days until the county's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the board or by employees of the county shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed supervisorial district, to the extent the county has that data.

(e) The board shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The county shall either record or prepare a written summary of each public comment and board deliberation made at every public hearing or workshop held pursuant to this article. The county shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The board shall establish, and maintain for at least 10 years after the adoption of new supervisorial district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the county's existing internet website or another internet website maintained by the county. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the county, in English and applicable languages.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the board, in English and applicable languages.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop meets the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The audio or audiovisual recording and adopted minutes of each public hearing.

(6) Each draft map considered by the board at a public hearing.

(7) The adopted final map of supervisorial district boundaries.

(h) For purposes of this section, "applicable language" means any language in which ballots are required to be provided in the county pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).

(i) This section does not apply when a county transitions from at-large to district-based elections.

(j) The Secretary of State shall publish on the internet a template explaining the county redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503). The template shall be published in a conspicuous location on the Secretary of State's internet website.

SEC. 13. Section 21509 is added to the Elections Code, to read:

21509. (a) If the board does not adopt supervisorial district boundaries by the deadlines set forth in Section 21501, the board shall immediately petition the superior court of the county for an order adopting supervisorial district boundaries. If the board does not petition the superior court within five days after the deadline, any resident of the county may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the county for doing so.

(b) (1) Upon finding that a petition filed pursuant to subdivision (a) is valid, the superior court shall adopt supervisorial district boundaries in accordance with the criteria set forth in Section 21500, which shall be used in the county's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new supervisorial district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the supervisorial district boundaries. The county shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the supervisorial district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the county in producing and using whatever data, computer models and programs, and technical assistance that was made available to the board and county personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the county of a request for county funding for the necessary expenses of the special master and the special master's staff.

(5) The supervisorial district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the board.

SEC. 14. Section 21600 of the Elections Code is amended to read:

21600. (a) This article applies only to general law cities electing members of the legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 15. Section 21601 of the Elections Code is amended to read:

21601. (a) Following each decennial federal census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for any or all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by that census.

(2) Notwithstanding paragraph (1), an incarcerated person as that term is used in Section 21003, shall not be counted as part of a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 16. Section 21602 of the Elections Code is repealed.

SEC. 17. Section 21602 is added to the Elections Code, to read:

21602. The boundaries of the council districts shall be adopted by the council no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but not later than 151 days before the city's next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this section does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before August 1.

SEC. 18. Section 21603 of the Elections Code is repealed.

SEC. 19. Section 21603 is added to the Elections Code, to read:

21603. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district under the circumstances described in subdivision (a) if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21601.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population, as determined by the most recent federal decennial census.

SEC. 20. Section 21604 of the Elections Code is repealed.

SEC. 21. Section 21605 is added to the Elections Code, to read:

21605. (a) After redistricting or districting pursuant to Section 21601 or 21603, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city expand by the addition of new territory pursuant to Section 21603.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

SEC. 22. Section 21606 of the Elections Code is amended to read:

21606. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) The successor to the office in a council district for which the boundaries have changed shall be a resident and voter of that council district.

SEC. 23. Section 21607 of the Elections Code is amended to read:

21607. Before adopting the boundaries of a council district pursuant to Section 21601, 21603, or 21604, or for any other reason, the council shall hold public hearings on the proposal in accordance with Section 21607.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 24. Section 21607.1 is added to the Elections Code, to read:

21607.1. (a) Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

(1) At least one public hearing shall be held before the council draws a draft map or maps of the proposed council boundaries.

(2) At least two public hearings shall be held after the council has drawn a draft map or maps of the proposed council boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the council that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the council may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The council may have city staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The council may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 25. Section 21608 is added to the Elections Code, to read:

21608. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. A good faith effort satisfies the requirements of this subdivision. These steps shall include the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the city, including those active in language minority communities, or that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation of a public hearing or workshop held pursuant to this article in an applicable language if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the city's next regular election, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 179 days until the city's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees of the city shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed council district, to the extent the city has that data.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website maintained by the city. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the city in English and any applicable language.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the council at a public hearing.

(7) The adopted final map of council district boundaries.

(h) For purposes of this section, "applicable language" means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city's total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State's internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau's American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State's determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State's internet website that is described in subdivision (h).

SEC. 26. Section 21609 is added to the Elections Code, to read:

21609. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21602 or subdivision (a) or (b) of Section 21604, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to this subdivision is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21601, which shall be used in the city's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

SEC. 27. Section 21620 of the Elections Code is repealed.

SEC. 28. Section 21620 is added to the Elections Code, to read:

21620. (a) This article applies to charter cities that elect members of the charter city's legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 29. Section 21621 of the Elections Code is repealed.

SEC. 30. Section 21621 is added to the Elections Code, to read:

21621. (a) Following each federal decennial census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated

persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 31. Section 21622 is added to the Elections Code, to read:

21622. (a) The boundaries of the council districts shall be adopted by the council no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but no later than 151 days before the city's next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this subdivision does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before August 1.

(b) This section does not apply to a charter city that has adopted a different redistricting deadline by ordinance or in its city charter before October 1, 2021, and October 1 of each year ending in the number one thereafter.

SEC. 32. Section 21623 is added to the Elections Code, to read:

21623. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21621.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population as determined by the most recent federal decennial census.

(c) This section does not apply to a charter city that has adopted, by ordinance or in its city charter, a different standard for adding new territory to existing council districts.

SEC. 33. Section 21625 is added to the Elections Code, to read:

21625. (a) After redistricting or districting pursuant to Section 21621 or 21623, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city expand by the addition of new territory pursuant to Section 21623.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

(c) This section does not apply to a charter city that has adopted different rules for mid-cycle redistricting in its city charter.

SEC. 34. Section 21626 is added to the Elections Code, to read:

21626. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) The successor to the office in a council district for which the boundaries have changed shall be a resident and voter of that council district.

SEC. 35. Section 21627 is added to the Elections Code, to read:

21627. Before adopting the boundaries of a council district pursuant to Section 21621, 21623, or 21624, or for any other reason, the council shall hold public hearings on the proposal, in accordance with Section 21627.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 36. Section 21627.1 is added to the Elections Code, to read:

21627.1. (a) Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

(1) At least one public hearing shall be held before the council draws a draft map or maps of the proposed council boundaries.

(2) At least two public hearings shall be held after the council has drawn a draft map or maps of the proposed council boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the council that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the council may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The council may have city staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The council may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 37. Section 21628 is added to the Elections Code, to read:

21628. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. These steps shall include a good faith effort to do all of the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the city, including those active in language minority communities, or that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation of a public hearing or workshop held pursuant to this article in an applicable language if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the city's next regular election, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 179 days until the city's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees of the city shall be accompanied with information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed council district, to the extent the city has that data.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website maintained by the city. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the city in English and any applicable language.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the council at a public hearing.

(7) The adopted final map of council district boundaries.

(h) For purposes of this section, "applicable language" means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city's total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State's internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau's American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of

State's determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State's internet website that is described in subdivision (h).

SEC. 38. Section 21629 is added to the Elections Code, to read:

21629. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21622 or subdivision (a) or (b) of Section 21624, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to this subdivision is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21621, which shall be used in the city's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

(c) This section does not apply to a charter city that has adopted in its city charter a different method for adopting city council district boundaries when a redistricting deadline is missed.

SEC. 39. Section 34874 of the Government Code is amended to read:

34874. (a) An amendatory ordinance altering the boundaries of the legislative districts established pursuant to this article shall not be submitted to the registered voters until the ordinance has been submitted to the planning commission of the city or, in absence of a planning commission, to the legislative body of said city for an examination as to the definiteness and certainty of the boundaries of the legislative districts proposed.

(b) An amendatory ordinance altering the boundaries of legislative districts shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable.

SEC. 40. Section 34877.5 of the Government Code is amended to read:

34877.5. (a) After an ordinance is passed by the voters pursuant to Section 34876.5, or after an ordinance is enacted by the legislative body pursuant to Section 34886, the legislative body shall prepare a proposed map that describes the boundaries and numbers of the districts for the legislative body. In preparing the proposed

map, the legislative body shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and shall seek public input, including accepting proposed maps submitted by the public.

(b) If the legislative body is changing from an at-large method of election to a district-based election, as those terms are defined in Section 14026 of the Elections Code, the legislative body shall hold public hearings pursuant to Section 10010 of the Elections Code. If the legislative body is otherwise adjusting the district boundaries, the legislative body shall hold public hearings on the proposed district boundaries pursuant to Section 21607 or 21627 of the Elections Code, as applicable.

SEC. 41. Section 34884 of the Government Code is amended to read:

34884. (a) If, at the time a vote is held on the subject of incorporation of a new city, a majority of the votes cast is for incorporation and, if, in accordance with Section 57116, a majority of the votes cast on the question of whether members of the city council in future elections are to be elected by district or at large is in favor of election by district, all of the following procedures apply:

(1) Before the first day on which voters may nominate candidates for election at the next regular municipal election, the legislative body shall, by ordinance or resolution, establish the boundaries of the districts of the legislative body. The districts shall be substantially equal in population as required by the United States Constitution. The districts shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable.

(2) The terms of office of the two members elected with the lowest vote shall expire on the Tuesday succeeding the next regular municipal election. At that election, members shall be elected by district in the even-numbered districts and shall hold office for four years.

(3) The terms of office of the three members elected with the highest vote shall expire on the Tuesday succeeding the second regular municipal election following the incorporation. At that election, members shall be elected by district in the odd-numbered districts and shall hold office for four years.

(b) The result of the vote cast on the question of whether members of the city council in future elections are to be elected by district or at large shall not preclude the submission to the voters at any future election of a measure in accordance with Section 34871.

SEC. 42. Section 34886 of the Government Code is amended to read:

34886. Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

SEC. 43. The district boundary criteria specified in this act apply to supervisorial and council district boundaries that are adopted or readopted on or after January 1, 2020. Supervisorial and council district boundaries adopted before January 1, 2020, shall comply with the applicable district boundary criteria in effect at the time of their adoption.

SEC. 44. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



AB-1276 Local redistricting. (2019-2020)

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Assembly Bill No. 1276

CHAPTER 90

An act to amend Sections 21500, 21500.1, 21501, 21506, 21507, 21508, 21534, 21552, 21600, 21601, 21602, 21605, 21606, 21607, 21608, 21609, 21620, 21621, 21622, 21623, 21625, 21626, 21627, 21627.1, 21628, 21629, and 23000 of, and to add Section 21630 to, the Elections Code, relating to elections.

[Approved by Governor September 18, 2020. Filed with Secretary of State September 18, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, Bonta. Local redistricting.

(1) Existing law establishes procedures and criteria pursuant to which counties, general law cities, and charter cities adopt supervisorial and council district boundaries for the purpose of electing members of a county's board of supervisors or a city's council.

This bill would make technical, clarifying, and conforming changes to make these provisions consistent in their application to those jurisdictions.

(2) Under the redistricting procedures described above, existing law requires those jurisdictions to adopt the boundaries of districts no earlier than August 1 in each year ending in the number 1, but not later than 151 days before the jurisdiction's next regular election occurring in March in each year ending in the number 2. Existing law requires the board of supervisors or the council to publish the date, time, and location of a public hearing or workshop on redistricting, or a draft map pending adoption as a final map, on the internet at least 3 days in advance if the hearing or workshop is held, or the draft map will be adopted as a final map, within 179 days of the jurisdiction's next regular election. Existing law requires the Citizens Redistricting Commission and the Legislature to coordinate efforts to make publicly available a computerized database which contains data necessary for redistricting. Existing law authorizes a candidate for elective office in a county or charter city to submit a petition containing signatures of a specified number of registered voters in lieu of a filing fee, and requires an elections official to make forms for securing signatures available commencing 60 days before the first day for circulating nomination papers, except as specified.

This bill would, for redistricting occurring in 2031 and thereafter, instead require district boundaries to be adopted no later than 205 days before the jurisdiction's next regular election occurring after January 1 in each year ending in the number 2. For redistricting occurring before 2031, the bill would require boundaries to be adopted not later than 174 days before the next regular election if the election is held after January 1, 2022, and before July 1, 2022, and not later than 205 days before the next regular election if the election is held on or after July 1, 2022. For redistricting in counties and charter cities to which the 174 day deadline applies, the bill would prohibit forms for securing signatures in lieu of a filing fee from being made available until at least 28 days after

the adoption of a final map, and would require an elections official in a county or charter city to reduce the number of signatures required, as specified, if that prohibition reduces the amount of time in which a candidate can collect signatures before the first day for circulating nomination papers. The bill would instead require the board of supervisors or council to publish the date, time, and location of a hearing or workshop on the internet at least 3 days in advance if the hearing or workshop is held within 28 days of the deadline for the jurisdiction to adopt district boundaries. The bill would prohibit a board of supervisors or council, or their contractors, from releasing draft maps of districts earlier than 3 weeks after the database described above is made publicly available, unless the database is made available less than 90 days before the deadline to adopt a map, in which case the 3 week period would be shortened or waived, as specified.

(4) Existing law establishes the Citizens Redistricting Commission in the County of Los Angeles and the Independent Redistricting Commission in the County of San Diego for the purpose of adjusting the boundaries of supervisorial districts of the boards of supervisors in those counties. Existing law requires each of the supervisorial districts in the jurisdiction of one of those commissions to have a reasonably equal population with other districts in the same jurisdiction, except as specified. Existing law requires each of those commissions to adopt a redistricting plan adjusting the boundaries of supervisorial districts and to file the plan with specified county officials before August 15 of the year following the year in which each federal decennial census is taken. Existing law requires the commissions to conduct public hearings before drawing a map that proposes redistricting. Existing law provides that a redistricting plan is not effective until 30 days after it is filed.

This bill would require the measure of population equality for supervisorial districts in those counties to be based on the total population of residents of the respective county as determined by the most recent federal decennial census for which specified redistricting data is available, and would prohibit an incarcerated person from being counted as part of a county's population, unless specified redistricting data shows that the incarcerated person's last known place of residence may be assigned to the county. The bill would instead require each of those commissions to file their redistricting plans pursuant to the deadlines for adopting district boundaries described above that are applicable to counties. The bill would also apply to those commissions the provisions described above that prohibit counties or their contractors from releasing draft maps within certain time periods following the date on which redistricting data becomes publicly available. The bill would authorize the commissions to change the location of a hearing, including the use of virtual hearings that permit remote access and participation, if a public health order that prohibits large gatherings is in place, subject to specified requirements. The bill would repeal the provisions described above delaying the effective date of a redistricting plan.

(5) The California Constitution authorizes a city to adopt a charter by a majority vote of its electors, and authorizes a charter city to make and enforce all ordinances and regulations in respect to municipal affairs. The California Constitution provides that it shall be competent in a city charter to provide for the manner in which, the method by which, the times at which, and the terms for which municipal officers and employees shall be elected or appointed. Existing law establishes criteria pursuant to which charter cities adjust or adopt council district area boundaries, as applicable, for the purpose of electing members of the city council. These criteria encourage council districts to be geographically contiguous and compact, to respect the geographic integrity of communities of interest, as defined, and to have easily identifiable and understandable boundaries.

This bill would provide that these criteria do not apply to a charter city that has adopted comprehensive or exclusive redistricting criteria, as defined, in its city charter. The bill would clarify that if a council assigns the power to adopt new district boundaries to an advisory, hybrid, or independent redistricting commission, the charter city remains subject to the same redistricting deadlines, requirements, and restrictions that are applicable to the council.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21500 of the Elections Code is amended to read:

21500. (a) Following a county's decision to elect its board using district-based elections, or following each federal decennial census for a county whose board is already elected using district-based elections, the board shall adopt boundaries for all of the supervisorial districts of the county so that the supervisorial districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are

available.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The board shall adopt supervisorial district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The board shall adopt supervisorial district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, supervisorial districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single supervisorial district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) To the extent practicable, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division.

(4) Supervisorial district boundaries should be easily identifiable and understandable by residents. To the extent practicable, supervisorial districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the county.

(5) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The board shall not adopt supervisorial district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 2. Section 21500.1 of the Elections Code is amended to read:

21500.1. (a) This chapter applies to a county that elects members of the county's board of supervisors by districts or from districts.

(b) This chapter shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 3. Section 21501 of the Elections Code is amended to read:

21501. (a) (1) For redistricting occurring in 2031 and thereafter, the boundaries of the supervisorial districts shall be adopted by the board not later than 205 days before the county's next regular election occurring after January 1 in each year ending in the number two.

(2) For redistricting occurring before 2031 and where a county has a regular election occurring after January 1, 2022, and before July 1, 2022, the boundaries of the supervisorial districts shall be adopted by the board not later than 174 days before that election. Notwithstanding subdivision (b) of Section 8106, the forms required under that subdivision shall not be made available until at least 28 days after the adoption of a final map. The elections official shall reduce the required number of signatures for the in-lieu-filing-fee petition, as specified in subdivision (a) of Section 8106, by the same proportion as the reduction in time for the candidate to collect signatures.

(3) For redistricting occurring before 2031 and where a county does not have a regular election occurring after January 1, 2022 and before July 1, 2022, the boundaries of the supervisorial districts shall be adopted by the board not later than 205 days before the county's next regular election occurring on or after July 1, 2022.

(b) This section does not apply when a county transitions from at-large to district-based elections.

SEC. 4. Section 21506 of the Elections Code is amended to read:

21506. (a) The term of office of any supervisor who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the supervisor was elected.

(b) At the first election for county supervisors in each county following adoption of the boundaries of supervisorial districts, excluding a special election to fill a vacancy or a recall election, a supervisor shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire. This subdivision does not apply when a county transitions from at-large to district-based elections.

(c) For a county employing both a primary and a general election, a change in the boundaries of a supervisorial district shall not be made between the direct primary election and the general election.

(d) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a board of supervisors unless that person meets the requirements of Section 201 of the Elections Code and Section 24001 of the Government Code.

SEC. 5. Section 21507 of the Elections Code is amended to read:

21507. Before adopting the boundaries of a district pursuant to Section 21501 or 21503, or for any other reason, the board shall hold public hearings on the proposal in accordance with Section 21507.1. This section does not apply when a county transitions from at-large to district-based elections.

SEC. 6. Section 21508 of the Elections Code is amended to read:

21508. (a) The board shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. These steps shall include a good faith effort to do all of the following:

(1) Providing information to media organizations that provide county news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, and community groups or organizations that are active in the county, including those active in language minority communities, and those that have requested to be notified concerning county redistricting.

(b) The board shall arrange for the live translation in an applicable language of a public hearing or workshop held pursuant to this chapter if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the board shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 28 days until the deadline to adopt boundaries, the board may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the board provided that, if there are fewer than 28 days until the deadline to adopt boundaries, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the board or by employees or contractors of the county shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed supervisorial district, to the extent the county has that data.

(3) (A) The board and employees or contractors of the county shall not release draft maps of supervisorial districts earlier than three weeks after the block-level redistricting database required by subdivision (b) of Section 8253 of the Government Code is first made publicly available. This subparagraph does not prohibit the board from holding public hearings or workshops on the placement of supervisorial district boundaries before the earliest date that draft maps of supervisorial districts may be released.

(B) If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 90 days and more than 59 days, then the waiting period required by subparagraph (A) is reduced to one week. If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 60 days, then the waiting period required by subparagraph (A) is waived.

(e) The board shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The county shall either record or prepare a written summary of each public comment and board deliberation made at every public hearing or workshop held pursuant to this article. The county shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The board shall establish, and maintain for at least 10 years after the adoption of new supervisorial district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the county's existing internet website or another internet website maintained by the county. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the county, in English and applicable languages.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the board, in English and applicable languages.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the board at a public hearing.

(7) The adopted final map of supervisorial district boundaries.

(h) For purposes of this section, "applicable language" means any language in which ballots are required to be provided in the county pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).

(i) This section does not apply when a county transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the county redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503). The template shall be published in a conspicuous location on the Secretary of State's internet website.

SEC. 7. Section 21534 of the Elections Code is amended to read:

21534. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event any state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include, but are not limited to, setting up multiple rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the internet website of the County of Los Angeles.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of Los Angeles that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or

submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official by the map adoption deadline set forth in subdivision (a) of Section 21501. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (d) of Section 21508.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 8. Section 21552 of the Elections Code is amended to read:

21552. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or is allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where it does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event any state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include, but are not limited to, setting up multiple rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the internet website of the County of San Diego.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of San Diego who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of San Diego that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide for reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the Clerk of the Board of Supervisors by the map adoption deadline set forth in subdivision (a) of Section 21501. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (d) of Section 21508.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 9. Section 21600 of the Elections Code is amended to read:

21600. (a) This article applies to a general law city that elects members of the city's legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 10. Section 21601 of the Elections Code is amended to read:

21601. (a) Following a city's decision to elect its council using district-based elections, or following each federal decennial census for a city whose council is already elected using district-based elections, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(2) Notwithstanding paragraph (1), an incarcerated person as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 11. Section 21602 of the Elections Code is amended to read:

21602. (a) (1) For redistricting occurring in 2031 and thereafter, the boundaries of the council districts shall be adopted by the council not later than 205 days before the city's next regular election occurring after January 1 in each year ending in the number two.

(2) For redistricting occurring before 2031 and where a city has a regular election occurring after January 1, 2022, and before July 1, 2022, the boundaries of the council districts shall be adopted by the council not later than 174 days before that election.

(3) For redistricting occurring before 2031 and where a city does not have a regular election occurring after January 1, 2022 and before July 1, 2022, the boundaries of the council districts shall be adopted by the council not later than 205 days before the city's next regular election occurring on or after July 1, 2022.

(b) This section does not apply when a city transitions from at-large to district-based elections.

SEC. 12. Section 21605 of the Elections Code is amended to read:

21605. (a) After redistricting or districting pursuant to Section 21601 or 21603, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city change by the addition of territory pursuant to Section 21603 or by the subtraction of territory.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

SEC. 13. Section 21606 of the Elections Code is amended to read:

21606. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, excluding a special election to fill a vacancy or a recall election, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire. This subdivision does not apply when a city transitions from at-large to district-based elections.

(c) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a city council unless that person meets the requirements of Section 201 of the Elections Code and Section 34882 of the Government Code.

SEC. 14. Section 21607 of the Elections Code is amended to read:

21607. Before adopting the boundaries of a council district pursuant to Section 21601 or 21603, or for any other reason, the council shall hold public hearings on the proposal in accordance with Section 21607.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 15. Section 21608 of the Elections Code is amended to read:

21608. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. These steps shall include a good faith effort to do all of the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, and community groups or organizations that are active in the city, including those active in language minority communities, and those that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation in an applicable language of a public hearing or workshop held pursuant to this article if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 28 days until the deadline to adopt boundaries, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 28 days until the deadline to adopt boundaries, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees or contractors of the city shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed council district, to the extent the city has that data.

(3) (A) The council and employees or contractors of the city shall not release draft maps of council districts earlier than three weeks after the block-level redistricting database required by subdivision (b) of Section 8253 of the Government Code is first made publicly available. This subparagraph does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before the earliest date that draft maps of council districts may be released.

(B) If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 90 days and more than 59 days, the waiting period required by subparagraph (A) is reduced to one week. If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 60 days, then the waiting period required by subparagraph (A) is waived.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website maintained by the city. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the city in English and applicable languages.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the council at a public hearing.

(7) The adopted final map of council district boundaries.

(h) For purposes of this section, "applicable language" means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city's total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State's internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau's American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State's determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January 1 in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the

requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State's internet website that is described in subdivision (h).

SEC. 16. Section 21609 of the Elections Code is amended to read:

21609. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21602, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to subdivision (a) is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21601, which shall be used in the city's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

SEC. 17. Section 21620 of the Elections Code is amended to read:

21620. (a) This article applies to a charter city that elects members of the city's legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 18. Section 21621 of the Elections Code is amended to read:

21621. (a) Following a city's decision to elect its council using district-based elections, or following each federal decennial census for a city whose council is already elected using district-based elections, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

(e) Subdivision (c) does not apply to a charter city that has adopted comprehensive or exclusive redistricting criteria in its city charter. For purposes of this subdivision, "comprehensive or exclusive" means either that the city's charter excludes consideration of redistricting criteria other than those that are identified in the city charter or that the city's charter provides two or more traditional criteria for redistricting other than the requirement that districts be equal in population.

SEC. 19. Section 21622 of the Elections Code is amended to read:

21622. (a) (1) For redistricting occurring in 2031 and thereafter, the boundaries of the council districts shall be adopted by the council not later than 205 days before the city's next regular election occurring after January 1 in each year ending in the number two.

(2) For redistricting occurring before 2031 and where a city has a regular election occurring after January 1, 2022 and before July 1, 2022, the boundaries of the council districts shall be adopted by the council not later than 174 days before that election. For cities that charge candidates a filing fee, notwithstanding subdivision (b) of Section 8106, the forms required under that subdivision shall not be made available until at least 28 days after the adoption of a final map. The elections official shall reduce the required number of signatures for the in-lieu-filing-fee petition, as specified in subdivision (a) of Section 8106, by the same proportion as the reduction in time for the candidate to collect signatures.

(3) For redistricting occurring before 2031 and where a city does not have a regular election occurring after January 1, 2022 and before July 1, 2022, the boundaries of the council districts shall be adopted by the council not later than 205 days before the city's next regular election occurring on or after July 1, 2022.

(b) This section does not apply to a charter city that has adopted a different redistricting deadline by ordinance or in its city charter.

(c) This section does not apply when a city transitions from at-large to district-based elections.

SEC. 20. Section 21623 of the Elections Code is amended to read:

21623. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district under the circumstances described in subdivision (a) if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21621.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population as determined by the most recent federal decennial census.

(c) This section does not apply to a charter city that has adopted, by ordinance or in its city charter, a different standard for adding new territory to existing council districts.

SEC. 21. Section 21625 of the Elections Code is amended to read:

21625. (a) After redistricting or districting pursuant to Section 21621 or 21623, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city change by the addition of territory pursuant to Section 21623 or by the subtraction of territory.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

(c) This section does not apply to a charter city that has adopted different rules for mid-cycle redistricting in its city charter.

SEC. 22. Section 21626 of the Elections Code is amended to read:

21626. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, excluding a special election to fill a vacancy or a recall election, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire. This subdivision does not apply when a city transitions from at-large to district-based elections.

(c) For a city employing both a primary and a general election, a change in the boundaries of a council district shall not be made between the direct primary election and the general election.

(d) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a city council unless that person meets the requirements of Section 201 of the Elections Code and Section 34882 of the Government Code.

SEC. 23. Section 21627 of the Elections Code is amended to read:

21627. Before adopting the boundaries of a council district pursuant to Section 21621 or 21623, or for any other reason, the council shall hold public hearings on the proposal in accordance with Section 21627.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 24. Section 21627.1 of the Elections Code is amended to read:

21627.1. (a) Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

(1) At least one public hearing shall be held before the council draws a draft map or maps of the proposed council boundaries.

(2) At least two public hearings shall be held after the council has drawn a draft map or maps of the proposed council boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the council that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the council may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The council may have city staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The council may establish an advisory redistricting commission to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 25. Section 21628 of the Elections Code is amended to read:

21628. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. These steps shall include a good faith effort to do all of the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, and community groups or organizations that are active in the city, including those active in language minority communities, and those that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation in an applicable language of a public hearing or workshop held pursuant to this article if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 28 days until the deadline to adopt boundaries, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 28 days until the deadline to adopt boundaries, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees or contractors of the city shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed council district, to the extent the city has that data.

(3) (A) The council and employees or contractors of the city shall not release draft maps of council districts earlier than three weeks after the block-level redistricting database required by subdivision (b) of Section 8253 of the Government Code is first made publicly available. This subparagraph does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before the earliest date that draft maps of council districts may be released.

(B) If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 90 days and more than 59 days, then the waiting period required by subparagraph (A) is reduced to one week. If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 60 days, then the waiting period required by subparagraph (A) is waived.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or

written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website maintained by the city. The web page shall include, or link to, all of the following information:

- (1) A general explanation of the redistricting process for the city in English and applicable languages.
- (2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.
- (3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).
- (4) The notice and agenda for each public hearing and workshop.
- (5) The recording or written summary of each public hearing and workshop.
- (6) Each draft map considered by the council at a public hearing.
- (7) The adopted final map of council district boundaries.

(h) For purposes of this section, "applicable language" means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city's total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State's internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau's American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State's determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State's internet website that is described in subdivision (h).

SEC. 26. Section 21629 of the Elections Code is amended to read:

21629. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21622, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to subdivision (a) is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21621, which shall be used in the city's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

(c) This section does not apply to a charter city that has adopted in its city charter a different method for adopting city council district boundaries when a redistricting deadline is missed.

SEC. 27. Section 21630 is added to the Elections Code, to read:

21630. If a council assigns the responsibility to recommend or to adopt new district boundaries to a hybrid or independent redistricting commission as defined in Section 23000, the charter city remains subject to the redistricting deadlines, requirements, and restrictions that apply to the council under this article, unless otherwise exempted by law. A redistricting commission described in this section may perform the duties required of a city council under this article.

SEC. 28. Section 23000 of the Elections Code is amended to read:

23000. For purposes of this chapter, the following terms have the following meanings:

(a) "Advisory redistricting commission" means a body that recommends to a legislative body placement of the district boundaries for that legislative body.

(b) "Family member" means a spouse, parent, sibling, child, or in-law.

(c) "Hybrid redistricting commission" means a body that recommends to a legislative body two or more maps for the placement of the district boundaries for that legislative body, where the legislative body must adopt one of those maps without modification, except as may be required to comply with state or federal law.

(d) "Independent redistricting commission" means a body, other than a legislative body, that is empowered to adopt the district boundaries of a legislative body.

(e) "Legislative body" means a county board of supervisors, a city council of a general law city, a governing board of a school district, a governing board of a community college district, or an elected governing board of a special district.

(f) "Local jurisdiction" means a county, general law city, school district, community college district, or special district. "Local jurisdiction" does not include a charter city.

(g) "Redistricting" means either districting or redistricting.

(h) "Spouse" means a spouse or registered domestic partner.

SEC. 29. This act and Division 21 (commencing with Section 21000) of the Elections Code shall not be construed as limiting the ability of a charter city to create an advisory, hybrid, or independent redistricting commission. The amendment of Section 23000 of, and the addition of Section 21630 to, the Elections Code made by this act do not constitute a change in, but are declaratory of, existing law.

SEC. 30. The amendment of Sections 21500 and 21601, and subdivision (a) of Section 21621, of the Elections Code made by this act do not constitute a change in, but are declaratory of, existing law.



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Proposal to Provide

Redistricting Consulting Services

Presented to:

City of Porterville

October 13, 2021

Stephanie Smith
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COVER LETTER

October 13, 2021

EMAIL DELIVERY

Patrice Hildreth
Deputy City Manager
City of Porterville
291 North Main Street
Porterville, CA 93257
Email: phildreth@ci.porterville.ca.us

Re: Proposal for Redistricting Services

Dear Ms. Hildreth:

Best Best & Krieger LLP (BB&K) is pleased to present this proposal to the City of Porterville (City) to provide professional redistricting consulting services. With 130 years of experience advising public agencies in California regarding all aspects of election law and election-related issues including districting, redistricting, initiatives, referendums, and voting rights, we are excited to assist the City with its redistricting needs.

A MULTI-DIMENSIONAL CHALLENGE

The redistricting process demands expertise in a variety of disciplines that aren't naturally found together in a single individual or firm. For this reason, it is common to find firms managing these processes that may have training in one field (e.g., demography) while lacking any formal training or expertise in other areas that are equally important (e.g., law). Unfortunately, redistricting processes also tend to be led by consultants who have spent their careers in private practice. Having never actually worked for a public agency, they often have difficulty appreciating the many ways in which the redistricting process can create ongoing challenges and long-lasting impacts for an agency's operations, officials, candidates, and constituents.

WHAT MAKES OUR TEAM DIFFERENT

The BB&K team delivers expertise and experience in each of the disciplines that are required to ensure the City redistricting process is handled seamlessly, professionally, in accordance with all legal requirements, and with the proper levels of engagement for the City, stakeholders and constituents. Specifically, we bring to the table:

Legal Expertise

BB&K's attorneys are true experts in election law, including the minutia of state and federal constitutional and statutory requirements that govern districting and redistricting. These include requirements under the Federal Voting Rights Act (FVRA), the 14th Amendment, the California Voting Rights Act (CVRA), and redistricting guidelines in the California Constitution, government code, elections code, and local charters and ordinances.

We also actively monitor and participate in case law that can shift the opportunities and risks associated with districting and redistricting. As legal questions arise, our team of attorneys will ensure that the City of Porterville receives correct answers and insightful advice.

Expertise in Community Data

Understanding your community's characteristics is central to the redistricting process. Although census data forms the building blocks for any redistricting exercise, a deeper analysis of community characteristics, shifting demographics, voter data, election outcomes, and/or attitudinal profiles can help illuminate the process.

Public Agency Perspective

If you choose BB&K as your consultant for redistricting services, I will serve as project manager and primary contact and ensure that all tasks are completed on time. I am BB&K's director of election services and have more than 30 years of public sector experience, including 15 years as a city clerk in California. Having worked through multiple districting processes in different jurisdictions, I understand the mechanics, logistics, and the politics of redistricting from the agency's perspective as well as the importance of having that perspective well-represented throughout the process. As the City embarks on the redistricting journey, staff will find that I am an experienced ally for my clients; and I will help guide staff through the various stages of the process.

The hallmark of BB&K's success is the relationships we forge with our clients. Grounded in integrity, respect, and a shared commitment to excellence, these relationships create unity and ensure that we are fulfilling our role as a trusted advisor. We are excited at the prospect of building a strong relationship with the City of Porterville. If you have any questions about our proposal or would like to discuss any aspect in further detail, please do not hesitate to contact me by email at stephanie.smith@bbklaw.com or by phone at (949) 263-2612.

Sincerely,



Stephanie Smith
Director of Election Services
of BEST BEST & KRIEGER LLP

PROPOSAL

All California public agencies that hold elections by district must ensure that their district boundaries are mapped according to the latest U.S. Census results. Districting rules under the CVRA are very specific and complex, and the April 2022 deadline to complete redistricting activities from the 2020 U.S. Census results will approach fast. In addition, in the wake of the July 2020 California Appellate Court decision in *Pico Neighborhood Association v. City of Santa Monica*, uncertainties and risks of costly court challenges exist for public agencies until and unless cases are heard by the California Supreme Court.

The proposed team offers the City seamless and proficient consultant services at a competitive, flat fee to meet the City's redistricting needs. Our combined unique experience coupled with our unparalleled attention to client satisfaction will provide the City with services that exceed its redistricting goals.

BB&K's election law team is well versed in all aspects of the CVRA and FVRA. We have extensive experience helping public agencies respond to CVRA and FVRA violations claims and demands made to change districts by a well-coordinated cadre of plaintiffs. We help local public agencies convert to a "by-district" format, working to establish proportional voting districts as required by federal and state law. We also advise on redistricting/reapportionment issues that arise whenever a new federal census report is published.

PROPOSED TEAM

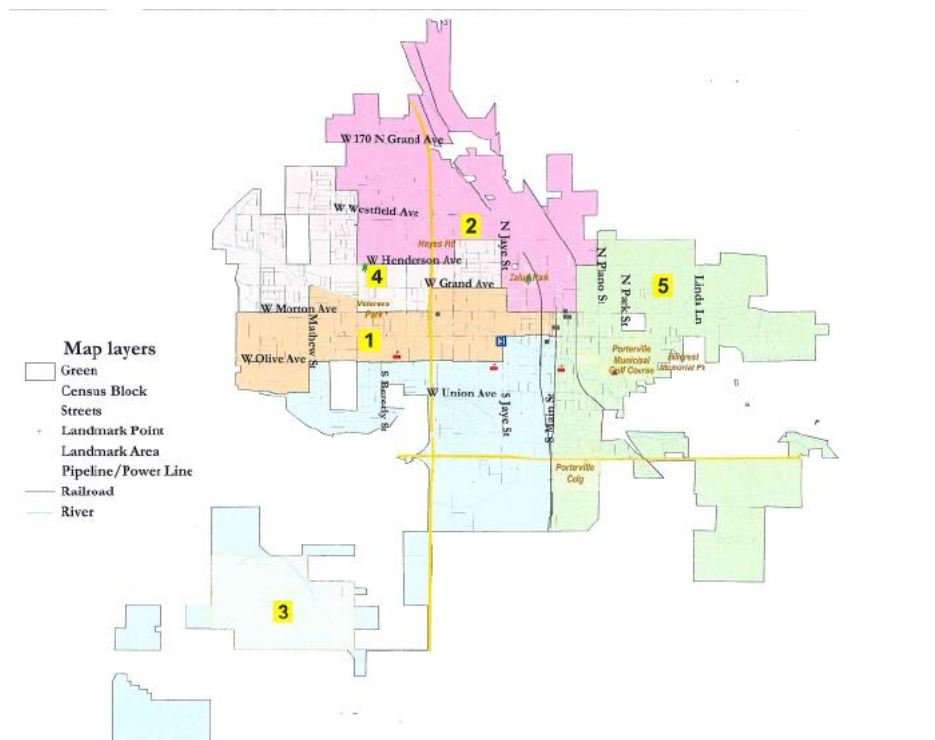
If you choose BB&K as your consultant for redistricting services, Stephanie Smith will serve as project manager and primary contact and ensure that all tasks are completed on time. As director of election services, she supervises BB&K's election services consulting initiative, which includes redistricting and demography services for client and non-client district-based agencies as well as election litigation services. She has more than three decades of hands-on experience in municipal government, including serving as city clerk to the cities of Murrieta and Lake Forest.

Stephanie will be supported by BB&K partners Scott Smith and Matthew "Mal" Richardson and of counsel William J. Priest in providing expanded election law counsel. Combined, they have decades of experience advising clients on election laws.

Full resumes of team members are attached as **Appendix A** for your consideration.

PROJECT UNDERSTANDING

Currently, the Porterville City Council consists of five members who are elected "by district". The transition from at-large to district based elections occurred in 2018 as a result of litigation under the California Voting Rights Act and a December 2017 ruling enjoining the City from continuing its at-large election system. Relying on Census 2010 data and estimates from the American Community Survey, the City ultimately adopted the district boundaries shown below. The first by-district election, held in November 2018, saw representatives elected from districts 1, and 2. In 2020 the transition to district based elections was complete, with representatives elected from Districts 3 and 4 for the full term of four years, as shown on the map below.



Because the City embarked on drawing district boundaries in 2018 without the benefit of a recent decennial census, the balance of population by district as well as the distribution of residents by race and ethnicity were based on 2010 Census data and ACS estimates from 2011-2017, which was the data that was available at the time. Although the City and consultant team will naturally be relying on 2020 Census data and updated CVAP estimates to redraw district boundaries (as needed) in the upcoming year, it is likely that there will be some shift in the boundaries from what was prepared in 2018.

SCOPE OF WORK

BB&K offers the City two choices for redistricting services — **Basic Census Services** and **Full Redistricting Services**. Basic Census Services are a prudent step for agencies that have experienced low levels of population growth and change over the past decade and anticipate that their existing district boundaries remain in compliance. Basic Census Services are a cost-effective way to confirm if this is indeed the case.

For agencies that have experienced significant population growth, demographic changes, or shifts in housing density during the past decade, Full Redistricting Services provide a comprehensive approach to redistricting that allows for ample community engagement, discussion, and legally-compliant district development.

Given that the City of Porterville has census tracts that have grown significantly since the 2010 census, it is likely that redistricting will be required to balance the City's population within districts and ensure proper consideration for communities of interest.

Redistricting assistance includes involvement by BB&K attorneys, staff, and expert demographic services through one comprehensive service agreement.

Basic Census Services

BB&K and its community data experts will assist the City in generating and reviewing its census data for each existing election district and evaluating the relationship between existing districts and concentrations of "protected class" voters as defined by the FVRA. BB&K will generate a written summary of conclusions and an assessment of whether existing election areas meet "equal population" requirements.

If the City concludes based on this data that voting districts are adequately balanced with no Voting Rights Act concerns to address, the project will conclude with Basic Census Services. Basic Census Services include a presentation by our team to present our conclusions.

Specific Basic Census Services include the following:

- Compilation of total population and voting age population
- Overlaying of existing election district lines
- Compilation of population data by election area and calculation of population deviations
- Review of any potential divisions of "protected class" resident concentrations
- Creation of a memorandum summarizing findings

Full Redistricting Services

Full Redistricting Services and the allocation service responsibility encompass the following:

- Project setup and coordination
 - BB&K will develop a demographic database including U.S. Census Bureau and California Statewide Database data
 - BB&K will incorporate any Geographic Information System (GIS) data that the jurisdiction wishes to include and provides (such as school locations, school attendance areas, important local landmarks, or local neighborhood boundaries)
 - BB&K will conduct initial telephonic discussion about data, communities of interest, project schedule, criteria, and special concerns of the jurisdiction
 - BB&K will attend any virtual/telephonic calls to discuss project progress or answer questions

- Plan development
 - BB&K will draft a memo on population balance and any potential divisions of “protected class” population concentrations in the existing election areas map
 - BB&K will create two to four initial draft maps
 - BB&K will analyze and prepare all whole or partial plans submitted by the public for presentation
 - BB&K will convert all maps and reports to web-friendly versions
 - BB&K will post all maps online to an interactive review website
 - BB&K will create any additional or revised maps as requested
 - BB&K will prepare the required ordinance for adoption of the final map
- Plan implementation
 - BB&K will work with the county registrar of voters to implement the final adopted plan
- Project website
 - BB&K will create, host, and update a dedicated project website such as mapPorterville2021.org
- Paper and Excel-based map drawing kit
 - As part of its fixed fee, BB&K creates both paper and Excel-based map drawing kits to provide interested parties with additional methods of engaging in the redistricting process in the event that an online mapping tool is not selected. Paper mapping kits include a one-page map of the agency broken out by census tract with population numbers and simple instructions for drawing. Participants can draw their preferred map configuration right on the page and submit their map to the agency via mail or email. The Excel-based map kit includes various census tracts and population numbers in a formula based worksheet that can be “drawn” and emailed directly to the agency for consideration.
- Online mapping tool (Optional)
 - BB&K is committed to providing residents with technology to review draft maps and create and submit their own maps. There are a variety of online mapping tools available, at varying costs and degrees of user difficulty. BB&K’s preferred mapping tool, Districtr, is user friendly. If requested, the BB&K team will provide a public online mapping tool and train community members in its use. Use of an online mapping tool often results in the submission of additional maps from the public. In many cases, maps created by community members best reflect the makeup of communities and are selected by governing bodies for adoption.

RELEVANT WORK AND REFERENCES

The BB&K team has assisted hundreds of cities, special districts, and other public agencies in California with districting; redistricting; passing initiatives; calling referenda; supporting voting rights; and developing a statistically reliable understanding of their communities through expert analysis of census data, voter data, data visualization, and mapping.

BB&K currently provides counsel on election law and redistricting matters for the following public agencies:

City of Adelanto	Altadena Library District
City of Albany	City of Arcadia
City of Artesia	City of Big Bear Lake
Borrego Spring Fire Protection District	City of Chula Vista
City of Corona	City of Costa Mesa
Cucamonga Valley Water District	City of Davis
City of Downey	El Rancho Unified School District
Hi Desert Water District	City of Indian Wells
City of Long Beach	Fallbrook Regional Heath District
Mendocino Coast District Hospital	City of Newport Beach
City of Palm Desert	City of Pam Springs
City of Paso Robles	City of Pomona
City of Poway	City of San Bernardino
City of San Clemente	San Geronio Pass Water Agency
San Miguel Consolidated Fire District	City of Santee
City Solano Beach	Tahoe Donner Association
City of Vacaville	

We have also provided references and project summaries for your consideration. Please do not hesitate to contact any of the following references for a more in-depth discussion of our ability to provide redistricting services.

City of Palm Springs – Transition to Districts

Anthony J. Mejia, MMC, City Clerk
760.323.8206; Anthony.Mejia@palmspringsca.gov

The City of Palm Springs transitioned to by-district elections in 2018. During the course of the transition, the community held over 40 public outreach and community engagement meetings in addition to four required public hearings. As part of the transition, the city moved from a directly elected mayor to an appointed, rotational mayor. BB&K supported the transition with project oversight, supervision of demographic analysis, federal and state Voting Rights Act legislation compliance, community outreach, training of public members in how to use an online mapping tool, public hearing support, ordinance preparation, and plan implementation.

City of Lake Forest – Transition to Districts

Debra D. Rose, City Manager
949.461.3410; drose@murrietca.gov

The City of Lake Forest transitioned to by-district elections in 2017. During the course of the transition, the community held four public outreach and community engagement meetings in addition to four required public hearings. BB&K supported the transition with project oversight, supervision of demographic analysis, federal and state Voting Rights Act legislation compliance, community outreach, training of public members in how to use an online mapping tool, public hearing support, ordinance preparation, and plan implementation.

City of Stanton – Transition to Districts

David J. Shawver, Mayor
714.890.4245; dshawver@ci.stanton.ca.us

The City of Stanton transitioned to by-district elections in 2017. During the course of the transition, the community conducted five public hearings and provided district election materials in multiple languages. BB&K supported the transition by providing project oversight, supervision of demographic analysis, federal and state Voting Rights Act legislation compliance, community outreach, training of public members in how to use an online mapping tool, public hearing support, ordinance preparation, and plan implementation.

COST/FEES

BB&K will provide Basic Census Services including attendance at an in-person City meeting for a fixed fee of \$4,000. Pre-meeting calls or questions are covered by the fixed fee. Additional meetings will be billed at BB&K's default special services hourly rate.

BB&K will provide Full Redistricting Services, including data analysis and mapping costs, for a fixed fee of \$42,000. The Full Redistricting Services fee includes attendance at required public hearings — whether virtual/telephonic or in-person — and participation in one, in-person public outreach meeting.

Pre-meeting calls and questions are covered by the fixed fee; thus, there will be no extra charge for these communications. Additional meetings will be billed at BB&K's default special services hourly rate. The fixed fee includes development and dedication of the City redistricting website. The fixed fee also includes all legal service reviews of the proposed maps for compliance with the Fair Maps Act, Local Redistricting Act, California Voting Rights Act and federal Voting Rights Act.

The benefit of using BB&K for your redistricting needs is that our pricing is all inclusive and takes into the consideration the needs of the agency and the required elements. For example, we know you will need support at your public hearings and community outreach meeting, and our expert team will be there with you. We know that the dedicated website is a requirement of the Fair Maps Act, and we take the hassle out of designing, updating, and hosting a specialized website.

We know that your residents want to be involved, with tools necessary to submit maps of their own so we provide the paper-based and Excel-based mapping kits as part of our comprehensive package.

Lastly, there are no additional City Attorney fees to have your proposed maps checked for compliance. No extra charges to prepare staff reports and the required ordinance for adoption. When you work with BB&K there is no guesswork as to what your final costs will be.

The only variable is for the optional online mapping tool. Costs for the optional online mapping is \$2,200. Any costs associated with use of Maptitude will be provided as soon as they are available and there is no BB&K markup for this utility, should the City choose to implement it.

CONFLICTS

BB&K maintains a comprehensive database on client representation. Prior to accepting any representation, the database is accessed to determine whether there are any existing conflicts. This database is overseen and managed by our firm's Billing and Client Information Department as well as the responsible attorneys.

There are no current conflicts. However, an advanced water waiver may be necessary before BB&K can begin work for the City. BB&K represents other clients who may share the same water resources as the City. It is possible conflicts may arise between the City and BB&K's other clients on such water issues.

APPENDIX A

RESUMES

Stephanie Smith



Stephanie Smith

Director of Elections Services
(949) 263-2612
stephanie.smith@bbklaw.com

Services

ARC: Advanced Records Center
California Public Records Act
Elections
Municipal Law
Special Districts

Education

Purdue University Global, B.S.

At a Glance

- Stephanie served as city clerk for the cities of Murrieta and Lake Forest.
- She served as state president on the City Clerks Association of California Executive Board.
- She is experienced in municipal elections, particularly in initiatives, recalls and referendums.

Profile

Best Best & Krieger LLP Director of Elections Services Stephanie D. Smith brings a wealth of hands-on municipal government experience to her role helping cities navigate the myriad of ever-changing election laws. Throughout her career she has handled multiple initiatives, two referendums and three recalls - all reaching the signature verification stage and several reaching the ballot.

Stephanie also supports public agencies with California Public Records Act compliance as a member of BB&K's ARC: Advanced Records Center.

Before joining BB&K, Stephanie served as city clerk for the cities of Murrieta and Lake Forest. Accredited as a Master Municipal Clerk by the International Institute of Municipal Clerks, Stephanie has more than three decades of experience in municipal government.

Stephanie served on the City Clerks Association of California Executive Board, most recently as president in 2018-2019. In addition to her bachelor's degree in management, Stephanie completed the Advanced Leadership Program through Continuing Education for Public Officials and is also a graduate of the CEPO Training for Trainers Program. She shares her knowledge and know-how as a trainer for the CCAC, as well as for the Master Municipal Clerk Academy and the California Building Officials Association.

Stephanie has authored more than 100 published articles on a variety of topics, including workplace change initiatives, personnel issues, business management, work/life balance and financial planning. Her book, "Values-Based Goal Setting: How to Dream Big and Live the Life You Were Meant to Live," was an Amazon #1 bestseller in the Vocational Guidance and Business & Money Short Reads categories.

A native Californian, Stephanie is married to Jim and they have two children who followed her footsteps into public service, as well as three grandchildren.



Scott C. Smith



Scott C. Smith

Partner

(949) 263-6561

scott.smith@bbklaw.com

Services

California Environmental Quality Act (CEQA)
Economic Development, Real Estate, & Affordable Housing
Elections
General & Special Counsel
Government Policy & Public Integrity
Local Agency Formation Commission (LAFCO)
Municipal Law
Special Districts

Education

Brigham Young University Law School, J.D.
Utah State University, B.A.

Admissions

California

At a Glance

- Scott provides guidance on First Amendment issues to public and private clients.
- He serves as city attorney for the cities of San Clemente and Aliso Viejo and general counsel to the Santa Margarita Water District and the Orange County Local Agency Formation Commission.
- Scott helps local government agencies navigate election and campaign laws.

Profile

Best Best & Krieger LLP Partner Scott C. Smith advises public and private clients on issues of state and local regulatory law, including advice on critical issues relating to the First and Fifth Amendments, elections, voting rights and municipal law. Scott's career in public law at BB&K began immediately after law school graduation.

Scott's work includes providing regular legal guidance on issues surrounding First Amendment, election and campaign laws. He served as special counsel to Los Angeles County in developing special legislation and County enactments for a special tax to address homelessness. He also advises the firm's city clients on issues relating to growth management initiatives and referendums, voter-approved taxes, election processes, and ballot issues, and district and redistricting. He advises local agency formation commissions on protest elections and incorporations.

Scott's is also well-versed in helping public agencies navigate emerging legal trends relating to protected speech, social media, public records and privacy. Scott is often called upon to provide advocacy and litigation support to clients on Constitutional issues relating to the use of public spaces, including free speech on public websites, political speech in public forums and camping and homelessness in public spaces.

Scott's principal clients include the cities of San Clemente and Aliso Viejo, where he serves as contract city attorney. He also served as city attorney in Lake Forest, Santee, La Verne and Big Bear Lake. He is general counsel to the Santa Margarita Water District and Orange County Local Agency Formation Commission.

Scott has served two terms on the Executive Committee of the California State Bar Association's and California Lawyers Association's Public Law Section, where he served as co-editor in chief of the State Bar's Public Law Journal. Scott served for 10 years as general counsel to the California Chapter of the American Planning Association. He was president of the Orange County City Attorneys Association in 2016.



Matthew Richardson



Matthew Richardson

Partner

(949) 263-6562

matthew.richardson@bbklaw.com

Services

Business
California Environmental Quality Act (CEQA)
Economic Development, Real Estate, & Affordable Housing
Elections
General & Special Counsel
Government Policy & Public Integrity
Municipal Law
Special Districts

Education

University of California, Los Angeles School of Law, J.D.
Brigham Young University, M.A.
Brigham Young University, B.A.

Admissions

California

At a Glance

- Mal is city attorney for the cities of Lake Forest and Stanton.
- He has extensive experience in complex land use and entitlements representing public and private entities.
- Mal represents public and private clients on issues related to the First Amendment and election and campaign law.

Profile

Matthew “Mal” Richardson is the co-chair of the firm’s Election Law Practice and advises public agency clients on issues related to election and campaign law, the First Amendment and municipal governance.

Mal has served as general and special counsel to numerous cities, with a specialized focus on election issues. Mal has guided clients through the processes required by the California Voting Rights Act, including helping cities transition from at-large to by-district elections, and providing advice and guidance on redistricting issues. In this context, Mal has worked closely with demographers, helping them understand the application of the relevant data to the political nuances of each public agency.

Mal’s experience with election and campaign laws also includes drafting ballot measures, advising on the proper use of public funds in campaigns and providing ongoing counsel throughout the campaign and election process. Mal has successfully guided clients through politically explosive referenda processes and recall campaigns and elections.

Mal is currently the city attorney for the cities of Lake Forest and Signal Hill. He previously served as the City Attorney for Stanton, and serves as special counsel for other public agencies throughout California, including cities, counties and special districts.

William J. Priest

**William J. Priest***Of Counsel***(909) 483-6648***william.priest@bbklaw.com***Services**

Business Licensing & Franchising
California Public Records Act
Elections
Fees, Taxes and Assessments
Government Policy & Public
Integrity
Municipal Law
Public Contracts & Construction
Public Finance

Education

Southern Illinois University
Carbondale, J.D.
University of California, Los
Angeles, B.A.

Admissions

California
Illinois

At a Glance

- Jim is well versed in local elections laws.
- He has extensive experience in land use, development and public finance law.
- He regularly assists clients in finding solutions to their particular finance challenges.

Profile

William J. “Jim” Priest represents public agencies as of counsel in the Municipal Law practice group of Best & Krieger LLP. Operating out of the firm’s Ontario office, he provides both general and special counsel services to many cities, counties, special districts and other clients. Jim’s particular areas of practice includes local elections, public finance, land use and ethics law.

Election Law

Jim is well versed in local election laws, running the gamut from initiative, referendum, vacancy and recall procedures, to political reform/campaign finance, to election recounts and contests. He devotes much of his time to helping clients comply with the California Voting Rights Act and the California Voter Participation Rights Act (Senate Bill 415) – laws that often require public agencies to change the timing and means by which they elect representatives (from at-large to by-district elections). He is also one of the firm’s go-to legal advisors for clients that elect officers by-district and must, therefore, go through the “redistricting” process triggered by the 2020 U.S. Census.

He has worked with dozens of public agencies throughout the State on other local election issues – ranging from charter amendments to tax measures to land use elections. He is also experienced in many types of local tax, assessment and fee/rate setting procedures under Propositions 13, 62, 218 and 26 (which often require an election or similar approval process). He regularly assists clients in finding solutions to their particular financial challenges, whether through local tax measures, property assessments, utility rates or other revenue sources.

Municipal Planning

Jim has extensive experience in land use and development law. He serves as general counsel to the Palm Springs Planning Commission, most recently assisting the City in drafting proposed golf course redevelopment rules as well as a comprehensive update to its historic preservation ordinance.



William J. Priest

During his 12 years of service for the City of Covina, he served as general counsel to its Planning Commission and assisted the City with a variety of high-profile downtown development projects, including the Heritage Plaza Park, the Metrolink and Civic Center Parking Structures, City Ventures' "Covina 2" and "Covina 3" projects, and the Olson Company's "Vintage Walk" and "Citrus Walk" mixed-use developments.

He also assisted the City of Azusa in developing public parking facilities for its Metro Gold Line train stations as well as forming a dedicated joint powers authority, which will long-term manage more than 200 acres of undeveloped hillside property overlooking the City for conservation purposes.

As part of his municipal practice, Jim frequently advises clients on issues regarding the State Planning and Zoning Law, Subdivision Map Act, Brown Act, Public Records Act and similar laws.

Experience

Jim returned to BB&K after spending several years with Oliver, Sandifer and Murphy in Los Angeles, where he served as assistant city attorney for the cities of Gardena and Downey. During his prior tenure with BB&K, he served many public agencies, including the cities of Fontana and Ontario, as well as the March Joint Powers Authority.

September 16, 2021

Patrice Hildreth
Deputy City Manager
City of Porterville
291 N. Main Street
Porterville, CA 93257

Sent via email to phildreth@ci.porterville.ca.us

Dear Ms. Hildreth,

Thanks for reaching out to Redistricting Partners for information on our work with local governments in this coming 2021-2022 redistricting cycle.

Redistricting Partners is a specialized firm that conducts services for organizations and local governments ranging from racially polarized voting analysis, conversion of elections from at-large to districted under the California Voting Rights Act, and traditional redistricting. Going back a decade we have worked with dozens of local governments, ranging from small hospital and water agencies to the sprawling Los Angeles Unified School District.

Most recently we have conducted the districting processes within the cities of Napa, Davis and Santa Ana. For 2021 we have already been hired by the Counties of Kern, Napa, San Bernardino, Siskiyou, and Solano along with the cities of Burlingame, Carpinteria, and Napa, to conduct their decennial redistricting under the Fair Maps Act provisions. We have also been hired by the Cities of Berkeley, Long Beach, Oakland, and San Jose to conduct their decennial process under their municipal redistricting commissions/committees. This work extends to a number of community colleges, water districts and other special districts. A full list of the agencies we have done CVRA conversions or redistricting for is attached.

We have the experience and knowledge to assist local governments in every step of the coming redistricting process, from community engagement, data gathering, line drawing, map presentation and all other technical aspects of the work. For more on our staff please visit our website staff page at <http://redistrictingpartners.com/about/>

I have attached an outline of our scope of services for agencies conducting their redistricting using the Fair Maps Act provisions of California with a five-hearing structure. In most cases, for a City Council redistricting, with this structure, multiple draft maps, assistance in outreach and analysis of public input, the cost would be \$42,000 exclusive of the online mapping tool. These costs are based on an expectation that most, and likely all, hearings in 2021 and 2022 would be done virtually.

In addition to our redistricting services, we can facilitate online mapping tools for the public. This is an option that we have not always embraced – historically favoring more in-person outreach. Given that much of this kind of activity will not be possible in the coming months,

and potentially for the full redistricting timeline, we are focusing on utilizing online mapping tools. The public online mapping software would be accessible through the city website.

The recommended software is one developed by Tufts University called DistrictR and it is being packaged with data from Redistricting Partners and can be licensed at a cost of \$8,000 and would include training from our staff. This program does not require city hosting.

The redistricting process is always a challenge, but there are many additional complications this year. Not only are there more agencies needing redistricting services, the timeframe for doing so has been compressed and the delay in receiving Census data is likely to compress the timeframe even more. At the same time, the public desire for open and transparent redistricting is adding to the workload within each redistricting.

We would be happy to work with you on the redistricting process for the City of Porterville and help you overcome these challenges. We look forward to discussing this more at your convenience.

Sincerely,



Paul Mitchell
Owner
Redistricting Partners

Scope of Services – Fair Maps Act

Redistricting Partners is providing services to assist municipalities with districting and redistricting services using data collected during the 2020 Census, in compliance with State and Federal laws.

California's Fair Maps Act, enacted in 2020, increases transparency and public accountability in redistricting. While it only specifically applies to cities and counties in California, the Fair Maps Act codifies redistricting best practices that should be utilized by all local governmental agencies in California whenever possible.

Public Engagement

The Fair Maps Act sets a structure for public engagement which includes five public hearings: up to two conducted prior to line drawing, at least two more held for public input and changes after maps have been made public, and one final hearing for adoption of a map that has been made public for 7 days prior to adoption.

Redistricting Partners will work with the City in conducting these presentations, gathering and documenting public input, and utilizing these hearings as a means for determining initial criteria for draft maps and amending maps that have been produced.

In addition, Redistricting Partners traditionally utilizes three methods for soliciting public input during this process.

- 1) The use of a simple community of interest worksheet which allows the public to describe their community of interest, give evidence of what binds that community together and defines it, and provide any kind of drawing or map of that area. This can be used in-person at public hearings or completed by the public and emailed as a form of submitted testimony.
- 2) An in-person or online interactive workshop where physical maps are provided showing population densities, and the public is assisted in either drawing their communities of interest or drawing draft maps. (dependent on health and safety guidelines)
- 3) An online mapping option to facilitate deeper community engagement by allowing members of the public to draw and describe their community of interest or draw potential district lines.

Our staff includes experts in civic engagement, community outreach, and will assist in communicating needs for public engagement at client direction.

GIS and Data

The GIS backbone of redistricting is the Topologically Integrated Geographic Encoding and Referencing, or TIGER, a format used by the United States Census Bureau. This will serve as the geographic backbone of the redistricting project. The core TIGER/Line Files and Shapefiles do not include demographic data but do contain information about the external boundaries of Cities, Counties and other districts, and often are the same geography used in the creation of precincts.

Other districts, such as community colleges, water boards, and other special districts may utilize other geographic layers for their external boundaries, such as parcel layers, and some counties rely on parcel layers entirely for the creation of their precincts. Redistricting Partners has more than a decade of experience dealing with these issues and working with county registrars to process the redistricting files in both formats.

Once released, decennial Census redistricting data specifically tailored to each jurisdiction will be utilized within this TIGER geography. This data, under new California law, will also include the reallocation of incarcerated population, and be supplemented with the most recent American Community Survey (ACS) dataset, including estimated total population and Citizen Voting Age Population (CVAP) which quantifies ethnic populations for the purposes of the Federal Voting Rights Act.

Additional datasets can be utilized in redistricting based on the client needs. For example, in a city the underlying neighborhoods can be a critical geographic element, in addition to transportation patterns, city amenities, and other mappable factors that help define communities of interest. Redistricting Partners is adept at helping agencies utilize these different pieces of geographic information within one project.

Meetings & Creation of Lines

Redistricting Partners will participate in public hearings either remotely or in-person, based on the health and safety guidance at the time. In a contract with a standard five-hearing schedule, at least three will be held remotely with up to two using in-person staffing, if appropriate.

Once mapping can be conducted, Redistricting Partners will create three sets of potential lines following traditional redistricting criteria including that districts be contiguous,

compact, and follow traditional governmental or community lines and natural / physical contours of the district geography and input from the initial public hearings.

Maps that are created are provided in four formats:

- Printable 8.5x11 Mapping and Data PDFs for dissemination with meeting agenda or posting on the public-facing website. These maps provide an overview and will often show neighborhoods, significant landmarks or key facilities, but do not go down to the street-level.
- Interactive online maps, like Google Maps, with the proposed district boundaries, including the embedded data calculations for population, ethnicity, and any other factors that are key to the district analysis.
- Shapefile and census block equivalency files for use by any GIS staff or members of the public with GIS mapping capabilities.

Following the presentation of maps at the third public hearing Redistricting Partners will take any information gleaned from public comments or elected official input to create additional amended maps and engage in a process of selecting and finalizing mapping options for the fourth public hearing. Alternatively, Redistricting Partners could continue to collect public information and only create new versions after the fourth public hearing.

Under both the California Voting Rights Act and the Fair Maps Act, the final hearing will be for a vote only on the map which has been finalized and published within seven days prior to adoption. This mapping option will be produced by Redistricting Partners with all the additional technical elements necessary for the final resolution.

Adoption / Processing of new lines

Once lines are adopted, Redistricting Partners will work with the County Registrar staff in order to complete the process and make new lines available for the next available election. This processing includes:

- Documentation from public meetings, signed resolution
- Electronic PDF maps of new election district boundaries
- GIS Shapefiles for county staff to assign precincts
- Metes and Bounds legal document with written description of district boundaries

- Census Block equivalency files and shapefiles for a backup of district lines in latest US Census geographic data.

Optional Elements

Beyond the Fair Maps Act five meeting structure, contracts can be adjusted to allow for additional public meetings or interactive workshops.

Additional outreach programs, including in-language outreach, are available through Redistricting Partners sub-vendors. These can range from small engagements to create materials and promotions for public engagement, and grow into large emailing, mass-mailing, digital, radio and cable TV ads promoting the redistricting process. Language services are also available through a sub-vendor contract.

Two different online mapping tools are available through Redistricting Partners. The first is Maptitude Online Redistricting from Caliper Corporation. The second is a public community engagement and district mapping tool developed by Tufts University and managed by Redistricting Partners. Video demonstrations of each product are available here: <https://tinyurl.com/RDPmapping>

Additional training hearings can be added to the beginning of the process and are a great way to produce a knowledgeable and empowered advisory committee, commission or board. We are contracting with subject matter experts and past redistricting commissioners to perform trainings on increasing sensitivity to the needs of minority communities, the importance of not cracking or packing communities of interest, the rights of protected classes, and applicable federal voting rights act laws.

One of our expert trainers is former 2011-2020 Statewide Redistricting Commissioner Connie Galambos Malloy, who we are working with on the Long Beach Independent Redistricting Commission.

TYPICAL FIVE HEARING STRUCTURE

	Purpose of Hearing
1 st Public Hearing	Public Hearing with information about the redistricting process, descriptions of the data and mapping tools, introduction of ways the community can provide input. The purpose of this introductory hearing is to provide information to the public and solicit input from the public and elected officials on where community of interests exist, and how those can contribute to the building of potential districts.
2 nd Public Hearing	Repeat of first hearing, with additional emphasis on tools for providing input, potentially an overview or training for online mapping tools, emphasis on receiving community of interest testimony for the purposes of driving map creation.
3 rd Public Hearing	Public Hearing with presentation of maps of new potential district boundaries produced by the demographer and <i>published seven days in advance</i>, with a summary of how mapping options were drawn from testimony and public input received during the previous hearings. These maps are expected to drive additional feedback from the public and elected officials.
4 th Public Hearing	Public Hearing with revised map(s) of proposed district boundaries produced by the demographer and <i>published seven days in advance</i>. Additional public input regarding the revised map(s) and concluding with direction from the council on a final map that will be placed on the calendar for an upcoming up/down vote on the completed districting plan.
5 th Public Hearing	Public Hearing to adopt final map, district numbering, and order of election.

Client List

Past Client List (excluding current 2021-2022 contracts)

Los Angeles Unified School District	Santa Clarita CCD
City of Santa Ana	Solano CCD
City of Davis	Yosemite CCD
City of Elk Grove	Yuba CCD
City of Napa	Salinas Valley Memorial Healthcare
College of the Desert CCD	Cucamonga Valley Water District
Mt. San Antonio CCD	Coalinga Regional Medical District
Ohlone CCD	Solano Irrigation District
Citrus CCD	Sequoia Healthcare District
San Jacinto CCD	San Mateo County Harbor District
Santa Barbara CCD	Cosumnes Services District
Compton CCD	Nevada Irrigation District
Copper Mountain CCD	Novato Fire District
Pasadena CCD	North Marin Water District
San Bernardino CCD	Three Valleys Municipal Water District

Current Client List (for 2021-2022 Redistricting Cycle)

Napa County	San Luis Obispo County
Napa County Office of Education	Foothill De-Anza CCD
City of Burlingame	Shasta CCD
City of Carpinteria	Southwestern CCD
City of Long Beach	Goleta Water District
City of Napa	Santa Clara Valley Water District
City of Redwood City	Siskiyou County
City of Mesa, AZ	Kern County
City of San Jose	Santa Clara County
Ventura County	San Bernardino County
Solano County	Yolo County
Kern County	City of Berkeley
	City of Oakland

References

The following are references from recent work. Additional references are available upon request.

Client Name: **City of Davis**

Project Description: The City of Davis which faced a CVRA lawsuit and required a quick transition to districted elections, including facing a question of going to 7 districts or staying with 5. Ultimately the plan adopted was based on a map drawn by two members of the community during a weekend workshop and amended by the council members in a public, open, televised council meeting.

Reference: Kelly Stachowicz

Assistant City Manager

KStachowicz@cityofdavis.org

(530) 757-5602 ext. 5802

Client Name: **City of Santa Ana**

Project Description: An extended and contentious CVRA lawsuit and conversion process.

Redistricting Partners was hired to help facilitate a new set of district lines and a change of both the election system, and date of the election, in a majority minority Latino city with a strong Vietnamese population that had their geographic area divided among multiple council districts.

Reference: Maria Huizar

City Manager

City of Lake Forest

mhuizar@lakeforestca.gov

Note: Maria Huizar was the City Manager at the City of Santa Ana at the time of this redistricting.

Reference: Jose Solorio

Councilmember

City of Santa Ana

(714) 514-6233

jsolorio@aol.com

Note: Councilmember Solorio was an active member of the city council during the redistricting process. In this redistricting, the city itself was the agency in charge of adopting the district lines. Solorio was active in each of the public council hearing and attended public outreach meetings.

Client Name: **City of Napa**

Tiffany Carranza
955 School Street
Napa, CA 94559
tcarranza@cityofnapa.org
(707) 257-9503

The City of Napa was the first city in California subject to the Fair Maps Act while conducting redistricting based on a demand from a petitioner under the California Voting Rights Act. In addition, the process was hindered further by the stay-at-home orders issued in March, 2020. The process was completed on time and followed all the requirements under the CVRA and the Fair Maps Act.

Client Name: **Kern Community College District**

Project Description: A redistricting project including Kern County and several adjacent counties for a diverse community college district which was conducting a revision of their district boundaries to comply with the California Voting Rights Act and the Federal Voting Rights Act.

Reference: Board Secretary Danielle Hillard

danielle.hillard@kccd.edu
(661) 336-5100

Client Name: **Los Angeles Unified School District**

Project Description: A public commission-based redistricting of the second largest school district in the nation. This redistricting included work with the commissioners to train them on traditional redistricting principles, identifying and working with communities of interest, public engagement, many community-based outreach meetings across the area served by LAUSD, and full technical lead on line-drawing, data management, map development and every aspect of the redistricting from the first commission meeting to plan adoption.

Client Project Manager: Doug Wance (949) 224-6439

18400 Von Karman Ave, Suite 800
Irvine CA 92612
dwance@buchalter.com
(949) 224-6439

Reference: Lindsay Horvath

LAUSD Redistricting County of Orange

Councilwoman, West Hollywood
Lindsey.p.horvath@gmail.com
(323) 632-7530

Reference: Greg Girvan
22736 Margarita Dr.
Woodland Hills, CA, 91364
(818) 631-2405

Basic Redistricting Services	Description	Cost
Council Meetings	Five Board meetings – Council training & four to five Council meetings as required. Anticipated to be a mix of remote and in person.	\$42,000 – Basic Redistricting Services
Mapping & Demography	Mapping & Demography services for draft maps post Census data release. Will track and incorporate all public comment and input from website and meetings. Will submit maps to post on website based on public input in 3 formats, and will work with County registrar to ensure that final maps are delivered accurately in requested formats.	Included in Basic Redistricting Services
Project Meetings with City staff	Monthly meetings with city staff. Anticipated to be remote meetings.	Included in Basic Redistricting Services
Additional Redistricting Services	Description	Cost
Communications	Comprehensive assistance in outreach to the public, translation services. Includes assistance in gathering community input and testimony.	\$25,000
Public Outreach	Five Public Outreach meetings, includes training on mapping tools and basic premises of redistricting process, general facilitation of meetings. Anticipated to be a mix of remote and in person.	\$15,000 Additional Remote Meeting Cost: \$1,750 each Additional In-Person Meeting Cost: \$3,500 each
Website	Suggestions for and review of City hosted website	\$2,500
Project Meetings with City Staff	Additional meetings as needed with City Staff. Anticipated to be remote meetings.	\$5,000
Online Mapping Options	Description	Cost
Maptitude Online Redistricting	Software for Council, staff and public. Includes training.	\$25,000
DistrictR	Online tool for Council, staff and public. Includes training.	\$8,000



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: New Porterville Rescue Mission Update

SOURCE: Community Development

COMMENT: At its meeting on June 18, 2019, the City Council adopted Resolution 43-2019, approving Conditional Use Permit (CUP) 2018-041-C for the New Porterville Rescue Mission (NPRM) to allow for a Social Services Facility located at 30 S. A Street. As outlined in Resolution 43-2019, Condition #1, and in compliance with Porterville Municipal Code Chapter 21, Section 301.09, "Social Services Facilities shall provide: adequate and accessible sanitary facilities, including lavatories, restrooms and refuse containers; sufficient patron seating facilities for dining; effective screening devices such as landscaping and masonry fences in conjunction with outdoor activity areas." To meet these requirements, NPRM was to continue to work on site improvements, and stay in communication with staff until all items had been completed. CUP 2018-041-C includes a requirement that staff provide a bi-annual update to the Council on the status of project, which is the purpose of this report.

At its meeting on February 4, 2020, staff presented to Council the bi-annual update as required in the CUP to update the status of improvements. The item was continued as additional information was needed to be provided by NPRM in writing. At its meeting on March 3, 2020, staff provided to Council the proposed Plan of Action that staff considered quite aggressive and reported that a realistic timeline would be three to six months before there would be an issuance of a building permit. At its meeting on July 21, 2020, staff provided an update to Council regarding the progress of the NPRM's remodel project. NPRM was issued a building permit on July 7, 2020. The scope of the permit includes removing existing staff bedroom walls to open up to existing open area to accommodate fourteen (14) beds total on the west end of the building, remodel two restrooms to meet accessibility standards, the installation of two new concrete door landings, one new door landing with stairs and handrails, as well as reversing the swing of an existing door. NPRM had anticipated that this phase of construction would take approximately three to four months to complete.

At its meeting on November 17, 2020, staff provided an update to Council regarding the progress of the NPRM's remodel project. The Council was informed that the NPRM's project had experienced delays due to the pandemic as well as encountering structural issues during the demolition process.

At its meeting on January 19, 2021, Council was provided an update on the

Item No. 19.

status of the NPRM project. The update included that the NPRM had been issued a permit for the structural revision to correct the issues encountered during the demolition process on November 25, 2020. Staff met with the NPRM on January 4, 2021, to discuss the progress of the project. The NPRM informed staff that the project timeline has been impacted by the ongoing COVID-19 pandemic, noting that they received a letter from one of their suppliers informing them that the delivery of their order had been delayed due to the pandemic. A framing inspection was provided by the City's Engineering Department-Building Division on January 5, 2021, and second framing inspection on January 8, 2021, which NPRM passed.

At its meeting on August 17, 2021, staff provided an update to the Council regarding the progress of the NPRM's remodel project as well as information in regard to violations of the conditions outlined in Conditional Use Permit 2018-041-C and Porterville Development Ordinance, which were observed on August 10, 2021. The violations included a recreational vehicle that was observed onsite and is being occupied as a residence with an electrical extension cord connected to the recreational vehicle. Chapter 304.11 of the Development Ordinance states that "Parking and storing of recreational vehicles, boats, campers, trailers and similar vehicles are prohibited from being stored for a period longer than seventy-two hours (72) hours in the front yard setback. They may be stored in the side or rear yard behind a minimum six (6) foot high, solid fence. At no time are recreational vehicles allowed to be occupied as residences. Connection to any combination of electrical, water, cable, or sewer facilities is considered prima facie evidence of occupation as a residence. At no time shall commercial vehicles greater than a one-ton rating be parked or stored on residentially zoned properties. Storage on the street is limited pursuant to Sections 17-10.4, 17-11.7, 17-11.8, and 17-11.9 of the Porterville Municipal Code." Tents were also observed to be erected on site outside of the approved season and timeframe outlined in Condition 10 of the CUP. Condition 10 states "The temporary use of tents for overflow of patrons may be permitted during the winter months, provided that the usage and assembling of the tents be opposite of office hours, erecting tents after 7p.m. and removing them before 7 a.m." NPRM remedied the violations within seventy-two (72) hours.

The NPRM has had one inspection since the update provided to the City Council on August 17, 2021, which occurred on September 29, 2021. The inspection was for underground plumbing for the restroom remodel, which passed. During the inspection the NPRM disclosed that while saw cutting the existing concrete slab for the restroom remodel, that a four foot section of the exterior footing fell apart. City staff requested that NPRM have the footing evaluated by an engineer to provide a design to correct the issue.

On September 24, 2021, Porterville Police Department and Code Enforcement responded to the NPRM for the discharge of illegal fireworks, which a suspect was found to be in possession of additional fireworks and received an administrative citation. While on site, Code Enforcement observed conditions of the neighboring property (14 S. A Street), which is also operated by NPRM, that were not in compliance with the 1997 Uniform Housing Code. The conditions

observed included the rear yard being utilized as a living space with an outdoor shower built in close proximity of an existing electrical panel. Food and other items had also been allowed to accumulate in the yard along with multiple tarp covered areas that have been erected creating an attractive nuisance and possible fire hazard. The property owner was notified and required remedy the conditions by November 1, 2021. CUP 2018-041-C does not include provisions for the property located at 14 S. A Street. Resolution 43-2019 included NPRM Site and Operations Plan as Attachment A, which outlines that 14 S. A Street provides for six long-term residential beds and two emergency shelter beds for women. City staff inspected the property located at 14 S. A Street on October 12, 2021, and found that the conditions that were out of compliance with the 1997 Uniform Housing Code had been remedied.

RECOMMENDATION: That the City Council consider the report and provide direction as deemed appropriate.

ATTACHMENTS: 1. Resolution 43-2019

Appropriated/Funded:

Review By:

Department Director:

Jason Ridenour, Community Development Director

Final Approver: John Lollis, City Manager

RESOLUTION NO. 43-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE RESCINDING RESOLUTION 10-2019 AND PLANNING COMMISSION RESOLUTION 606, AND CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF CONDITIONAL USE PERMIT 2018-041-C TO ALLOW FOR A SOCIAL SERVICES FACILITY- THE NEW PORTERVILLE RESCUE MISSION

WHEREAS: The City Council of the City of Porterville, at its regular scheduled meeting of June 18, 2019, conducted a continued public hearing to consider whether to modify or revoke Modification No. 1 to Conditional Use Permit 8-74 (PRC 2018-041-C) to allow for a Social Services Facility for the New Porterville Rescue Mission located at 30 S. A Street; and

WHEREAS: The City Council determined that the proposed change of occupancy eliminates the use of the project site as a church. This in turn deems moot the original Conditional Use Permit (CUP 8-74), which authorized the expansion of a church on the subject property; and

WHEREAS: To clearly record the appropriate and allowed uses and occupancy of the subject site and structures, the original approvals must be replaced with conditions of approval focused on the establishment and operation of a Social Services Facility; and

WHEREAS: On May 29, 2019, the Environmental Coordinator made a preliminary determination that the project is exempt from California Environmental Quality Act pursuant to §15301, Existing Facilities in that there is no proposed expansion to the existing building; and

WHEREAS: The City Council of the City of Porterville received testimony from all interested parties related to said Conditional Use Permit; and

WHEREAS: The City Council made the following findings:

1. That the proposed project will advance the goals and objectives of, and is consistent with, the policies of the General Plan and any other applicable plan that the City has adopted:

The proposed project is consistent with the Housing Element's goal to provide a variety of housing types. Further, the subject site is consistent with the Zoning Standards for DRM-3 (Downtown High Density Residential) zone and the General Plan Land Use Designation of High Density Residential. The General Plan promotes a mix of residential neighborhoods to provide for a mix of housing types to serve the needs of all Porterville Residents. Additionally, it supports community facilities that are appropriate for a residential environment, including residential care and alcoholism or drug abuse recovery or treatment facilities.

2. That the proposed location of the project and the conditions under which it will be operated or maintained will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity:

Conditions of approval are included herein to ensure adequate operational standards are met. The project is located within an existing building and is conditioned so that proposed activities have been evaluated and conditions associated with them be mitigated.

Additionally, the project is conditioned to preserve the public safety, health and welfare to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations. In the event that any condition of approval is violated, the City Council may modify or revoke the conditional use permit.

3. This project is exempt from CEQA pursuant to §15301, Existing Facilities in that there is no proposed expansion to the existing building.

NOW, THEREFORE, BE IT RESOLVED:

1. Resolution 10-2019, which approved Modification No. 1 to Conditional Use Permit 8-74 to allow for a social services facility for the New Porterville Rescue Mission is hereby revoked.
2. Planning Commission Resolution 606, which approved Conditional Use Permit 8-74 to construct a social and Sunday school building as an addition to an existing church building at 30 South A Street is hereby revoked.

BE IT FURTHER RESOLVED: That the City Council of the City of Porterville does hereby approve Conditional Use Permit 2018-041-C subject to the following conditions:

1. Social Service Facilities shall be located, developed and operated in compliance with the following minimum standards. All Social Services Facilities shall provide: adequate and accessible sanitary facilities, including lavatories, rest rooms and refuse containers; sufficient patron seating facilities for dining, whether indoor or outdoor; effective screening devices such as landscaping and masonry fences in conjunction with outdoor activity areas; a plan of operation, including but not limited to, patron access requirements, hours of operation, security measures, litter control, and noise attenuation.
2. Evidence of compliance with all Fire Safety regulations shall be provided within the timeframe established herein:
 - i. On or before June 21, 2019: Submit plans for sprinkler and smoke detection building permit
 - ii. On or before July 12, 2019: Pull the permit to begin construction
 - iii. On or before August 12, 2019: Final inspection of the sprinkler and smoke detection system, complete with testing
3. A plan for compliance with all applicable Building regulations, as well as improvements required pursuant to Section 301.09 of the Development Code (referenced above in Condition #1) shall be provided by August 13, 2019, including timeframes for completion of necessary improvements.

4. Upon approval of this permit, any future change in operation which substantially alters the conditions or nature of the subject business as identified in the Operations Plan (Exhibit A), will require approval by the City Council.
5. Unless an extension of time is granted by the City Council, the conditional use permit shall expire two years after the date of approval if the activity is not active or actively pursued. The City Council may approve a one year extension of any permit or approval granted under this ordinance upon receipt of a written application with the required fee before the permit expires.
6. The applicant shall operate the establishment in such a manner as to preserve the public safety, health and welfare, to prevent the use from becoming a nuisance and operate the business in compliance with all laws, ordinances and regulations. In the event that this or any other condition of approval is violated, the City Council may modify or revoke the conditional use permit as provided in Section 601.10 of the Porterville Development Ordinance.
7. Pursuant to Section 601.10(d) the City Council may revoke the permit if it makes any of the following findings:
 - a. That approval was obtained by means of fraud or misrepresentation of a material fact;
 - b. That the use in question has ceased to exist or has been suspended for one year or more;
 - c. That there is or has been a violation of or failure to observe the terms or conditions of the permit or variance, or the use has been conducted in violation of the provisions of this ordinance, law or regulation; or
 - d. That the use to which the permit or variance applies has been conducted in a manner detrimental to the public safety, health and welfare or so as to be a nuisance.
8. Pursuant to Porterville Development Ordinance 300.09, Outdoor Storage is not permitted within the DRM-3 zone (all storage shall be within an enclosed building). Additionally, Resolution 14-2014 does not allow the use of cargo containers in residential zone districts. The two cargo containers present on site must be removed. Both of the existing storage sheds will be required to be relocated outside of the setbacks and would count towards the permitted two accessory structures.
9. The applicant proposes the sale of goods and merchandise as a means of financial support. Retail sales are not permitted in the DRM-3 zone. Section 301.21 allows for temporary uses to include non-profit fund raising. Fund raising sales by a non-profit organization are limited to seven consecutive days, twelve times a year. Merchandise must be stored appropriately on non-sale days. Outdoor Retail Sales must be done in accordance with Section 301.12 of the Porterville Development ordinance and in compliance with the California State Board of Equalization.
10. The temporary use of tents for overflow of patrons may be permitted during the winter months, provided that the usage and assembling of tents be opposite of office hours, erecting tents after 7 p.m. and removing them before 7 a.m.

11. At all times, the facility shall be operated and maintained to comply with State Laws, the City of Porterville Development Ordinance, adopted Building and Fire Codes and all other applicable laws and ordinances.
12. The entire site shall be maintained free of refuse, debris, or other accumulated matter and shall be kept in good repair at all times and in an otherwise neat and attractive manner.
13. Beginning with the final inspection on or before August 12, 2019, and every August thereafter, the facility will be subject to an annual inspection by the Porterville Fire Department.
14. Beginning with the meeting of August 20, 2019, and every February and August thereafter until further ordered by the Council, the applicant's compliance with this Conditional Use Permit will be reviewed by the City Council.

PASSED, APPROVED AND ADOPTED this 18th day of June, 2019.


Martha A. Flores, Mayor

ATTEST:
John D. Lollis, City Clerk

By 
Patrice Hildreth, Chief Deputy City Clerk

MAY 2019

Community Development Department

MAY 20 2019

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The shelter provides approximately 75-100 meals per day we accommodate special dietary such as heart healthy diets, allergies, etc. to the community which we serve. Please see attachment PRM #2 for shelter feeding schedule and meals prepared.

4. **Our men's long-term facility currently holds 18 total occupants. That includes our long term residential and emergency shelter beds. Our women's facility holds 8 total occupants. Which also includes long term residential and emergency shelter beds.**
5. **For housing dormitory layout for the bed arrangements please see attachment PRM#1**
6. **Our Long-term residency program is a 6 month to 1 yr housing facility. Our emergency shelter provides emergency services for up to 72 hours.**
7. **The Porterville Rescue Mission has taken a "Housing First" approach. We offer safety and protection from the hardships of homelessness. We believe that once the immediate burden of homelessness is lifted, it allows for participants to focus, and initiate a plan of action towards self-sufficiency.**
 - a. **We welcome our community by providing 72 hours of emergency food and shelter services. The Porterville Rescue Mission also facilitates a 6 month to 1 yr residency Program.**
 - b. **We offer meals to the homeless and needy, but we welcome our entire community, please see attachment PRM#2 for a more details on the food services provided.**
 - c. **We offer showers to the public during regular business hours. Long term residential participants have access to onsite laundry facilities. We provide essential hygiene products, and participants are allowed laundry detergent**
 - d. **We provide onsite Resume building workshops, on the job training and employment plugs. For those participants that may not be eligible for employment due to current circumstance we offer referrals to the qualifying organizations. Which may include but are not limited to; SSI Social security, Mental Health, Tulare works, Family crisis center**
 - e. **. We continue our support towards the participants personal goals, by allocating individual case managers. It allows us to advocate and address the specific needs of each participant.**
 - f. **We assist with transportation to and from scheduled legal/doctor/ and or personal appointments, AA/NA/ other meetings and court proceedings.**
8. **Hours of operation are as follows**
 - a. **Office hours 7am-7pm**
 - b. **24-hour onsite staff**
 - c. **24-hour emergency telephone services**
 - d. **7pm to 7am overnight staff**
9. **Staffing needs are as follows;**
 - a. **CEO/Director**
 - b. **Human and community resource specialist**
 - c. **Finance and accounting specialist**
 - d. **Intake specialist**
 - e. **Volunteer service coordinator**
 - f. **Maintenance in house**
 - g. **Grounds and lawn service maintenance/mechanic**
 - h. **Case manager for men's facility**
 - i. **manager for women's facility**
 - j. **lead**

- k. Housing program manager for women's facility
- l. Housing program manager for men's facility
- m. Kitchen lead staff and meal planner
- n. Kitchen cook
- o. Kitchen assistant 1
- p. Kitchen assistant 2

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 18th day of June, 2019.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	PEÑALOZA	WARD	FLORES	STOWE	REYES
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk



By: Fernando Gabriel-Moraga, Acting Deputy City Clerk



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Resolution of Support for Water Infrastructure Funding Act of 2022

SOURCE: City Manager's Office

COMMENT: California State Assembly Member Mathis has requested that the City Council consider a Resolution in support of the Water Infrastructure Funding Act of 2022. The Act is a citizens' ballot initiative that was filed for ballot title and summary with the California Secretary of State on August 26, 2021. The initiative would need one million registered voters in California to sign the petition to be placed on the November 2022 ballot.

The Act, which would amend the State Constitution, proposes that two percent (2%) of the State's General Fund (currently approximately \$3.5 billion) be annually allocated to projects that increase California's water supply, allowing half of the funds to be used to finance large water supply projects, and would continue to be appropriated annually until new completed projects add an additional five million acre-feet of water supply.

RECOMMENDATION: That the City Council consider the draft Resolution of support for the Water Infrastructure Funding Act of 2022.

ATTACHMENTS:

1. Draft Resolution
2. Water Infrastructure Funding Act of 2022 Initiative
3. Water Infrastructure Funding Act of 2022 Legislator Letter

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE,
IN SUPPORT OF WATER INFRASTRUCTURE FUNDING ACT OF 2022

WHEREAS, the state of California's water system infrastructure is aging and in critical need of improvement and repair;

WHEREAS, the challenges of a growing population in conjunction with climate change and prolonged droughts have exposed serious flaws within the state's water infrastructure;

WHEREAS, the Water Infrastructure Funding Act of 2022 is a citizens' constitutional amendment that was filed for title and summary on August 26, 2021;

WHEREAS, the funding allocated within the Act would ensure the state achieves water resilience and adequately provides clean, safe and affordable drinking water to all Californians;

WHEREAS, the Act would allocate two percent (2%) of the State's General Fund to support projects that increase California's annual supply of water to cities, farms and unserved regions;

WHEREAS, the Act would provide immediate access to tens of billions of dollars that would be invested in water projects by permitting up to half of the two percent (2%) to be used to pay principal and interest on construction bonds;

WHEREAS, the Act would give priority to underfunded projects approved by voters in Proposition 1 (2014) that are also already approved by the California Water Commission;

WHEREAS, the Act would prioritize the maintenance, repair and upgrading of projects to deliver abundant and affordable drinking water to underserved communities;

WHEREAS, the Act funding would not expire until the supply capacity of new projects provides five million acre-feet of new water for California consumers, with

surplus water used to protect California's ecosystems;

WHEREAS, eligible projects under the Act would include funding for conservation programs that would result in up to one million acre-feet of water saved;

WHEREAS, the Act would allocate funds based on an all-of-the-above strategy, allowing Californians to repair and upgrade aqueducts, dams, water treatment plants, build off-stream reservoirs, expand existing reservoirs, invest in wastewater reuse and desalination plants, runoff capture, and aquifer recharge and recovery;

WHEREAS, the Act would streamline the bureaucratic process so projects can be designed and built in a reasonable period of time;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, that the City Council of the City of Porterville does hereby support the Water Infrastructure Funding Act of 2022.

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

PASSED, APPROVED, AND ADOPTED this 19th day of October, 2021.

Adrian Monte Reyes, Mayor

ATTEST:

John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk

Water Infrastructure Funding Act of 2022

SECTION 1. TITLE

This measure shall be known and may be cited as the “Water Infrastructure Funding Act of 2022.”

SECTION 2. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE AND INTENT

The People of the State of California find and declare all of the following:

(A) Safe, sufficient and affordable water is a human right and fundamental to our quality of life and key to the economic development of our community. Previous Constitutional Amendments have prioritized spending for public education, public safety and transportation.

(B) It is long-past time for Californians to prioritize spending to increase California’s storage and supply of clean, safe drinking water for homes and businesses, water for agricultural use, and treatment, purification, and reclamation of stormwater and wastewater, while maintaining protection for the environment. Short-term and long-term drought resiliency requires an increase in the supply of water, through surface and subsurface storage, waste water treatment and reuse, and desalination, including ocean and inland brackish water.

(C) Water projects take years to permit, and, once issued, those permits can be subject to lengthy litigation, delaying the realization of new water supplies.

(D) Therefore, the people of the State of California hereby enact the “Water Infrastructure Funding Act of 2022” (the “Act”) to:

(1) Require the transfer of two percent (2%) of the State’s General Fund Revenue each and every year into a trust account until the State certifies that water projects funded, in whole or in part, have created a minimum increase of five million acre-feet (5,000,000 AF) of additional annual water supply that can be reliably delivered to Californians every year thereafter;

(2) Provide “pay-as-you-go” funding for certain water projects, including those ready for immediate construction, while also authorizing the issuance of general obligation bonds which may be repaid using up to half of the revenue transferred into the trust account each year for larger, longer-term water projects, all for the purpose of creating a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply;

(3) Require that such projects include new or increased storage capacity in reservoirs and aquifers, desalination, recycling and treatment of waste and stormwater, repair and upgrade to water systems for the delivery of clean, safe drinking water for homes and businesses, water for agricultural uses, and other projects designed to increase the safe and affordable supply of water to all Californians;

(4) Except as necessary to repay any outstanding bonds issued pursuant to this Act, this annual minimum funding requirement shall become inoperative upon the State’s certification that a

minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created and is being delivered to California's urban and agricultural consumers; and

(5) Provide for streamlined administrative processing and judicial review of water projects funded, in whole or in part, by this Act or otherwise certified by the California Water Commission as a drought resiliency project that would help achieve a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity.

SECTION 3. MINIMUM FUNDING GUARANTEE FOR WATER INFRASTRUCTURE PROJECTS

Section 2.5 is added to Article X of the Constitution to read:

SEC 2.5(a) The Treasurer shall annually transfer an amount equal to two percent (2%) of all state revenues which may be appropriated pursuant to Article XIII B, from the General Fund to the Water Supply Infrastructure Trust Account, which is hereby created in the State Treasury. The first annual transfer shall occur in the first fiscal year following the effective date of this section.

(b) Moneys in the trust account are hereby continuously appropriated, notwithstanding Section 13340 of the Government Code, to the California Water Commission for its actual cost of implementing this act, and for allocation for projects that will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity, including, and limited to, the following project categories:

(1) Development or expansion of groundwater aquifer storage, remediation, and recovery projects;

(2) Recycling, purification, and treatment of stormwater and wastewater to water reuse standards, including, but not limited to, current drinking water standards at the time the project is approved;

(3) Expansion, repair, or replacement of existing surface reservoirs, and construction of new surface reservoirs;

(4) Desalination plants;

(5) Water conveyance development, maintenance, or expansion, for the delivery of clean, safe drinking water for homes and businesses, and water for agricultural uses, consistent with area-of-origin water rights;

(6) Other projects designed to increase the clean, safe and affordable supply of water to all Californians with emphasis on California's disadvantaged communities, and other projects designed to increase conservation; and

(7) Research and development of new technologies designed to increase the clean, safe and affordable supply of water to all Californians, subject to an annual limit of no more than two percent (2%) of available funds.

(c) The Commission shall allocate and provide funding or, where applicable, additional funding in an amount necessary to complete a project that will begin delivery of water to California's urban and agricultural consumers from the Trust Account, subject to the following priorities:

- (1) The project is approved by the Commission as submitted pursuant to Section 79750(b) and (c) of the Water Code, on or before July 1, 2021;
 - (2) The applicant is a public agency, special district, joint powers authority, or a public-private partnership for the entitlement, design, construction, operation, and maintenance of the project, and the project will be owned, in whole or in part, by the applicant;
 - (3) The applicant is ready and able to commence the project immediately upon issuance of all necessary construction permits and will complete the project and begin delivery of water to California's urban and agricultural consumers within five years from the allocation;
 - (4) The applicant is ready and able to commence the project immediately upon issuance of all necessary construction permits and will complete the project and begin delivery of water to California's urban and agricultural consumers within a reasonable period of time; and
 - (5) All other projects that the Commission reasonably determines are consistent with the objectives of subdivision (b).
- (d) Both of the following requirements apply as a condition of allocating funding to any project from the Trust Account:
- (1) The applicant must certify, to the Commission's satisfaction, that one of the following requirements is satisfied:
 - (A) The project is a public work for which prevailing wages must be paid for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
 - (B) The project is not a public work, but all contractors and subcontractors employing construction workers on the project will be required to pay those workers at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.
 - (2) The applicant must certify, to the Commission's satisfaction, that all contractors and subcontractors employing construction workers on the project will be required to use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
- (e) The Commission shall not accept a certification pursuant to subdivision (d) unless the applicant demonstrates, to the Commission's satisfaction, that construction workers or their representatives will have adequate means to monitor and enforce contractors' and subcontractors' compliance with the requirements.
- (f) Except as necessary to repay any outstanding bonds issued pursuant to this Act, this section shall become inoperative upon the State's certification that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created after the effective date

of this section by the projects specified in subdivision (b), and projects otherwise certified by the Commission as drought resiliency projects, and is being delivered to California's urban and agricultural consumers. For purposes of this section, "additional annual water supply capacity" shall be measured as follows:

(1) For water storage projects, including the necessary infrastructure to convey the additional water supply created, funded by this Act, or certified by the Commission as a drought resiliency project, the amount of additional annual water supply capacity shall be calculated based on the average annual yield the projects produce instead of their storage capacities.

(2) For water recycling, treatment, purification to reuse standards (including, but not limited to, drinking water standards), desalination, and other projects, including the necessary infrastructure to convey the additional water supply created, funded by this Act, or certified by the Commission as a drought resiliency project, the amount of new annual water supply capacity shall be calculated based on average annual output capacity.

(3) For projects partially funded under this section, the amount of new annual water supply capacity shall be calculated based on their average annual yield without regard to the percent of funding provided under this section compared to total project funding.

(4) For projects designed to increase water conservation, up to one million acre-feet (1,000,000 AF) of water conserved annually may count towards the five million acre-feet (5,000,000 AF) of additional annual water supply capacity as required in subdivision (b).

(5) If the State, any public agency, or the federal government, eliminates any water producing infrastructure, or by regulation reduces the supply of water from existing infrastructure, that existed prior to the effective date of this Act and provided water for urban and agricultural consumers, the Commission shall increase the minimum requirement of creating five million acre-feet (5,000,000 AF) of additional annual water supply capacity by the same amount of water supply reduced by the elimination of such infrastructure or reduction of supply from such infrastructure.

(g) The projects funded or partially funded by this section, including projects identified in subdivision (c)(1), shall be deemed to be for the reasonable and beneficial use of the state's water resources and such uses are in the interest of the people, and for their public welfare as provided in Section 2 of this article.

(h) The Commission may enact regulations pursuant to the Administrative Procedures Act to implement this section.

(i) Notwithstanding any other provision of law, the Commission is prohibited from:

(1) Utilizing or developing any beneficial use rating when allocating funding from the Trust Account to projects pursuant to this section;

(2) Delegating, assigning, partitioning, or otherwise transferring any responsibilities, duties, or obligations as assigned by this section to any other new or existing state department or agency; and

(3) Authorizing, permitting, or encouraging any other state department or agency from actively interfering with or otherwise delaying projects that qualify for funding pursuant to this section.

(j) Within the Trust Fund, the Commission shall establish an account for the legal defense of the Act and of projects allocated funding pursuant to the Act, including the Water Supply Infrastructure Bond Act of 2022. The Commission shall allocate money in the Trust Fund to the account, as necessary, to provide money to any public agency requesting assistance to reimburse the necessary and actual legal defense costs associated with a project, and shall reimburse the Department of Justice, if the Department undertakes the legal representation of the State or the Commission.

(k) This Act is intended to supplement, and not supplant, existing funding for water infrastructure projects. Thus, any funding for such a project by this Act shall not preempt, nullify, or in any way impede, any existing funding for these projects, to the extent work has begun or will be performed on the projects on or after the effective date of this section.

(l) On or before June 30 of each fiscal year, the Chair of the California Water Commission shall certify, under penalty of perjury, the amount, by acre-feet, of additional annual water supply capacity that has been created after the effective date of this section by the projects specified in subdivision (b) and projects otherwise certified by the Commission as drought resiliency projects and is being delivered to California's urban and agricultural consumers. When the Chair determines that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created after the effective date of this section by the projects specified in subdivision (b) and projects otherwise certified by the Commission as drought resiliency projects and is being delivered to California's urban and agricultural consumers, such certification shall be reviewed by the State Auditor. If the State Auditor confirms the Chair's certification, the Chair shall notify the Governor, the Treasurer, and the Legislature.

(m) After the State certifies that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created after the effective date of this section by the projects specified in subdivision (b) and projects otherwise certified by the Commission as drought resiliency projects and is being delivered to California's urban and agricultural consumers pursuant to subdivision (l), any funds remaining in the Trust Fund shall be used to pay down any remaining bond debt authorized by this Act.

(n) Nothing in this section diminishes, impairs, or otherwise affects in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law.

SECTION 4. WATER SUPPLY INFRASTRUCTURE BOND ACT OF 2022

Division 26.8 (commencing with Section 79800) is added to the Water Code to read:

DIVISION 26.8. WATER SUPPLY INFRASTRUCTURE BOND ACT OF 2022

Chapter 1. Title/Definitions

Sec. 79800(a) This division shall be known, and may be cited, as the Water Supply Infrastructure Bond Act of 2022.

(b) As used in this division, the following definitions apply:

(1) “Committee” means the Water Supply Infrastructure Finance Committee created pursuant to Section 79806.

(2) “Fund” means the Water Supply Infrastructure Fund created pursuant Section 79801.

(3) “Public agency” means a board, commission, county, city and county, city, regional agency, district, federally recognized Indian tribe, other public entity, or public-private partnership.

(4) “State General Obligation Bond Law” means the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), as it may be amended from time to time.

(5) “Water Supply Infrastructure Trust Account” means the Water Supply Infrastructure Trust Account created pursuant to Section 2.5 of Article X of the Constitution.

Chapter 2. General Provisions

Sec. 79801. The proceeds of bonds, excluding those issued in accordance with Section 79813, issued and sold pursuant to this Bond Act, shall be deposited in the Water Supply Infrastructure Fund, which is hereby created in the State Treasury. All moneys in the fund, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated without respect to fiscal years for the purposes of this Bond Act.

Sec. 79802. An eligible applicant that is allocated funds for a water supply infrastructure project pursuant to this Bond Act, shall not use more than five percent (5%) of the funds allocated for the project to pay the administrative costs of the project.

Sec. 79803(a) The bonds issued pursuant to Section 79804 shall be available for the construction and acquisition of capital asset water supply infrastructure projects that will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional water supply, as provided in Section 2.5 of Article X of the Constitution.

(b) Water supply infrastructure projects eligible for funding pursuant to this Bond Act shall be approved by the California Water Commission based on the priorities stated in subdivision (c) of Section 2.5 of Article X of the Constitution and allocated to eligible projects that will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional water supply per year, including:

(1) Development or expansion of groundwater aquifer storage, remediation, and recovery projects;

(2) Recycling, purification, and treatment of stormwater and wastewater to water reuse standards, including, but not limited to, current drinking water standards at the time the project is approved;

(3) Expansion, repair, or replacement of existing surface reservoirs, and construction of new surface reservoirs;

(4) Desalination plants;

(5) Water conveyance development, maintenance, or expansion, for the delivery of clean, safe drinking water for homes and businesses, and water for agricultural uses consistent with area-of-origin water rights;

(6) Other projects designed to increase the clean, safe and affordable supply of water to all Californians with emphasis on California's disadvantaged communities, and other projects designed to increase conservation.

(c) The requirements of subdivisions (d) and (e) of Section 2.5 of Article X of the Constitution shall apply to all projects allocated funding pursuant to this Bond Act.

Sec. 79803.5 This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law.

Chapter 3. Fiscal Provisions

Sec. 79804(a) Bonds, equal to an amount wherein principal and interest payments do not exceed fifty percent (50%) of the amount annually transferred from the General Fund pursuant to Section 2.5 of Article X of the Constitution, not including the amount of any refunding bonds issued in accordance with Section 79813, shall be issued and sold for the purposes expressed in Sections 79802 and 79803, inclusive, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The committee shall annually estimate the allowable amount of bonds that may be issued, and the bonds shall be retired within fifty (50) years of the time of contracting. The bonds, when sold, issued, and delivered, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) The Treasurer shall issue and sell the bonds authorized in subdivision (a) in the amount determined by the committee pursuant to Section 79807. The bonds shall be issued and sold upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 of the Government Code.

Sec. 79805(a) The bonds authorized by this Bond Act shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, and all of the provisions of that law apply to the bonds, and this Bond Act, and are hereby incorporated as though set forth in full in this Bond Act.

(b) For purposes of this Bond Act, the references to "committee" in the State General Obligation Bond Law shall mean the Water Supply Infrastructure Finance Committee created in Section 79806, and the references to "board" in the State General Obligation Bond Law shall mean the California Water Commission.

Sec. 79806(a) Solely for the purpose of authorizing the issuance and sale pursuant to the State General Obligation Bond Law of the bonds authorized by this Bond Act, the Water Supply Infrastructure Finance Committee is hereby created.

(b) The committee consists of the Controller, the Treasurer, the Director of Finance, and the Chair of the California Water Commission. Notwithstanding any other law, any member may designate a representative to act in the member's place for all purposes, as though the member were personally present.

(c) The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

Sec. 79807. The committee shall determine by resolution the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

Sec. 79808. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds becoming due each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

Sec. 79809(a) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated from the Water Supply Infrastructure Trust Account, for the purposes of this Bond Act, and without regard to fiscal years, an amount that equals the total of both of the following:

(1) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this Bond Act, as the principal and interest become due and payable.

(2) The sum necessary to carry out Section 79811.

(b) If there is insufficient funding in the Water Supply Infrastructure Trust Account to pay the amounts described in subdivision (a), any excess amount is, notwithstanding Section 13340 of the Government Code, hereby continuously appropriated from the General Fund in the State Treasury to pay the amounts described in subdivision (a).

Sec. 79810. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this Bond Act, less any amount withdrawn pursuant to Section 79811 and not yet returned to the Water Supply Infrastructure Trust Account. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this Bond Act, excluding any refunding bonds authorized pursuant to Section 79813, less any amount loaned pursuant to this section and not yet repaid and any amount withdrawn from the Water Supply Infrastructure Trust Account pursuant to Section 79811 and not yet returned to the Water Supply Infrastructure Trust Account. The board

shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this Bond Act.

Sec. 79811. For the purposes of carrying out this Bond Act, the Director of Finance may authorize the withdrawal from the Water Supply Infrastructure Trust Account of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this Bond Act, excluding any refunding bonds authorized pursuant to Section 79813, less any amount loaned pursuant to Section 79810 and not yet repaid, and any amount withdrawn from the Water Supply Infrastructure Trust Account pursuant to this section and not yet returned to the Water Supply Infrastructure Trust Account. Any amounts withdrawn shall be deposited in the fund. Any moneys made available under this section shall be returned to the Water Supply Infrastructure Trust Account from proceeds received from the sale of bonds for the purpose of carrying out this Bond Act.

Sec. 79812. All moneys deposited in the fund that are derived from premium and accrued interest on bonds sold pursuant to this Bond Act, shall be reserved in the fund and shall be available for transfer to the Water Supply Infrastructure Trust Account as a credit to expenditures for bond interest, except those amounts derived from premium may be reserved and used to pay the cost of bond issuance before any transfer to the Water Supply Infrastructure Trust Account.

Sec. 79813. The bonds issued and sold pursuant to this Bond Act, may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state of the measure adding this division to the Water Code includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this Bond Act, or any previously issued refunding bonds. Any bond refunded with the proceeds of refunding bonds as authorized by this section may be legally defeased to the extent permitted by law in the manner and to the extent set forth in the resolution, as amended from time to time, authorizing that refunded bond.

Sec. 79814. Notwithstanding any other provision of this Bond Act, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this Bond Act, that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions or is otherwise entitled to any federal tax advantage, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds or earnings required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

Sec. 79815. The proceeds from the sale of bonds authorized by this Bond Act, are not “proceeds of taxes” as that term is used in Article XIII B of the Constitution, and the disbursement of these proceeds is not subject to the limitations imposed by that article.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE AND STREAMLINED REVIEW

Article 7 (commencing with Section 21159.50) of Chapter 4.5 of Division 13 of the Public Resources Code is added to read:

Sec. 21159.50(a) Except as provided in Section 21159.51, the provisions of the California Environmental Quality Act (“CEQA”) shall apply to water projects allocated funding in whole or in part by Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certified as a drought resiliency project pursuant to Section 21159.52.

(b) Notwithstanding subdivision (a), the Water Commission’s determination to (1) allocate funding pursuant to Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or (2) certify a project as a drought resiliency project pursuant to Section 21159.52 shall not constitute a “project” pursuant to Section 21065 of the Public Resources Code and shall be exempt from CEQA.

Sec. 21159.51(a) Projects allocated funding in whole or in part by Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certified as a drought resiliency project pursuant to Section 21159.52 may elect to be subject to streamlined review of an agency’s compliance with the California Environmental Quality Act (“CEQA”) as follows:

(1) For projects electing to be governed by the provisions of this section, within 10 days of the project’s allocation of funding or certification as described in subdivision (a), the lead agency shall issue a public notice providing the following:

“THE APPLICANT HAS ELECTED TO PROCEED UNDER PUBLIC RESOURCES CODE SECTION 21159.51, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING AN AGENCY’S COMPLIANCE WITH CEQA OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE ENVIRONMENTAL DETERMINATION IS SUBJECT TO THE PROCEDURES SET FORTH IN PUBLIC RESOURCES CODE SECTION 21159.51. A COPY OF PUBLIC RESOURCES CODE SECTION 21159.51 IS INCLUDED BELOW.”

(2) The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

(b) Notwithstanding any other law, the procedures set forth in this section shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or approval of any environmental determination or granting of project approvals for a project electing to be governed by the provisions of this section.

(c) Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or approval of any environmental determination or granting of project approvals for a project electing to be governed by the provisions of this section, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within two hundred seventy (270) days of the filing of the certified record of proceedings with the court. For purposes of this Article, “environmental determination” means an environmental impact report, mitigated negative declaration, negative declaration, categorical

exclusion, a determination that the project is not subject to CEQA, or a determination that no additional environmental review is required.

(d) Notwithstanding any other law, in connection with any environmental review following allocation of funding or certification for a project electing to be governed by the provisions of this section, the preparation and certification of the administrative record shall be performed in the following manner at the applicant's expense:

(1) The lead agency or responsible state agency (for purposes of this section, the "Agency") shall prepare the record of proceedings pursuant to this division concurrently with the administrative process.

(2) All documents and other materials placed in the record of proceedings after the project's allocation of funding under Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certification under Section 21159.52 shall be posted on, and be downloadable from, an Internet Web site maintained by the Agency commencing with the date of the release of the project's draft environmental impact report or other environmental determination.

(3) The Agency shall make available to the public in a readily accessible electronic format the project's draft environmental impact report or other environmental determination and all other documents submitted to, or relied on by, the Agency in the preparation of the project's draft environmental impact report or other environmental determination.

(4) A document prepared by the Agency or submitted by the applicant after the date of the release of the project's draft environmental impact report or other environmental determination that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five (5) business days after the document is released or received by the Agency.

(5) The Agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five (5) business days of receipt.

(6) Within seven (7) business days after the receipt of any comment that is not in an electronic format, the Agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(7) Notwithstanding paragraphs (2) to (6), inclusive, documents submitted to or relied on by the Agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the Agency shall make an index of these documents available in an electronic format no later than the date of the release of the project's draft environmental impact report or other environmental determination, or within five business days if the document is received or relied on by the Agency after the release of the project's draft environmental impact report or environmental determination. The index shall specify the libraries or Agency offices in which hardcopies of the copyrighted materials are available for public review.

(8) The Agency shall certify the final record of proceedings within five (5) days of its approval of the project.

(9) Any dispute arising from the record of proceedings shall be resolved by the Superior Court. Unless the Superior Court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(10) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

(e) (1) In granting relief in an action or proceeding subject to this section, the court shall not stay or enjoin the construction or operation of any project described in subdivision (a) unless the court finds either (i) that the continued construction or operation of the project presents an imminent threat to public health and safety, or (ii) that the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the project unless the court stays or enjoins the construction or operation of the project.

(2) If the court finds that either (i) or (ii) of subsection (1) is satisfied, the court shall only enjoin those specific activities associated with the project that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

(f) With respect to projects described in subdivision (a), for a period of five (5) years after the certification or adoption of the project's most recent environmental determination, subdivisions (b) and (c) of Section 21166 of the Public Resources Code shall not apply and "substantial changes" as used in subdivision (a) of Section 21166 of the Public Resources Code shall only mean changes to the project that result in more than a five percent (5%) increase in the project's total floor area and/or production capacity, beyond the scope of the project analyzed in the project's environmental determination.

(g) This section applies prospectively and retroactively to any approvals by a lead agency or a responsible agency for a project electing to proceed pursuant to this section. This section also applies prospectively and retroactively to any such project with any causes of action and claims that are pending as of the effective date of this section and for which no final non-appealable judgment has been entered prior to the effective date of this section.

Sec. 21159.52(a) A person proposing to construct a water supply project may apply to the Water Commission for certification that the water supply project is a drought resiliency project eligible for streamlining provided by this Article. The person shall supply evidence and materials that the Water Commission deems necessary to make a decision on the application. Any evidence or materials submitted for certification review shall be made available to the public at least fifteen (15) days before the Water Commission certifies a project pursuant to this Article.

(b) Within sixty (60) days of receipt of the evidence and materials described in subdivision (a), the Water Commission shall certify a project as a drought resiliency project if the evidence and materials provided demonstrate that:

(1) The project falls within one or more of the following project categories:

(i) Development or expansion of groundwater aquifer storage, remediation, and recovery projects;

(ii) Recycling, purification, and treatment of stormwater and wastewater to water reuse standards, including but not limited to current drinking water standards at the time the project is approved;

(iii) Expansion, repair, or replacement of existing surface reservoirs, and construction of new surface reservoirs;

(iv) Desalination plants;

(v) Water conveyance development, maintenance, or expansion, for the delivery of clean, safe drinking water for homes and businesses, and water for agricultural uses consistent with area-of-origin water rights;

(vi) Other projects designed to increase the clean, safe and affordable supply of water to all Californians with emphasis on California's disadvantaged communities, and other projects designed to increase conservation; or

(vii) Research and development of new technologies designed to increase the clean, safe and affordable supply of water to all Californians;

(2) The project will help achieve the creation of a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity; and

(3) The project will satisfy the requirements of subdivisions (d) and (e) of Section 2.5 of Article X of the Constitution.

(c) A project is not required to be eligible for or receive funding under Article X, Section 2.5 of the Constitution or the Water Supply Infrastructure Bond Act of 2022 in order to be certified as a drought resiliency project pursuant to this Section.

(d) The Water Commission may issue guidelines regarding application and certification of projects under this section. Any guidelines issued under this section are not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) This Section shall become inoperative upon the State's certification pursuant to Article X, Section 2.5(e) that a minimum of five million acre-feet (5,000,000 AF) of additional annual water supply capacity has been created and is being delivered to California's urban and agricultural consumers.

SECTION 6. CALIFORNIA COASTAL COMMISSION REVIEW

Section 30412.5 of the Public Resources Code is added to read:

Sec. 30412.5(a) Notwithstanding any other provision of law, with respect to any project allocated funding in whole or in part by Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022 or certified as a drought resiliency project pursuant to Section 21159.52 of the Public Resources Code, the Secretary of the California Natural Resources Agency shall have the authority to review, approve, deny, and/or issue any Coastal Commission action or inaction for such project, including without limitation, any coastal development permits or denials arising out of an appeal of an approval or a denial by a local government pursuant to a local coastal program or part thereof certified under Chapter 6 of Division 20 of the Public Resources Code, pursuant to the procedures set forth in this section. For purposes of this section, any project meeting the requirements of this subdivision (a) shall be referred to as an "eligible water project." For purposes of this section, an appeal of an approval or a denial by a local government of an eligible

water project pursuant to a local coastal program or part thereof certified under Chapter 6 of Division 20 of the Public Resources Code, including all local implementing ordinances and regulations related thereto, shall be referred to as a “local coastal program appeal.”

(b) The Secretary of the California Natural Resources Agency shall have the authority to review the Coastal Commission action or inaction with respect to any eligible water project subject to subdivision (a) as set forth herein:

(1) Notwithstanding Article 5 of Chapter 4.5 of Division 1 of Title 7 of the Government Code, the Coastal Commission shall render a final decision on any coastal development permit application, and/or local coastal program appeal(s) for an eligible water project subject to subdivision (a) within ninety (90) days after submission of the application and/or local coastal program appeal or the Coastal Commission determines the application and/or local coastal program appeal is complete, whichever may occur first. If the Coastal Commission fails to act within such ninety-day (90 day) time period, the coastal development permit application and/or local coastal program appeal(s) shall be transferred to the Secretary of the California Natural Resources Agency, who shall render a final decision on such application and/or local coastal program appeal(s).

(2) Within thirty (30) days following any decision by the Coastal Commission on an eligible water project subject to subdivision (a), a project applicant may appeal the Coastal Commission’s decision to the Secretary of the California Natural Resources Agency.

(3) For any Coastal Commission decision related to any eligible water project subject to subdivision (a) issued subsequent to September 1, 2021, but before the effective date of this section, the project applicant may appeal any such decision to the Secretary of the California Natural Resources Agency within thirty (30) days of the effective date of this section.

The Secretary may grant or deny any appeal filed pursuant to this subdivision, and shall render a final decision on any such appeal within ninety (90) days of the filing of such appeal. Should the Secretary approve any coastal development permit(s) for the eligible water project, or grant any appeal filed hereunder, the Secretary may direct the Commission to issue the coastal development permit(s) or take any other action, on those terms and conditions that the Secretary may determine, in the Secretary’s sole discretion, are appropriate. In issuing such approval or direction regarding any such coastal development permit, the Secretary shall rely upon the project’s previous environmental determination(s) and no further environmental review shall be required under Division 13 (commencing with Section 21000) of the Public Resources Code. The Secretary shall adopt findings that reflect the action of the Secretary based upon prior environmental review. In reviewing the coastal development permit application and/or local coastal program appeal(s), or any other decision, the Secretary shall consider the State’s interest in diverse and resilient water supplies and mitigating the effects of drought on such supplies, and may conclude that such interests require modification of any decision of the Coastal Commission, or any condition imposed by the Coastal Commission on the eligible water project.

(c) Notwithstanding the Secretary of the California Natural Resources Agency’s certification of the regulatory program of the Coastal Commission dealing with the consideration and granting of coastal development permits pursuant to Section 21080.5 of the Public Resources Code, in

assessing the conformity of an eligible water project with Chapter 3 (commencing with Section 30200) of the Public Resources Code and, if applicable, the local government's certified local coastal program for those portions of the project on appeal to the Coastal Commission, the Coastal Commission shall rely exclusively upon any environmental impact report or other environmental review document previously certified or adopted by the lead agency (and any responsible state agency, if applicable) pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, and the Coastal Commission shall not require any new or revised environmental review pursuant to the California Environmental Quality Act prior to acting on such.

(d) Notwithstanding any other provision of law, including but not limited to Chapter 4, Article 3, and Chapter 5, Article 1, of Division 20 of the Public Resources Code, the Secretary of the California Natural Resources Agency is designated as a state agency charged with implementation of Section 307 of the Federal Coastal Zone Management Act of 1972 (16 U.S.C. § 1456), and any regulations promulgated thereunder, with respect to decisions made by the Secretary pursuant to this section. In exercising such authority, the Secretary shall interpret and apply the applicable policies set forth in the certified California Coastal Management Program, including, but not limited to, the applicable policies set forth in Chapter 3 of Division 20 of the Public Resources Code, and shall determine the consistency of such eligible water project with such policies. This section shall be submitted by the Governor to the United States Secretary of Commerce for certification as part of the California Coastal Management Program consistent with the requirements of 16 U.S.C. § 1455, subdivision (e) and 15 C.F.R. Part 923, subpart H.

(e) This section applies prospectively and retroactively to any approvals or denials of permits for an eligible water project under Division 20 of the Public Resources Code or any local coastal program or part thereof approved by a local government lying, in whole or in part, within the coastal zone and certified under Chapter 6 of Division 20 of the Public Resources Code.

(f) The Coastal Commission may provide comment to the Water Commission during the Water Commission's funding allocation process pursuant to Section 2.5 of Article X of the Constitution or the Water Supply Infrastructure Bond Act of 2022.

SECTION 7. MANDATORY AUDITS

Article 5 (commencing with Section 8549.50) of Chapter 6.5 of Division 1 of Title 2 of the Government Code is added to read:

Sec. 8549.50(a) The California State Auditor shall annually conduct a programmatic review and an audit of expenditures from the Water Supply Infrastructure Fund and the Water Supply Infrastructure Trust Account.

(b) Notwithstanding Section 10231.5 of the Government Code, the California State Auditor shall report its findings under subdivision (a) annually on or before March 1 to the Governor, and to the Legislature in compliance with Section 9795 of the Government Code, and shall make the findings publicly available.

(c) If an audit of an entity that receives funding under this article is conducted pursuant to state law and reveals any impropriety, the California State Auditor or the Controller may conduct a full

audit of any or all of the activities of that entity. If the audit reveals erroneous or inappropriate spending of funding received under Section 2.5 of Article X of the California Constitution or the Water Supply Infrastructure Bond Act of 2022 by a public agency, the public agency shall, if the California Water Commission determines the erroneous or inappropriate spending was intentional, repay the moneys to the California Water Commission for deposit into the Water Supply Infrastructure Trust Account or the Water Supply Infrastructure Fund, as applicable.

SECTION 8. GENERAL PROVISIONS

(A) The provisions of this Act are severable. If any provision of this Act, or any part thereof, or its application, is for any reason held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect any other provision or application that can be given effect without the invalid provision or application. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivisions, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional irrespective of whether any portion of this Act or application thereof are subsequently declared invalid or unconstitutional.

(B) This Act is intended to be comprehensive. It is the intent of the people that in the event this Act and acts relating to the same subject appear on the same statewide election ballot, the provisions of the other act or acts (each, a “Conflicting Act”) shall be deemed to be in conflict with this Act. In the event that this Act and one or more Conflicting Acts are adopted by the voters in the same election, and this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the Conflicting Acts shall be null and void.

(C) (1) Except as provided in paragraph (2), the Attorney General shall defend against any action challenging, in whole or in part, the validity of this Act, and shall have an unconditional right to intervene in any action to defend the validity of this Act.

(2) If the Attorney General declines to defend the validity of this Act in any action, the Attorney General shall nonetheless file an appeal from, or seek review of, any judgment of any court that determines that the Act is invalid, in whole or in part, if necessary or appropriate to preserve the State’s standing to defend the law in conformity with the Attorney General’s constitutional duty to see that the laws of the state are adequately enforced.

(3) The official proponent(s) of this Act have an unconditional right to participate, either as interveners or real parties in interest, in any action affecting the validity or interpretation of this Act. Where the Governor and Attorney General have declined to defend the validity of the Act, the official proponents are also authorized to act on the State’s behalf in asserting the State’s interest in the validity of this Act in any such action and to appeal from any judgment invalidating this Act.

(4) Nothing in this section precludes other public officials from asserting the State’s interest in the validity of this act.

(5) This Act must be broadly construed, interpreted, and implemented in order to achieve the purposes in Section 2.

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Assembly California Legislature



DEVON J. MATHIS
ASSEMBLYMEMBER, TWENTY-SIXTH DISTRICT

Water Infrastructure Funding Act of 2022

We, the undersigned members of the California State Legislature, pledge our support to the “Water Infrastructure Funding Act of 2022,” a citizens’ constitutional amendment, filed for title and summary on August 26th.

This act, when approved by the voters, will accomplish the following objectives:

1 – Provide ample funds for water infrastructure by allocating two percent of the state’s general fund to support projects that increase California’s annual supply of water to cities, farms, and unserved regions.

2 – Unlock immediate access to tens of billions of dollars that will be invested in water projects by permitting up to half of the two percent allocation which/ that will be used to pay principal and interest on construction bonds.

3 – Give priority to underfunded projects approved by voters in Prop. 1 (2014) that are also already approved by the California Water Commission.

4 – Prioritize the maintenance, repair and upgrading of projects to deliver abundant and affordable drinking water to underserved communities.

5 – Funding does not expire until the supply capacity of new projects provides five-million-acre feet of new water for California consumers, with surplus water used to protect California’s ecosystems.

6 -- Eligible projects include funding for conservation programs and will result in up to one-million-acre feet of water saved.

7 -- Allocate funds based on an all-of-the-above strategy, allowing Californians to repair and upgrade aqueducts, dams, water treatment plants, build off-stream reservoirs, expand existing reservoirs, invest in wastewater reuse and desalination plants, runoff capture, and aquifer recharge and recovery.

8 – Streamline the bureaucratic process so projects can be designed and built in a reasonable period of time.

We support this initiative to improve our aging water infrastructure and to construct new means to capture and deliver water to all parts of our state. The challenges of a growing population in conjunction with climate change and prolonged droughts have exposed the serious flaws within our water infrastructure. The funding allocated within this proposal will ensure the state achieves water resilience and adequately provide clean, safe, and affordable drinking water to all Californians.

Devon Smith's AD26

Printed Name

[Signature]

Signature

[Signature]

Printed Name

HEATH FLORA AD12

Signature

RUDY SALAS

Printed Name

R. SALAS AD32

Signature

James Ramos

Printed Name

[Signature] AD40

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TIMOTHY S. GRAYSON

Printed Name

[Signature] AD14

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Carlos Villapudua

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[Signature] AD13

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Adam Gray

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KEN COOLEY

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Phillip Chen

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Kevin Kiley AD 6
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KL-Ki
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Thurston E. Smith
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Thurston E. Smith
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TOM LACKEY
Printed Name

Thomas Lackey
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Reduced AD 71
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RANDY DEPEL
Signature

Suzie Valladros
Printed Name

Suzie Valladros
Signature

AD 35
Printed Name

AD
Signature

Steven Choi
Printed Name

Steve Choi
Signature

JIM PATTERSON AD 23
Printed Name

Jim Patterson
Signature

Frank Bigelow AD 05
Printed Name

Frank Bigelow
Signature

M SD8
Printed Name

AD 3
Signature

Melvin Hurtado SD14
Printed Name

Signature

Boys
Printed Name

Chet Mayer
Signature

Vince Fong
Printed Name

Vince Fong AD-34
Signature

Marie Waldron
Printed Name

Marie Waldron AD 75
Signature

Laurie Davis
Printed Name

Laurie Davis
Signature

Bruce Ickle SD1
Printed Name

Signature

Kelly Seyarto
Printed Name

Kelly Seyarto
Signature

Janet Nguyen
Printed Name

Salvador
Signature



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: City Billboard Regulations

SOURCE: City Attorney

COMMENT: At its meeting on October 5, 2021, the City Council directed that an item be scheduled concerning the City's billboard regulations, in response to a citizen's complaint about a specific billboard's content and its proximity to a local school.

The City is severely restricted from enacting content-based regulations, pursuant to the First Amendment. For example, content-based restrictions on tobacco advertising have been invalidated under the First Amendment, even when challenged due to its close proximity to a school. [See *Lorillard Tobacco Co. v. Reilly* (2001) 533 US 525, 558.] A sign ordinance that creates exemptions for certain types of noncommercial speech and regulates each type differently is generally considered content-based and therefore is subject to strict scrutiny, per *Reed v. Town of Gilbert* (2015) 576 US 155. To avoid First Amendment violations, a governmental restriction on commercial speech must concern lawful activity and must not be misleading, must seek to implement a substantial governmental interest, must directly advance that interest, and must reach no further than necessary to accomplish its objective [Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n (1980) 447 US 557, 564].

That stated, cities can allow on-site commercial signage and prohibit off-site advertising billboards. A content-neutral ordinance banning (or otherwise regulating) all off-site billboards is not subject to strict scrutiny and does not violate the First Amendment, or the free speech clause of the California Constitution. [See *Metromedia, Inc. v. City of San Diego* (1981) 453 US 490, and *Lamar Cent. Outdoor, LLC v. City of Los Angeles* (2016) 245 Cal.App.4th 610.]

Cities that opt to enact such prohibitions or restrictions can provide for amortization of nonconforming signs after a certain period of time, and courts will uphold an amortization provision if the amortization period is "reasonable." Courts have upheld 5 and 7 year amortization clauses, and the reasonableness is evaluated by considering the cost of the sign, its depreciated value, remaining useful life, remaining length of leases, and harm to the public if the signs remain. To the extent there are any "onsite" billboards, California law may also require that fair and just compensation must be paid when removal of on-premises advertising is required.

The City of Porterville, per Municipal Code Section 305.06 currently prohibits ALL off-site billboard advertising, which would include off-site billboards. However, the billboards that were in place at the time of the enactment the regulation have been treated as non-conforming uses and are currently permitted until the uses are stopped/abandoned for a specific period of time. The Council can consider directing staff to analyze what might be potential specific “reasonable” amortization periods, in order to propose including a specific amortization period in the City’s sign regulations. This would effectively set a deadline and end the uses for the “grandfathered” billboards.

RECOMMENDATION: That the City Council provide direction to staff concerning whether the Council wishes to consider setting an amortization period for all billboards.

ATTACHMENTS: 1. Municipal Development Code: Article 305.06

Appropriated/Funded:

Review By:

Department Director:

Julia Lew, City Attorney

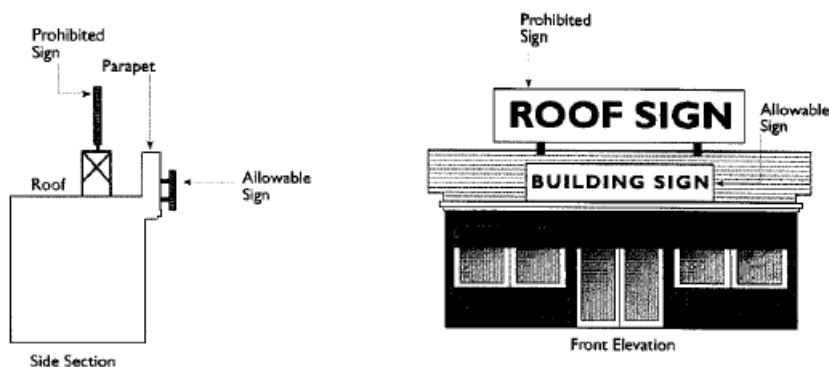
Final Approver: John Lollis, City Manager

305.06: PROHIBITED SIGNS:

The following types of signs and devices are specifically prohibited:

- A. **Animated, Flashing or Moving Signs.** Signs that incorporate, flashing, moving, rotating, pulsating or intermittent lighting, with the exception of changeable copy message center display signs and barber poles, except as allowed elsewhere in this chapter. Any sign that, because of brilliant lighting, interferes with the enjoyment of surrounding residential property or interferes with traffic, vehicular or pedestrian, is prohibited.
- B. **Balloons, Banners, Streamers and Pennants.** Signs, balloons, banners, pennants, or any other advertising display constructed of cloth, canvas, light fabric, paper, cardboard, wallboard or other light materials, except awnings or as allowed for Automobile/Vehicle Sales and Leasing establishments, or in Section 305.11, Temporary Signs.
- C. **Billboards.** Any sign directing attention to a business, service, or product that is not conducted, sold, produced, or offered by any use on the same lot, or which identifies by brand name a product which, although sold on the premises, does not constitute one (1) of the principal items for sale on the premises unless otherwise provided by the California Outdoor Advertising Act (Business and Professions Code Sections 5200 - 5486, inclusive).
- D. **Emissions.** Signs that produce noise in excess of forty (40) decibels, excluding voice units at drive-through facilities, and signs that emit odor or visible smoke, vapor or particles.
- E. **Fence Signs.** Signs attached or painted on fences or freestanding walls that are not part of a building, except for subdivision entry signs as allowed in Section 305.08 (b).
- F. **Obscenities.** Signs that depict, describe or relate to "specified sexual activities" or "specified anatomical areas" as defined in Chapter 700, Terms and Definitions.
- G. **Obstructions to Exits.** Signs erected, constructed or maintained which obstruct any firefighting equipment, fire escape, required exit or door opening intended as a means of egress, unless approved by the Fire Marshal.
- H. **Obstructions to Driver Visibility.** Signs in corner cut-offs and lines of sight in accordance with the provisions of Section 300.16, Visibility at Driveways and Intersections.
- I. **Obstructions to Ventilation.** Signs that interfere with any opening required for ventilation.
- J. **Portable Signs.** Signs not permanently attached to, mounted upon or affixed to a building, structure or the ground, except as otherwise provided herein.
- K. **Posters.** Posters of a temporary character that are tacked, painted, pasted or otherwise placed or affixed and made visible from a public way, on the walls of buildings, on barns, sheds, trees, fences, utility poles or other structures, sidewalks or patios, except as otherwise provided in this chapter. This section excludes signs placed in windows per Section 305.10 (e).
- L. **Roof Signs.** Signs erected or painted upon, over or above the roof of a building or structure, or any sign affixed to the wall of a building so that it projects above the ridge line or top of parapet, except as allowed in this chapter.

FIGURE 305.06L: ROOF SIGNS



M. **Signs Creating Traffic Hazards.** Signs that simulate in color, size or design any traffic control sign, signal or device, or that make use of words, symbols or characters in a manner that interferes with, misleads or confuses pedestrian or vehicular traffic. No sign, light or advertising structure shall be located in such a manner as to constitute a hazard to pedestrian or vehicular traffic, or in such a manner as to obstruct free and clear vision, at any location where, by reason of the position, shape, color or movement may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device.

N. **Signs of public property.** Signs located on public lands, including but not limited to public rights of way, parks, public buildings, storm drainage basins, and facilities are prohibited. When associated with rental or reservation of such facility, signs may be placed during the event for which the reservation was made; however, such signs must be removed at the end of the reservation period. (Ord. 1866, 11-19-2019)



CITY COUNCIL AGENDA – OCTOBER 19, 2021

SUBJECT: Status and Review of Proclamation of Local Emergency: COVID-19

SOURCE: City Manager's Office

COMMENT: At its meeting of March 17, 2020, the City Council took action to approve a Resolution of Proclamation of Existence of a Local Emergency for the novel coronavirus (COVID-19), which staff also initiated a soft-opening of its Emergency Operations Center (EOC) on Friday, March 20, 2020. At its meeting on October 5, 2021, the Council reviewed the status of existence of local emergency, and acted to continue its Resolution of Proclamation.

On March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency, President Trump issued a Proclamation on Declaring a National Emergency on March 13, 2020, and the Tulare County Board of Supervisors adopted a Resolution of Proclamations of Local Emergencies on March 17, 2020. The Tule River Tribal Council also adopted a Resolution of Declaration of State of Emergency on March 13, 2020. Subsequent to his Proclamation at the time of this report, Governor Newsom has issued sixty-five (65) Executive Orders in support of the State addressing and mitigating COVID-19 impacts, several of which are pertinent to the City. On June 11, 2021, Governor Newsom issued two Executive Orders to terminate the Stay-at-Home Order (Executive Order N-07-21), as well as to begin the wind down of other previous Executive Orders related to the pandemic (Executive Order N-08-21).

Governor Newsom's Executive Order N-25-20, issued on March 12, 2020, provided restrictions on mass gatherings of no more than 250, as well as provided accommodations to the Brown Act to encourage remote participation and social distancing. At its meeting of March 17, 2020, the Council gave direction of local gatherings not to exceed twenty-five (25), which staff responded to complaints and incidents accordingly. Both President Trump and the Centers for Disease Control (CDC) had recommended mass gatherings not exceed ten (10), which with Easter approaching on Sunday, April 12, 2020, the Council acted at its meeting on April 7, 2020, to limit local gatherings to no more than ten (10) individuals, allowing also for 6' social distancing. On October 9, 2020, apparently in consideration of the approaching holidays (e.g. Halloween, Thanksgiving, Christmas, etc.), the State issued guidance to allow up to three households to gather outdoors, including in a public park or outdoor space, allowing for social distancing, hand hygiene and wearing of face coverings unless eating or drinking, and not to exceed two hours in duration. On December 3, 2020, in response to rapidly increasing positive cases and hospitalizations (especially requiring ICU care), the State issued new stay home

Orders that prohibited all gatherings with members of other households. On January 25, 2021, the State ended its stay home Orders, removing the prohibited gathering restriction. On April 12, 2021, the State issued new guidance for activities and business tiers consistent with the Blueprint for a Safer Economy, which continued to strongly discourage indoor gatherings, but did allow for outdoor social gatherings not to exceed fifty (50) individuals in the Orange (Moderate) Tier - Tulare County's tier status at that time. On May 21, 2021, the State issued new guidance for activities and business referred to as "Beyond the Blueprint" that became effective June 15, 2021, eliminating limitations on capacity and allowing large gatherings both outdoors (recommended vaccine verification or negative testing) and indoors (required vaccine verification or negative testing). The "Beyond the Blueprint" requirements and regulations were effective through October 1, 2021, which the State assessed conditions by September 1, 2021 and determined an update was necessary. On August 18, 2021, the State issued updated guidance to the "Beyond the Blueprint" in regard to indoor "Mega Events," requiring vaccine verification or negative testing requirements for events involving 1,000 or more participants, removing self-attestation as a mode of verification after September 20, 2021, and extending requirements and regulations until November 1, 2021.

During the past eighteen (18) months, the Council and its legislative bodies have conducted teleconferencing meetings as allowed pursuant to a series of Executive Orders, the most recent which expired on September 30, 2021 (Executive Order N-08-021, issued June 11, 2021), which waived all physical presence requirements under the Brown Act as a means of limiting the spread of COVID-19. Recently adopted State law, Assembly Bill 361 (AB 361), extends the authority of public agencies to conduct meetings by teleconference, including video conference, without compliance with all of the Brown Act's limitations on such meetings, which the status of emergency resulting from the COVID-19 pandemic and accompanying recommendations for social distancing remain in place. Consistent with AB 361, the Council must adopt a Resolution consistent with its proclamation of local emergency, and must review and renew such Resolution every thirty (30) days thereafter. AB 361 will sunset on January 1, 2024.

The County and most cities across the county initially either closed or instituted soft-closings of its parks, including the closing of arbors, playgrounds and restrooms. At its meeting of April 7, 2020, the Council acted to soft-close City parks, including arbors, playgrounds, skatepark and sports courts (keeping restrooms open for hygiene purposes) and that gatherings of any size not occur. Consistent with the State and County's modified Orders regarding outdoor recreation and operating restrictions, at its meeting of May 5, 2020, the Council acted to reopen the City's golf course (including requiring participants to wear face coverings), OHV Park and tennis courts. On June 5, 2020, the State announced guidelines for the opening of outdoor recreation, including public swimming pools and aquatic venues, beginning June 12, 2020. At its meeting on June 16, 2020, the Council provided approval for the opening of the Murry Park swimming pool and Fallen Heroes Park splash pad consistent with the State's guidelines and necessary precautions and preparations. With continued

limitations on team-oriented recreation activities, staff prepared new individual outdoor recreation opportunities for the community, such as cross-country running. On June 5, 2020, the State also provided guidance on the opening of day camps beginning June 12, 2020, which staff also prepared for opening consistent with the State's guidelines and necessary precautions and preparations, and subsequently was completed on July 31, 2020. On September 28, 2020, the State allowed public playgrounds to reopen with guidance and restrictions, which at its meeting on October 6, 2020, the Council acted to keep playgrounds closed until further action. In its regional stay at home order issued on December 3, 2020, the State ordered the closing of all indoor and outdoor playgrounds, but did encourage residents to experience outdoor recreation without gathering with anyone outside their immediate household. On December 9, 2020, the State changed its guidance on outdoor playgrounds, allowing to remain open to facilitate physically distanced personal health and wellness through outdoor exercise. At its meeting on February 2, 2021, the Council acted to reopen the City's public playgrounds and skatepark in accordance with State guidance and restrictions. On February 19, 2021, the State released new guidance for both indoor and outdoor youth and recreational adult sports, effective February 26, 2021. Adhering and consistent with State guidance, the City began offering the reservation of park arbors and pavilions on March 27, 2021, and reopened the Zalud House Museum on March 25, 2021.

Due to the pandemic and to avoid mass gatherings, the community has suffered from the cancellation in the 2020 calendar year of the Iris Festival, Cinco de Mayo Parade, Porterville Fair, Military Banner Ceremony, KJUG Summer Concert Series, Freedom Fest, Pioneer Days, Veterans Day Parade, Christmas Tree-Lighting Ceremony and the Children's Christmas Parade (December), which further cancellations in the current calendar year potentially to occur. At its meeting on October 5, 2021, the Council approved the Veterans Day Parade to occur on November 11, 2021, with health and safety precautions required including: 1) longer parade route, multiple announcing areas and signage to avoid gathering and encourage social distancing; 2) livestreaming the event for individuals who elect not to attend in-person; and 3) sponsoring a vaccine event in collaboration with Sierra View Medical Center.

Governor Newsom's Executive Order N-28-20, issued on March 16, 2020, strongly advised that both private and public utilities not shutoff utilities or charge late fees for lack of payment until May 31, 2020, and directed the California Public Utilities Commission to review both private and public utilities for conformance. At its meeting on March 17, 2020, the Council acted to suspend the shutoff of utilities and the charging of late fees for lack of payment until at least its meeting of April 21, 2020 for review. Governor Newsom issued Executive Order N-42-20 on April 2, 2020, which mandated that private and public water utilities not shutoff service due to non-payment, retroactive to March 4, 2020 - the Order did not reference the charging of late fees. Given the suspension of shutoff and charging of late fees, the City initially experienced a dramatic increase in accounts not making payment since the Council's action, which staff reinforced the message to customers that regular payments must still be made and has led to now generally usual payment,

although has begun to accumulate. Since the Council's action on March 17, 2020 and as of September 30, 2021, there was \$1,205,360 in unpaid City utility accounts (water: \$602,471; sewer: \$320,062; and refuse: \$282,828), with the corresponding total loss in late fees of \$291,399 - more than double the City's experience prior to the Governor's Executive Order. At its meeting on April 21, 2020, the Council acted to continue the moratorium of utility turnoff for non-payment consistent with the Executive Order, and to continue to not charge late fees until further action by the Council. State Senate Bill 155 was chaptered on September 24, 2021, which extends the prohibition of shutoff of utilities until December 31, 2021.

Governor Newsom's Executive Order N-32-20, issued on March 18, 2020, appropriated \$150 million in emergency homeless funding, of which \$284,403 was allocated to Tulare County between \$147,734 to the Continuum of Care (CoC) and \$136,669 to the County. The CoC initially indicated its appropriation to the City of approximately \$40,000 based upon recent homeless population counts, which City staff recommended be the funding source for the daily homeless lunch program the City initiated on March 27, 2020, with the closure of the local non-profit (Helping Hands of Porterville Inc.) due to pandemic concerns earlier that same week. Staff estimated that the \$40,000 would allow the daily lunch program to continue through the month of April 2020. Subsequently, the CoC indicated it was attempting to match its funding allocation with the County's as the required 25% match to larger federal FEMA funding of approximately \$1.2 million. The County has indicated its allocation will be utilized in assisting with providing shelter for homeless individuals that are identified high-risk or in need of quarantine due to COVID-19 (Project Roomkey), which the County was working with two local hotels in the leasing of approximately thirty (30) rooms. At the time of this report, the County is no longer reporting the number of hotel rooms available to homeless individuals participating in the Project Roomkey program across the county, nor the number of rooms occupied. The County also reports that a Street Medicine event occurred in Porterville on June 29, 2020, during which twelve (12) individuals were tested for COVID-19 and all were negative, as well as another Street Medicine event that occurred in the Porterville area on May 7, 2021. On July 1, 2020, Helping Hands of Porterville resumed its daily homeless lunch program, thus relieving the City and its staff of the deliver of this program. However, Helping Hands decided to close its program in October 2020 due to limited donations and participation.

The City's contract operator of the planned navigation center, Turning Point of Central California, had been issued building permits and was making necessary improvements for anticipated opening in the month of July, with the installation of the fire monitoring and suppression system the final improvement needed to be completed. Turning Point had previously indicated that due to the current pandemic, occupancy of the navigation center when opened would be at half-capacity to allow adequate physical distancing given group housing, but now believes the center can open with two-thirds capacity and meet State guidelines for healthy and safe operations. Given the delay in the installation of the fire monitoring and suppression system, at its meeting on August 4, 2020, the

Council gave staff direction to consider opening the navigation center restricted to providing services without housing, which Turning Point opened and began offering daily services only on August 18, 2020. With the final completion of the requisite fire suppression and monitoring system, Turning Point began offering emergency shelter and transitional housing on November 15, 2020. For those served by the navigation center, a vaccine event occurred on May 7, 2021.

Governor Newsom's Executive Order N-33-20, issued on March 19, 2020, ordered that state residents shelter-at-home, and that only identified essential businesses remain open and associated workforce. Much confusion reverberated throughout the state in clarifying essential businesses, which staff both responded to complaints and acted proactively in following the State's guidelines of essential businesses (attached). To assist in this ever-changing subject, at its meeting on April 21, 2020, the Council acted to appoint Vice Mayor Reyes and Council Member Gurrola to form an Ad Hoc Committee to coordinate with the City Attorney and City Manager in the application of the State and County guidelines in regard to essential and non-essential businesses. The Committee has met intermittently in review of local complaints and compliance with modified State and County Orders. At its meeting on December 15, 2020, the Council acted to appoint Council Member Carrillo to replace former Council Member Gurrola on the Committee.

On Tuesday, April 28, 2020, Governor Newsom announced his 4 Stage plan for reopening the California economy and gradual modification of his stay-at-home Order, which his presentation is enclosed. The Governor indicated that moving from current Stage 1 to State 2 would likely occur in several weeks and allow non-essential "low-risk" retail to reopen with requisite 6' social distancing. The Governor indicated "high-risk" personal services would likely be allowed later during the Summer. On May 4, 2020, Governor Newsom issued Executive Order N-60-20, allowing the reopening of lower-risk businesses and spaces in Stage 2 beginning May 8, 2020, including manufacturing, retailers (pick-up and delivery) and warehouses. The Order also allowed Counties to proceed more quickly through Stage 2 (Variation Attestation) given certain State-determined public health metrics were met, including: 1) sustained reduction or stability in new cases for fourteen (14) days; 2) adequate diagnostic testing capacity and test results, including the ability to test all individuals with COVID-19 symptoms, same-day testing widely available for hospitalized patients, healthcare workers and workers in essential roles, close contacts for confirmed cases, and outpatients with symptoms; 3) public health department's capacity to rapidly interview new cases, identify close contacts, and ensure isolation and quarantine are effective; and 4) health care system capacity to respond to potential surges.

At its meeting on May 12, 2020, the Tulare County Board of Supervisors considered its draft plan for compliance with the Executive Order (attached). Of note, the Tulare County Public Health Officer issued a health advisory on May 7, 2020, that county residents should wear face coverings when in public (attached). At its meeting on May 19, 2020, the Board of Supervisors acted to modify its draft plan for reopening, including advancing immediately through

the State's Stage 3, rescinding the County's Public Health Officer's Order, halting all local civil enforcement of stay-at-home Orders, directing County guidance for Stage 3 businesses, and direct County efforts from meeting State metrics to supporting problem areas and populations including the elderly and health compromised individuals, skilled nursing facilities, hospitals, and businesses or agencies with reported outbreaks. On May 26, 2020, the County submitted its Variance Attestation to the State, which was approved and posted by the State on May 27, 2020, allowing the county to proceed through the State's Stage 2.

On May 25, 2020, the State announced that places of worship (25% capacity) and in-store retail were allowed to proceed immediately statewide, and on May 26, 2020, the Governor announced that barber and hair salons could reopen immediately in counties with approved Variance Attestations, which as previously stated Tulare County's was approved by the State on May 27th. On June 5, 2020, the State announced that additional previous Stage 3 activities would be allowed to reopen with provided guidance effective June 12, 2020, including bars and wineries, campgrounds and RV parks, family entertainment centers (i.e. bowling alleys and movie theaters), fitness facilities, and museums/galleries/zoos/aquariums.

Due to increasing positive cases across the state, on June 18, 2020, the State issued guidance that all individuals wear face coverings when in public. At its meeting on July 7, 2020, the Council acted to approve and Order under its Proclamation of Local Emergency authorizing the City to enforce the State's mandatory face covering requirements through the City's administrative citation regulations and aggressive education efforts, and directed City staff to prepare an emergency Ordinance requiring face coverings consistent with the State requirements, which was scheduled for Public Hearing and was approved by the Council at its meeting of July 21, 2020. In enforcement of the emergency Ordinance since adoption by Council, the Fire Department's Code Enforcement Division has eleven (11) documented business-oriented incidents, and the Police Department has 132 documented individual or group incidents. On June 9, 2021, the State released new face coverings guidance to take effect June 15, 2021, providing that face coverings are not required for fully vaccinated individuals except for: 1) on public transit; 2) indoors in K-12 education, childcare and youth settings; 3) healthcare settings; 4) state and local correctional and detention facilities; and 5) homeless, emergency and cooling centers. Unvaccinated individuals continue to be required to wear face coverings when indoors in public settings and businesses. On July 27, 2021, the CDC issued guidance that recommended vaccinated individuals wear face coverings while indoors in areas considered to be experiencing increased spread ("substantial" or "high" risk) of the delta variant coronavirus, which Tulare County at the time of this report is considered "high" risk for spread.

Due to increasing positive cases, testing positivity and COVID-19 hospitalizations, the State placed Tulare County on its monitoring list program for targeted engagement and potentially reinstituting community measures, which on June 28, 2020, the State directed all bars in Tulare County be closed

again immediately by local health officer order. On July 1, 2020, the State further directed the closing of indoor activities for at least the succeeding three weeks, including restaurants, bowling alleys, movie theaters, card rooms, museums, wineries and zoos. On Monday, July 14, 2020, the State directed the immediate closure of all bars in California and cease in-restaurant dining, as well as the immediate closure of indoor activities or industries including barbershops, fitness centers, hair salons, malls, offices for non-essential sectors, personal care services (e.g. esthetic salons, nails salons, tattoo parlors), protests and places of worship for counties on the State's monitoring list (including Tulare County), unless the activity or industry can be modified to operate indoors or by pick-up. The State Board of Barbering and Cosmetology initially declared that barbershops and esthetic, hair and nails salons are required to operate indoors and may not operate outdoors and therefore must be closed, however, the State Board subsequently determined to allow these businesses to be open with modifications to operate outdoors.

On August 28, 2020, Governor Newsom announced that the State was implementing a new County Monitoring List system known as the Blueprint for a Safer Economy, incorporating standardized four tiers dependent upon a county's daily new cases per 100,000 population and testing positivity rates and the corresponding effect on economic sectors guidelines for operation. When the Blueprint for a Safer Economy was retired on June 15, 2021, Tulare County was in the Orange (Moderate) tier given its daily positive case rate per 100,000 population exceeded two (1.5 at the time of the report), however, the positivity rate met the Yellow (Minimal) tier requirement of less than two percent (1.5% at the time of the report). As of June 15, 2021, there were three counties in the Red (Substantial) tier, thirty-one (31) counties in the Orange (Moderate) tier and twenty-four (24) counties in the Yellow (Minimal) tier. Under the new system, the State allowed barber and hair salons to reopen indoor operations on August 31, 2020, and allowed nail salons to reopen indoor operations on September 22, 2020, if permitted by local county public health officials. The State further allowed expanded personal care services to reopen indoor operations on October 20, 2020, including esthetic, skin care, electrology, body art professionals, tattoo parlors, piercing shops and massage therapy (in non-healthcare settings).

On September 30, 2020, the State announced a new health equity metric to be included in the Blueprint for a Safer Economy, requiring that test positivity rates in disadvantaged communities that comprise the lowest quartile of a county's Healthy Places Index census tracts do not significantly lag behind overall county test positivity rates. In order to advance to the next less restrictive tier (e.g. Purple-widespread to Red-substantial), a county will need to meet an equity metric and/or demonstrate targeted investments to eliminate disparities in levels of transmission. According to Tulare County's report as of October 13, 2020, the lowest quartile does not include Porterville areas exceeding 8% positivity, with the census tracts of Cutler/Yettum (24.4%), Pixley/Teviston (18.9%), Earlimart (15.6%), Alpaugh/Allensworth/Richgrove (15.4%), South-Central Tulare (13.3%), Tipton/Woodville (12.5%), West-Central Tulare (11.8%) and Orosi (8.9%) being of greatest concern. As referenced by a Member of Council, at its meeting on October 6, 2020, the Tulare County Board

of Supervisors adopted a Resolution, demanding clarity, consistency, and continuity from Governor Newsom regarding COVID-19 directives to counties.

On November 19, 2020, due to the observed significant rise in positive cases, the State announced a "Limited Stay At Home Order" that in all counties in the Purple (Widespread) tier under the State's Blueprint for a Safer Economy, requiring that all non-essential business and public activities cease to occur between 10:00 PM and 5:00 AM, effective November 21, 2020 through December 21, 2020 or as may be extended. On January 25, 2021, the State removed this Order effective immediately.

On December 3, 2020, due to the continued significant rise in positive cases and hospitalizations (especially ICU care), the State issued a "Regional Stay At Home Order" with the state separated into five regions by county and centered around maintaining a minimum of fifteen percent (15%) regional hospital ICU capacity, with Tulare County joining eleven (11) other counties in the "San Joaquin Valley" region. The San Joaquin Valley region experienced 14.1% ICU capacity on December 5th and 6.6% capacity on December 6th, causing the new regional order to go into effect in the San Joaquin Valley region at 11:59 P.M. on December 6th. As of June 15, 2021, the San Joaquin Valley region had 27.4% ICU capacity. The regional order modified business operations, including: 1) limit indoor retail to no more than twenty percent (20%) capacity; 2) limit restaurants to delivery/pick-up/take-out only; 3) limit worship and political expression to outdoor only; 4) limit outdoor recreation to no drink or food sales; 5) limit essential office work only when remote work is not possible; and 6) limit hotels and lodging to only supporting critical infrastructure. The regional order closes business operations, including: 1) barber and hair salons; 2) personal care services (esthetician, massage, nail and tattoo); and 3) museums. On January 25, 2021, the State removed this Order, returning to the State's Blueprint for a Safer Economy and the county tiers system.

The new State Blueprint also provided a waiver process to allow TK-6th Grade students to receive in-person instruction with prior County and State approval, which locally St. Anne's School received such approval and began instruction on September 14, 2020. Also locally, Hope Elementary School received waiver approval and began in-person instruction on September 28, 2020, and Porterville Unified School District received waiver approval and began in-person instruction on December 1, 2020. Burton, Pleasant View Elementary and Rockford Elementary have each also received both County and State waiver approval and have begun in-person instruction. The State issued guidance on August 2, 2021, that all adults and students must wear face coverings when indoors, and on August 11, 2021, announced guidance that all education employees be vaccinated or be tested at least once weekly. On October 1, 2021, Governor Newsom announced that the COVID-19 vaccine would be added to the list of vaccines required for school attendance for middle and high school grades, once the vaccine receives full approval from the federal Food and Drug Administration (FDA).

At its meeting on August 4, 2020, the Council considered and gave direction to
Item No. 22.

staff evaluate opportunities for local restaurants to operate outdoors in the City's public right-of-way. At its meeting on August 18, 2020, given City liability considerations, the Council gave direction to work with local restaurants individually through an application and guidelines developed in coordination with the Council's Ad Hoc Committee. On August 24, 2020, the Council Ad Hoc Committee met with staff to review draft guidelines for the opening of outdoor dining by restaurants in public right-of-way, which the final guidelines are provided as an attachment. Consistent with the guidelines and the proposed City's support for protecting restaurant patrons dining in the public right-of-way, at its meeting on September 1, 2020, the Council authorized an appropriation of \$100,000 from the City's Emergency/Catastrophic Reserve Fund for the purchase of necessary traffic and sidewalk barriers and other complimentary amenities, with any expenditure of funds to be documented for potential reimbursement should future federal and/or state funding be made available to mitigate COVID-19 activities. Nine entities had been approved to provide outdoor dining, including the Elks Lodge #1342, New China Restaurant, El Jacalito Taqueria, Pho Sho Fusion House, Pizza Factory, El Maguey Mexican Restaurant, Mariscos El-30, RJ's Cafe & Bakery, El Nuevo Mexicali II, Habi Sushi, Black Bear Diner and Birria Y Pollos El Guero, and several more were in the application process prior to outdoor dining being prohibited by the State's regional stay at home orders on December 3, 2020. On January 25, 2021, the State removed the regional stay at home Order, again allowing outdoor dining and the consideration of the outdoor dining permits that were in process. The Council's initial approval of the outdoor dining permit process was effective through January 31, 2021, which at its meeting on February 2, 2021, the Council acted to extend its outdoor dining permit process until June 30, 2021. Subsequently, an additional seven entities have been approved to provide outdoor dining, including Birria y Pupusas Las Favoritas, Denny's, El Nuevo Mexicali, El Tapatio, Landing 13, Taco Truck Cantina and The Mud House.

On June 3, 2021, Governor Newsom released a letter announcing the Eighth Notice of Regulatory Relief that allows restaurants and bars to maintain their expanded outdoor operations by providing regulatory relief through the end of 2021. The regulatory relief includes; on-sale retailers exercising off-sale privileges, sales of alcoholic beverages to-go, deliveries to consumers, free delivery, expansion of licensed footprint, on-sale licenses without kitchen facilities, virtual meet the winemaker or brewer dinners, renewal of relief for charitable promotions and sales, and relief from type-75 requirement to produce 100 barrels of beer annually. The letter also encourages local jurisdictions to continue to allow expanded outdoor dining opportunities. At the time of this report nineteen (19) entities have been approved to provide outdoor dining. One restaurant requested that their permit closed and several other restaurants are no longer utilizing the temporary outdoor dining areas approved under the program. The Council's initial approval of the outdoor dining permit process through January 31, 2021, was extended on February 2, 2021 to June 30, 2021. At its meeting on June 15, 2021, the Council extended the outdoor dining permit through January 2, 2022.

Due to increasing virus spread in the Central Valley resulting in increased cases

and hospitalizations, on July 27, 2020, the Governor announced the appropriation of \$52 million in support of the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare in the implementation of three Unified Support Teams to provide hands-on technical assistance in support of testing, contact tracing, isolation and quarantine efforts. On August 12 and 13, 2020, the State's Unified Support Team met with local representatives in developing strategies reducing community spread in Tulare County.

Most of the City's workforce has been deemed essential under the State's guidelines, which the City has directed its limited non-essential workers to remain at home and available for assignment if necessary, and has implemented a rotation of its essential workforce as much as possible to reduce employees public exposure. Employees required to be at work during the shelter-at-home Order are accrued special leave for later utilization and/or payment, as well as employees that are working from home. Given the State's reopening guidelines, all City employees returned to work effective June 1, 2020, and the special leave program was discontinued effective May 31, 2020. Compounding the challenge for the City's workforce was the temporary closure of local non-profit contractor Promoting Self Worth (PSW) due to its workforce being considered highly vulnerable to COVID-19, thus necessitating City staff to address the contracted essential services of graffiti removal and the care for a significant number of Landscape and Lighting Maintenance Districts (LMD). PSW returned to performing its contracted services with the City beginning the week of May 11, 2020.

Governor Newsom's Executive Order N-37-20, issued on March 27, 2020, established a moratorium on eviction of tenants in good standing as of the date of the Order through May 31, 2020, which had been an issue of discussion by the Council at its meeting on March 17, 2020. On May 29, 2020, Governor Newsom issued Executive Order N-66-20, extending the eviction moratorium through July 28, 2020. On June 30, 2020, the Governor issued Executive Order N-71-20, extending the eviction moratorium through September 30, 2020. On August 31, 2020, Governor Newsom signed legislation to extend protections for tenants from eviction from COVID-19-related back rent through February 1, 2021, as well as extended anti-foreclosure protections in the Homeowner Bill of Rights to small landlords, and on January 20, 2021, Governor Newsom signed legislation to extend the protections through June 30, 2021. On June 28, 2021, Governor Newsom signed legislation to extend the protections through September 30, 2021. With the conclusion of the eviction moratorium, \$850 million in State emergency rental assistance continues to be available to eligible low income tenants through the California COVID-19 Rent Relief Program.

Governor Newsom's Executive Order N-39-20, issued on March 30, 2020, provided broad waivers of certifications and licensing for healthcare providers and locations to expand the provision of medical care in meeting an expected patient surge. During his press conference announcing the Order, Governor Newsom mentioned that Porterville would play a role in meeting the expected patient surge, which staff has learned will involve the reactivation of a portion of the General Treatment Area of the Porterville Developmental Center (PDC),

including caring for up to potentially 350 COVID-19 patients in four (4) categories: 1) patients too sick to recover at home, but do not need hospitalization; 2) patients who have been hospitalized and who are recovering and require less care; 3) skilled nursing facility patients who don't require acute care; and 4) developmentally-disabled group home patients. Preliminary construction improvements have been completed to prepare the facility's infrastructure, with no timeline yet provided for necessary medical improvements expected to begin. The City has repeatedly asked the State to keep it involved in its planning efforts, including any actions by Council that would be supportive of its operation. On May 8, 2020, the City received notice from the County that the State intended to immediately relocate approximately forty (40) foster youth from across the state with COVID-19 to PDC, however, on May 9, 2020, the County notified the City that the State had changed its plans and would not be relocating the youth to PDC, likely to ensure regional patient surge capacity. On July 2, 2020, the City received notification from the County that the State would activate PDC as a regional alternate site on Friday, July 3, 2020, treating low-acute COVID-19 patients transferred from impacted hospitals from across the Central Valley. On August 19, 2020, the State notified the County that State personnel were being assigned to support the large fires in northern California and now across the state, and that PDC would not be accepting any new patients until further notice. As of September 12, 2020, there were no patients being treated at PDC, with the State designating the "warm closure" of the facility that can be reactivated within seventy-two (72) hours if necessary. The State has indicated that due to rising hospitalizations, it anticipated that PDC would be reopened as a regional alternate site, which was activated on December 15, 2020, and at the time of this report is currently not treating any patients and has been returned to "warm closure" status.

As part of the Governor's commitment to broader testing in rural and under-served areas of the state, the State established a contracted large-scale testing facility at the Veterans Memorial Building, beginning operations on Tuesday, May 5, 2020. Up to 130 tests are expected to be performed each day (Monday - Friday) for the next several months, which testing will be available to everyone by appointment. Given initial low utilization, City staff initiated a local messaging campaign for local residents to be tested, which precipitated improved community response beyond minimum State testing thresholds. City staff had been notified by County staff that the Veterans Memorial administration has given notice to the State to terminate the testing at its facility effective July 31, 2020, so that it may again use the facility for other purposes, however, the State and the Veterans Memorial administration have agreed to continue testing, with the testing site being terminated effective July 31, 2021. In addition, the City has partnered with the County in providing free community walkup testing, occurring weekly on Tuesdays in the public parking lot south of the Centennial Plaza building, which the County made the determination to discontinue the testing site effective May 18, 2021.

The United States Food and Drug Administration (FDA) provided emergency use authorization for the Pfizer-BioNTech COVID-19 vaccine on December 11, 2020, the Moderna vaccine on December 18, 2020 and the Johnson & Johnson

vaccine on February 27, 2021, which the State provided guidelines for the distribution of vaccines in three phases. Consistent with the State's identified Phase 1A/Tier 1 priority, Tulare County began vaccinations the week of December 14, 2020, with approximately 3,000 vaccines administered. At the time of this report, the County has received 331,725 vaccines and administered 229,990 vaccines to residents, and is available to all individuals age 12 or older. The County had identified large-scale community vaccination sites, with locations in Porterville (Porterville College), Tulare (Ag Center) and Visalia (College of the Sequoias), though the County transitioned the Porterville vaccination site to the Porterville Fairgrounds in May 2021 due to a parking lot project at Porterville College. At its Special Meeting on April 13, 2021, the City Council approved a mass vaccination and resource fair event sponsored by the County at the Porterville Fairgrounds on Sunday, April 18th through Tuesday, April 20th, 2021, which a successor vaccination event at the Fairgrounds for Sunday, May 10th through Tuesday, May 12th, 2021. Effective July 31, 2021, the local community vaccine clinic operated by Sierra View Medical Center and Imperial Ambulance at the Veterans Memorial Building transitioned to Sierra View's facility on the southwest corner of Morton Avenue/Pearson Drive.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a \$2 trillion economic recovery stimulus package. The financial recovery package includes: 1) \$604 billion for individuals/families, including \$300 billion in cash payments, \$260 billion in unemployment payments and \$44 billion in student loan assistance; 2) \$500 billion for large corporations; 3) \$377 billion for small business; 4) \$340 billion for state and local governments; 5) and \$180 billion for public services, including \$100 billion for hospitals. Within the state and local government provisions, a local government's (county or city) population must exceed 500,000 to receive direct federal recovery, which local governments with population less than 500,000 would only receive federal recovery through a state if the state was agreeable to local government distributions. On April 24, 2020, President Trump signed the Paycheck Protection Program and Healthcare Enhancement Act (H.R. 266), which provided approximately \$400 billion in additional business assistance (\$321 billion) and medical support and testing (\$75 billion). Staff is focusing its efforts now in engaging with local businesses and financial institutions to ensure the emergency resources are made available to promote local economic stability upon the completion of the current state of emergency.

On December 27, 2020, President Trump signed a \$900 billion COVID-19 relief bill into law, which included enhanced unemployment benefits, direct cash payments, small business assistance, childcare and education funding, rental assistance, vaccine and hospital funding, and payroll tax repayment, but did not include local government funding. Tulare County has reported that it would be receiving \$13 million in direct funding for rental and utility assistance, which it opted to dedicate to the State under SB 91 legislation for matching funds of \$14 million, with the total estimated \$27 million to be administered by the Local Initiatives Support Corporation (LISC) through local non-profit

organizations beginning by March 15, 2021.

On July 14, 2021, Governor Newsom announced the State's new \$100 billion California Comeback Plan, which includes \$5.2 billion allocated for both back-rent and prospective rent for eligible low income residents(California COVID-19 Rent Relief Program), as well as \$2 billion to pay back unpaid water and utility bills.

On March 11, 2021, President Biden signed the \$1.9 trillion American Rescue Plan Act (ARPA), which includes \$65 billion in local government funding assistance, with recent estimates by adopted population formulas would provide \$19,984,717 in direct federal financial assistance to the City. Guidelines for the eligible use of funds are currently being drafted by the U.S. Department of the Treasury, which will administer the funds, who released the Interim Final Rule on May 10, 2021. The City's first allocation of \$9,992,358 was received on May 20, 2021, which the second allocation would be received twelve (12) months later in May 2022, with all funds required to be obligated by December 31, 2024, and expended by December 31, 2026. Pursuant to the Interim Final Rule, the funds may be used for: 1) support public health expenditures in response and mitigation of COVID-19, including public safety personnel; 2) address negative economic impacts caused by the public health emergency, including assistance to individuals, households, businesses and impacted industries (tourism, travel and hospitality); 3) replace lost public sector revenue; 4) provide premium pay for essential workers in critical infrastructure sectors; and 5) invest in water, sewer and broadband infrastructure. At its meeting on May 18, 2021, the Council provided direction that the priorities for funding be water infrastructure, homeless services, broadband and technology infrastructure, business assistance (restaurants in particular) and vaccine support.

Consistent with federal guidelines in the use of ARPA funds and the Council's priorities for the use of funds, at its meeting on August 17, 2021, the Council acted to support a vaccine incentive program in collaboration with Sierra View Medical Center, offering \$100 gift cards/certificates from local businesses (with particular focus on restaurants and personal services) to individuals being vaccinated in special publicized events. The City and Sierra View partnered in a vaccine event at the KJUG Free Summer Concert at Centennial Park on August 19, 2021, which seventy-four (74) individuals were vaccinated, and a Community Roundup Event on August 27, 2021 at Sierra View's vaccine clinic, which had 366 individuals vaccinated, for a total of 440 local gift cards to be purchased and \$44,000 in City's ARPA funds expended. A second Community Roundup Event was held on September 16-18, 2021, with 795 individuals vaccinated. The third Community Roundup Event was held on October 7-9, 2021, with 1,249 individuals vaccinated. A total of 2,320 local gift cards/certificates have been purchased and \$232,200 in City ARPA funds expended. Sierra View has expressed its interest in continuing to partner with the City in future vaccine incentive events, which the Council at its meeting on September 21, 2021, authorized continued Community Roundup Events for October 7-9 and October 28-30, 2021, as well as Music on Main events on

October 15, 2021, and October 29, 2021. At its meeting on October 5, 2021, the Council approved a vaccine incentive event in conjunction with the Veterans Day Parade on November 11, 2021. Unfortunately, the vaccine event planned in conjunction with the Family Literacy Day on September 25, 2021, was canceled due to unhealthy air quality from the local Windy Fire. Family Healthcare Network has also expressed an interest to partner with the City on vaccine incentive events through its Downtown clinic.

At its meeting on May 5, 2020, the Council acted to amend its federal Community Development Block Grant (CDBG) 5-Year Action Plan and program the \$490,000 CDBG-CV business assistance funds received, and took additional action at its meeting on June 2, 2020, which staff received final approval from the Housing and Urban Development (HUD) Department on July 21, 2020, and begin providing local small business assistance. Although the City received approval of its CDBG-CV plan and program by HUD, on August 10, 2020, HUD released its final set of program rules, which staff had to review for consistency. On September 17, 2020, the City received notification from HUD of an additional \$393,000 in additional CDBG-CV funds, which City staff is still awaiting final approval from HUD on the use of funds. At its meeting of June 16, 2020, the Council took action to defer the collection of the biannual \$25 business license from July 2020 to January 2021 for local small businesses, which due to the State's current regional stay at home order, at its meeting on December 15, 2020, the Council acted to defer the biannual collection again until July 2021. At its meeting on August 3, 2021, the Council acted to continue to defer the biannual collection until January 2022.

On December 3, 2020, given the new Regional Stay-at-Home Orders, the State announced that a new \$500 million in grants would be made available to assist small businesses impacted by the Orders, which the application period for the first round of funding opened on December 30, 2020, and closed on January 13, 2021. A second round of funding was committed to by the State, with the application period having opened on February 2 and closed on February 8, 2021. Four additional rounds of funding were announced by the State on March 3, 2021, with the third round (waitlisted applicants from the first and second rounds only) having opened on March 5 and closed March 11, 2021, the fourth round (nonprofit cultural institutions only) opened on March 16 and closed on March 23, 2021, the fifth round (open to all eligible applicants) opened on March 25 and closed on March 31, 2021, and the sixth round (open to all eligible applicants) opened on April 28, 2021 and closed on May 4, 2021. An eighth round for nonprofit cultural institutions only opened on August 27, 2021 and closed on September 8, 2021. A ninth round for new and waitlisted applicants opened on September 9, 2021 and closed on September 30, 2021. Additional rounds of funding are expected to be announced, as the State has recognized an estimated \$75 billion budget surplus.

Given challenges of access and gaps in available small business assistance, some cities have developed self-funded small business assistance programs. As an example, the City of Whittier recently developed a \$500,000 small business assistance grant program, with eligible businesses required to have a valid

business license, be independently owned and operated, and have a physical commercial location (home based businesses are not eligible). The program provides \$500 to personal care services providers (i.e. hair, massage, nail, skincare, tattoo), \$2,000 to businesses that generate less than \$250,000 in gross taxable sales, and \$2,500 to businesses that generate more than \$250,000 in gross taxable sales. Small businesses are defined generating less than \$1.25 million in gross taxable sales.

From a City financial perspective, there is uncertainty as to how the pandemic would affect local sales tax and transient occupancy tax, which could be further compounded by a potential reassessment of property tax values. Fortunately, the conservative stewardship of the City has allowed it to have General Fund reserves for Catastrophic Emergencies (\$2.8 million) and Budget Stabilization (\$4.3 million), which in addition to the recent passage of Measure I, allows the City to purposefully address the current crisis and plan for budgetary accommodations that the City's essential services to the community can continue without current modification. The League of California Cities has estimated cities in California will collectively lose \$7 billion in revenue through the 2020-2021 fiscal year.

As a component of its 2020-2021 budget adoption, the State appropriated \$500 million of CARES Act funding to cities that were not allocated CARES Act funding directly by the federal government, including \$275 million to cities with a population of less than 300,000, which the City received approximately \$740,000.

On Friday, January 8, 2021, Governor Newsom announced the State's proposed \$227 billion budget for the 2021-2022 fiscal year, allocating \$15 billion for COVID-19 recovery and support, focused on vaccinations, safe reopening of schools, support for small businesses, and funding for California residents, but did not include financial support for cities.

On Tuesday, February 23, 2021, Governor Newsom signed the Golden State Stimulus legislation, that provides \$9.6 billion in financial assistance to eligible individuals and families, and economic aid to qualifying small businesses and non-profits.

RECOMMENDATION: That the City Council:

1. Receive the report of status and review of the Proclamation of Local Emergency;
2. Determine the need exists to continue said Declaration;
3. Approve the Draft Resolution authorizing local emergency virtual meetings; and
4. Take action and/or provide direction as deemed necessary.

ATTACHMENTS:

1. Resolution 22-2020: Proclamation of Local Emergency
2. Governor Newsom Proclamation of a State of Emergency
3. President Trump Proclamation on Declaring a National

- Emergency
4. Tulare County Proclamations of Local Emergency
 5. Tule River Tribe Declaration of State of Emergency
 6. Governor Newsom Executive Order N-42-20 - Utilities
 7. City of Porterville Urgency Ordinance - Face Coverings: July 21, 2020
 8. Tulare County Emergency Rental and Utility Assistance Program
 9. United States Treasury Department State and Local Fiscal Recovery Funds - Fact Sheet
 10. State of California Face Coverings Guidance - June 9, 2021
 11. State of California Beyond the Blueprint Framework for Industry and Business Sectors Update - August 18, 2021
 12. City Utilities Past Due Balances - September 2021
 13. Vaccination Incentives Report
 14. AB 361 Local Emergency Remote Access Resolution

Appropriated/Funded:

Review By:

Department Director:

John Lollis, City Manager

Final Approver: John Lollis, City Manager

RESOLUTION NO. 22-2020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE TO
PROCLAIM THE EXISTENCE OF A LOCAL EMERGENCY**

RESOLVED, by the City Council (the “Council”) of the City of Porterville (the “City”),
as follows:

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease which the
Centers for Disease Control and Prevention (CDC) considers to be a very serious public health
threat with outcomes ranging from mild to severe sickness and death; and

WHEREAS, COVID-19 is easily transmissible from person to person and has spread
globally to over 118 countries, infected more than 125,000, and killed more than 4,000 as of
March 11, 2020 per the World Health Organization (WHO); and

WHEREAS, on January 31, 2020, the United States Department of Public Health and
Human Services declared a public emergency for COVID-19 beginning on January 27, 2020;
and

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency
in the State of California due to the number of confirmed cases of COVID-19 in the State; and

WHEREAS, on March 11, 2020, WHO made the assessment that COVID-19 can be
characterized as a pandemic; and

WHEREAS, on March 12, 2020, Tulare County declared an emergency due to the
confirmed case of COVID-19 at Sierra View Medical Center in the city of Porterville, thus
enabling Tulare County to take extraordinary measures; and

WHEREAS, on March 13, 2020, Governor Newsom announced that California public
health officials have determined that gatherings of more than 250 people should be postponed or
canceled across the State at least until the end of March; and

WHEREAS, COVID-19 therefore and will continue to cause conditions of peril to the
health, safety, and welfare of persons and property in the City of Porterville; and

WHEREAS, preparing for, responding to, mitigating, and recovering from the spread of COVID-19 requires the City to divert resources from normal day-to-day operations, and has and will continue to impose extraordinary requirements on and expenses to the City; and

WHEREAS, the City Council hereby finds that the above described conditions related to the COVID-19 outbreak does warrant and necessitate the proclamation of the existence of a local emergency in the city of Porterville.

NOW, THEREFORE, it is hereby **DECLARED** and **ORDERED**, as follows:

1. The proclamation of existence of a local emergency exists throughout the City of Porterville.
2. The local emergency shall be deemed to continue to exist until its termination is proclaimed by the City Council of the City of Porterville.
3. As required by law, the City Council shall review the need to continue the state of emergency every thirty (30) days until this Resolution is terminated.

PASSED, APPROVED, AND ADOPTED this 17th day of March, 2020.



Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: 

Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 17th day of March, 2020.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	PEÑALOZA	REYES	FLORES	STOWE	GURROLA
AYES:	X	X	X	X	
NOES:					
ABSTAIN:					
ABSENT:					X

JOHN D. LOLLIS, City Clerk



By: Fernando Gabriel-Moraga, Deputy City Clerk

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

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

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

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

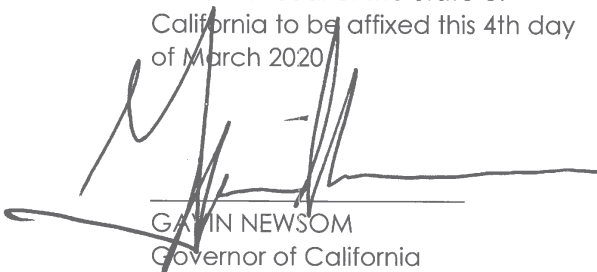
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 4th day
of March 2020



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

**PROCLAMATIONS**

Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak

Issued on: March 13, 2020



In December 2019, a novel (new) coronavirus known as SARS-CoV-2 (“the virus”) was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. I have taken sweeping action to control the spread of the virus in the United States, including by suspending entry of foreign nationals seeking entry who had been physically present within the prior 14 days in certain jurisdictions where COVID-19 outbreaks have occurred, including the People’s Republic of China, the Islamic Republic of Iran, and the Schengen Area of Europe. The Federal Government, along with State and local governments, has taken preventive and proactive measures to slow the spread of the virus and treat those affected, including by instituting Federal quarantines for individuals evacuated from foreign nations, issuing a declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d), and releasing policies to accelerate the acquisition of personal protective equipment and streamline bringing new diagnostic capabilities to laboratories. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States.

The spread of COVID-19 within our Nation’s communities threatens to strain our Nation’s healthcare systems. As of March 12, 2020, 1,645 people from 47 States have been infected with the virus that

causes COVID-19. It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and be prepared to surge capacity and capability. Additional measures, however, are needed to successfully contain and combat the virus in the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), do hereby find and proclaim that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. Pursuant to this declaration, I direct as follows:

Section 1. Emergency Authority. The Secretary of HHS may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

Sec. 2. Certification and Notice. In exercising this authority, the Secretary of HHS shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d)).

Sec. 3. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP



Health & Human Services Agency COUNTY OF TULARE AGENDA ITEM

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: March 17, 2020

Public Hearing Required	Yes ☐	N/A ☒
Scheduled Public Hearing w/Clerk	Yes ☐	N/A ☒
Published Notice Required	Yes ☐	N/A ☒
Advertised Published Notice	Yes ☐	N/A ☒
Meet & Confer Required	Yes ☐	N/A ☒
Electronic file(s) has been sent	Yes ☒	N/A ☐
Budget Transfer (Aud 308) attached	Yes ☐	N/A ☒
Personnel Resolution attached	Yes ☐	N/A ☒
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes ☐	N/A ☒

CONTACT PERSON: Andrew Lockman PHONE: 624-8000

SUBJECT: Ratify Proclamations of Emergency for COVID-19

REQUEST(S):

That the Board of Supervisors:

1. Ratify a Proclamation of Local Emergency issued by the County Coordinator of Emergency Services on March 11, 2020 due to COVID-19; and
2. Ratify a Proclamation of Local Health Emergency issued by the County Health Officer on March 11, 2020 due to COVID-19.

SUMMARY:

As has been widely covered in the media, the COVID-19 outbreak originated in China beginning in December 2019. The Tulare County Department of Public Health, in cooperation with all Tulare County departments and numerous healthcare and community partners, has been actively monitoring and proactively preparing for COVID-19 since early January 2020.

Since that time, cases have been reported worldwide along with numerous deaths resulting from the disease. California has had numerous cases resulting from travel, person-to-person contact, and community spread. On March 4, 2020, Governor Newsom proclaimed a State of Emergency for COVID-19 after the first COVID-19 related death in California. Since that date, confirmed cases have also occurred in neighboring Fresno and Madera Counties.

On March 11, 2020, Tulare County had its first confirmed positive COVID-19 case. As a result, the County implemented a contingency plan under which the County's Coordinator of Emergency Services proclaimed a Local Emergency, and the County

SUBJECT: Ratify Proclamations of Emergency due to COVID-19
DATE: March 17, 2020

Health Officer proclaimed a Local Health Emergency, to enable the County to take all necessary response actions to combat the effects of the disease. Pursuant to California Government Code section 8630(b), these proclamations must be ratified within seven (7) days by the Board of Supervisors in order to remain in effect.

The Governor's State of Emergency dated March 4, 2020, waives statutory requirements to renew emergency proclamations for COVID-19, so these local proclamations will remain in effect until terminated by the Tulare County Board of Supervisors.

As a matter of information, local public health emergencies due to the threat posed by COVID-19 also have been declared by the Counties of Santa Clara, San Diego, San Francisco, Orange, Solano, Alameda, Sonoma, Marin, Placer, Los Angeles, Mendocino, Butte, San Bernardino, San Benito, Yolo, Monterey, San Mateo, Yuba, Sutter, Contra Costa, Humboldt, Lake, and Sacramento, and by numerous California cities and Indian Tribes.

FISCAL IMPACT/FINANCING:

There is no cost associated with proclaiming or terminating a local emergency or local health emergency. The proclamation of local emergency contains a request for California Disaster Assistance Act funding, which may result in cost recovery of extraordinary response costs associated with this incident.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Safety and Security initiative, with a directive to plan and provide coordinated emergency preparedness, response, recovery and mitigation capabilities for both natural and man-made disasters. These proclamations support the County's emergency response and coordination efforts by ensuring all necessary actions can be taken to mitigate the spread of disease.

ADMINISTRATIVE SIGN-OFF:



Timothy W. Lutz
Agency Director

Cc: County Administrative Office

Attachment(s) Proclamation of Local Emergency
Proclamation of Local Health Emergency

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF RATIFY PROCLAMATIONS) Resolution No. _____
OF EMERGENCY DUE TO COVID-19) Agreement No. _____
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Ratified a Proclamation of Local Emergency issued by the County Coordinator of Emergency Services on March 11, 2020 due to COVID-19; and
2. Ratified a Proclamation of Local Health Emergency issued by the County Health Officer on March 11, 2020 due to COVID-19.

**PROCLAMATION OF A LOCAL EMERGENCY
BY THE DIRECTOR OF EMERGENCY SERVICES**

WHEREAS, Government Code section 8630 and Tulare County Ordinance Code section 1-15-1030 authorize the Director of Emergency Services to proclaim a local emergency when the County of Tulare ("County") is threatened by conditions of disaster or extreme peril to the safety of persons and property within the County that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County, and the Board of Supervisors is not in session; and

WHEREAS, the Director of Emergency Services hereby finds:

Conditions of extreme peril to the safety of persons and property have arisen within the County due to the following:

A novel coronavirus (named "COVID-19") was first detected in Wuhan City, Hubei Province, China, in December 2019. The U.S. Centers for Disease Control and Prevention ("CDC") considers the virus to be a very serious public health threat, based on current information. In part, the virus is considered a serious public health threat because much is unknown. The exact modes of transmission, the factors facilitating human-to-human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. The CDC believes at this time that symptoms appear two to fourteen days after exposure. Currently, there is no vaccine or specific antiviral treatment for COVID-19.

The number of reported cases of COVID-19 has escalated dramatically over a short period of time. To date, worldwide there are over 125,000 confirmed cases of COVID-19 and over 4,600 deaths from COVID-19. Cases of COVID-19, though concentrated in China, have been reported in one hundred twenty-two countries, including the United States, and include individuals who never visited China. Transmission from an asymptomatic individual has been documented. In the U.S., there have been 939 total cases of COVID-19 confirmed to date in 41 different states, and at least 29 deaths reported.

The World Health Organization has declared the outbreak to be a global health emergency. Actions are being taken to protect public health and limit the spread of COVID-19 in the United States.

On March 4, 2020, Governor Newsom proclaimed a state of emergency to exist in California. There are now almost 200 confirmed cases in California spanning some 24 counties and at least four deaths have been reported in California due to COVID-19.

Local public health emergencies due to the threat posed by COVID-19 have been declared by the Counties of Santa Clara, San Diego, San Francisco, Orange, Solano, Alameda, Sonoma, Marin, Placer, Los Angeles, Mendocino, Butte, San Bernardino, San Benito, Yolo, Monterey, San Mateo, Yuba, Sutter, Contra Costa, Humboldt, Lake, and Sacramento, and by numerous California cities and Indian Tribes; and

Tulare County has a population of over 450,000 residents, many of whom travel frequently for business or personal reasons. The Health Officer of the County of Tulare has determined that there is an imminent and proximate threat to public health from the introduction of COVID-19 in Tulare County, and has declared a Local Health Emergency as a result.

These conditions are beyond the control of the services, personnel, equipment, and facilities of the County and require the combined forces of other political subdivisions to combat.

WHEREAS, on March 11, 2020, a Tulare County resident tested positive for COVID-19; and

WHEREAS, based on the experience of other California communities, it can reasonably be expected that other positive tests will soon follow; and

WHEREAS, the Board of Supervisors is not in session, and cannot immediately be called into session; and

WHEREAS, during a local emergency, the Director of Emergency Services or other individual authorized to serve in that capacity under Tulare County Ordinance Code sections 1-15-1031 and 1-15-1032 is empowered by Tulare County Ordinance Code section 1-15-1025 to issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, that such rules and regulations must be confirmed at the earliest possible time by the Board of Supervisors; and

WHEREAS, the Director of Emergency Services is unavailable to issue a proclamation as he is currently outside of Tulare County and has authorized his successor, the County's Coordinator of Emergency Services (Assistant County Administrative Officer), as designated in Tulare County Ordinance Code sections 1-15-1010 (c) and 1-15-1030 (g) to exercise the powers of Director of Emergency Services as provided for in Tulare County Ordinance Code section 1-15-1030 (h) and thereby to issue this proclamation of local emergency; and

WHEREAS, the Tulare County Health Department must use all preventive measures, which will require access to available services, personnel, equipment, and facilities, to respond to COVID-19; and

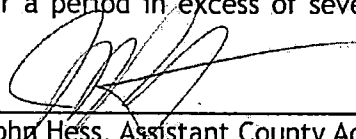
NOW THEREFORE, the Tulare County Coordinator of Emergency Services hereby:

1. Proclaims that a local emergency, as defined in Government Code Section 8558 and Tulare County Ordinance Code Section 1-15-1005, now exists within the County due to the presence of COVID-19; and
2. Requests that the Governor of the State of California request a federal declaration to provide assistance, including, but not limited to, California Disaster Assistance Act ("CDAA"); and
3. Orders that the Tulare County Health Department must use all preventive measures, which will require access to available services, personnel, equipment, and facilities, to respond to COVID-19.

The local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the Board of Supervisors.

Date: March 11, 2020

Time: 10:33 pm

By: 

John Hess, Assistant County Administrative Officer
and Emergency Services Coordinator

APPROVED AS TO FORM:
COUNTY COUNSEL

/s/ Jennifer M. Shiffert
Deputy
Matter No. 2020217

Jlk/03-11-2020/2020217/1444043

**County of Tulare
Health & Human Services Agency
Public Health Branch**

Health Officer
5957 South Mooney Blvd.
Visalia, CA 93277
559-624-8480



**PROCLAMATION OF LOCAL HEALTH EMERGENCY
REGARDING NOVEL CORONAVIRUS (COVID-19)**

WHEREAS, California Health and Safety Code section 101080 and Tulare County Ordinance Code section 1-15-1033 authorize the local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent; and

WHEREAS, the local health emergency shall not remain in effect after 7 days from the date of this declaration unless it has been ratified by the County of Tulare's Board of Supervisors; and

WHEREAS, the Health Officer of the County of Tulare makes the following findings:

A novel coronavirus (named "COVID-19") was first detected in Wuhan City, Hubei Province, China, in December 2019. The U.S. Centers for Disease Control and Prevention ("CDC") considers the virus to be a very serious public health threat, based on current information. In part, the virus is considered a serious public health threat because much is unknown. The exact modes of transmission, the factors facilitating human-to-human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation, but are poorly characterized at this time. The best information to date suggests that the virus is spread between people primarily via respiratory droplets produced when an infected person coughs or sneezes. Symptoms of the virus include fever, cough, and shortness of breath, and infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death. The CDC believes at this time that symptoms appear two to fourteen days after exposure. Currently, there is no vaccine or specific antiviral treatment for COVID-19.

The number of reported cases of COVID-19 has escalated dramatically over a short period of time. To date, worldwide there are over 125,000 confirmed cases of COVID-19 and over 4,600 deaths from COVID-19. Cases of COVID-19, though concentrated in China, have been reported in 122 counties, including the United States. Confirmed cases of COVID-19 include individuals who never visited China. Transmission from an asymptomatic individual has been documented. The World Health Organization has declared the outbreak to be a global health emergency.

On March 4, 2020, Governor Newsom proclaimed a state of emergency to exist in California.

**DECLARATION OF LOCAL HEALTH EMERGENCY
REGARDING NOVEL CORONAVIRUS (COVID-19)**

There are now almost 200 confirmed cases in California spanning 24 counties, and 4 deaths have been reported in California due to COVID-19.

Local public health emergencies due to the threat posed by COVID-19 have been declared by the Counties of Santa Clara, San Diego, San Francisco, Orange, Solano, Alameda, Sonoma, Marin, Placer, Los Angeles, Mendocino, Butte, San Bernardino, San Benito, Yolo, Monterey, San Mateo, Yuba, Sutter, Contra Costa, Humboldt, Lake, and Sacramento, and by numerous California cities and Indian Tribes.

Tulare County has a population of over 450,000 residents, many of whom travel frequently for business or personal reasons. As of March 11, 2020 there are 939 total cases of COVID-19 in the United States and 29 deaths. 41 states have reported cases.

WHEREAS, on March 11, 2020, a Tulare County resident tested positive for COVID-19; and

WHEREAS, based on the experience of other California communities, it can reasonably be expected that other positive tests will soon follow; and

WHEREAS, the Health Officer of the County of Tulare does hereby find that there is an imminent and proximate threat to public health from the introduction of COVID-19 in Tulare County; and

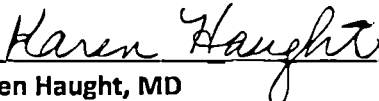
WHEREAS, the Board of Supervisors is not in session, and cannot immediately be called into session; and

NOW, THEREFORE, the Health Officer of the County of Tulare hereby proclaims and declares that a local health emergency now exists in the County of Tulare due to the presence of and threat posed by COVID-19.

Date: March 11, 2020

Time: 10:50 pm

Issued by:



Karen Haught, MD
County Health Officer
County of Tulare
Health & Human Services Agency
Public Health Branch

Approved as to Form:
COUNTY COUNSEL

By /s/Jennifer M. Shiffert
Deputy
Matter No. 2020217

Jlk/03-11-2020/2020217/1444044.DOCX



TULE RIVER INDIAN TRIBE OF CALIFORNIA

IN THE MATTER OF:

Resolution to Formally Declare a State of
Emergency for the Tule River Tribe of The)
Tule River Reservation of California)

RESOLUTION NO. FY2020-100

BE IT RESOLVED BY THE COUNCIL OF THE TULE RIVER INDIAN TRIBE:

WHEREAS, the Tule River Indian Tribe (the "Tribe") is a federally recognized Indian tribe organized pursuant to the Constitution and Bylaws of the Tule River Indian Tribe approved January 15, 1936 ("Constitution"); and

WHEREAS, pursuant to Article III, Section 1 of the Constitution the governing body of the Tribe is the Tribal Council and pursuant to Article VI, Section 1 of its Constitution it has the power to promulgate ordinance for the purpose of safeguarding the peace and safety of residents of the reservation and to adopt resolutions regulating the procedure of tribal agencies of the reservation; and

WHEREAS, On March 4th 2020, a proclaimed State of Emergency exists in the State of California, as result of the threat of COVID-19; and

WHEREAS, despite sustained efforts, the virus remains a threat, and further efforts to control the spread of the virus to reduce and minimize the risk of infection are needed; and

WHEREAS, for the safety and protection of the public health within the jurisdiction of the Tribe for the Tribe and/or its governmental agencies to obtain emergency support and funding from Federal, state and local agencies; and

WHEREAS, the Tule River Tribal Council desires to consider state and local recommendation deemed necessary in the interests of the public health, issue guidance limiting or recommend limitations upon attendance at public assemblies, conferences, or other mass events, which could cause the cancellation of such gatherings through no fault or responsibility of the parties involved thereby constituting a force majeure; and

WHEREAS, in the interest of public health and safety, it is necessary to exercise my authority under Constitution of the governing body of the Tribe to ensure adequate response and address potential issues related to the threat of COVID-19; and

NOW THEREFORE BE IT RESOLVED, the Tribal Council hereby declares a State of Emergency for the safety and protection of the public health within the jurisdiction of the Tribe for the Tribe and/or its governmental agencies to obtain emergency support and funding from Federal, state and local agencies

Page 2.

Resolution No. FY2020-100

BE IT FURTHER RESOLVED that this resolution has not been amended or rescinded in any way.

CERTIFICATION

UPON MOTION OF COUNCIL MEMBER **Zachary Janoko** SECONDED BY COUNCIL MEMBER **Steve M. Peyron, Jr.**, THE FOREGOING WAS ADOPTED BY THE TULE RIVER TRIBAL COUNCIL AT A DULY CALLED MEETING HELD ON **Friday, March 13, 2020**, AT WHICH A QUORUM WAS PRESENT BY THE FOLLOWING VOTES:

AYES: 8

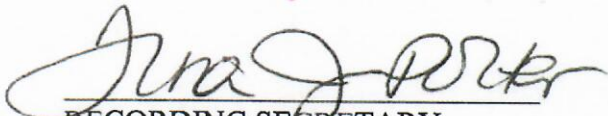
NOES: 0

ABSTAIN 0


NEIL PEYRON, CHAIRMAN
TULE RIVER TRIBAL COUNCIL


HEATHER TERAN, SECRETARY
TULE RIVER TRIBAL COUNCIL

ATTEST TO:


RECORDING SECRETARY

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-42-20

WHEREAS on March 4, 2020, I proclaimed a state of emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS it is the established policy of the State under Water Code section 106.3 that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes; and

WHEREAS to limit the spread of COVID-19 it is crucial that Californians wash their hands regularly and thoroughly; and

WHEREAS many Californians are experiencing or will experience substantial losses of income as a result of business closures, the loss of work hours or wages, or layoffs related to COVID-19, which may hinder their ability to make payments for water service and subject them to water shutoffs due to non-payment; and

WHEREAS many small businesses that provide services essential to the health and well-being of Californians have experienced substantial reductions in income, which may hinder their ability to make payments for water service and subject them to water shutoffs due to non-payment; and

WHEREAS the California Public Utilities Commission has directed private water utilities under its jurisdiction to implement customer service protections, including a moratorium on service disconnections, during the COVID-19 emergency; and

WHEREAS more than 100 public and private water systems have voluntarily agreed to halt disconnections as well; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with the various statutes and regulations concerning water shutoffs specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and the statutes of the State of California, and in particular, Government Code sections 8567, 8570, 8571, and 8627, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) The authority of urban and community water systems, as defined in Health and Safety Code section 116902, subdivision (d), to discontinue residential service, as defined in Health and Safety Code section 116902, subdivision (c), for non-payment under Health and Safety Code sections 116908 and 116910, is suspended.
- 2) Water systems not subject to the requirements of Health and Safety Code sections 116908 and 116910 shall not discontinue residential

service, as defined in Health and Safety Code section 116902, subdivision (c), for non-payment.

- 3) Water systems shall restore any residential service to occupied residences that has been discontinued for nonpayment since March 4, 2020.
- 4) Water systems shall not discontinue service to any business in the critical infrastructure sectors designated by the State Public Health Officer as critical to protect the health and well-being of all Californians that qualifies as a small business under 13 C.F.R. § 121.201 of the Small Business Administration's regulations.
- 5) The State Water Resources Control Board shall identify best practices, guidelines, or both to be implemented during the COVID-19 emergency (i) to address non-payment or reduced payments, (ii) to promote and to ensure continuity of service by water systems and wastewater systems, and (iii) to provide measures such as the sharing of supplies, equipment and staffing to relieve water systems under financial distress.

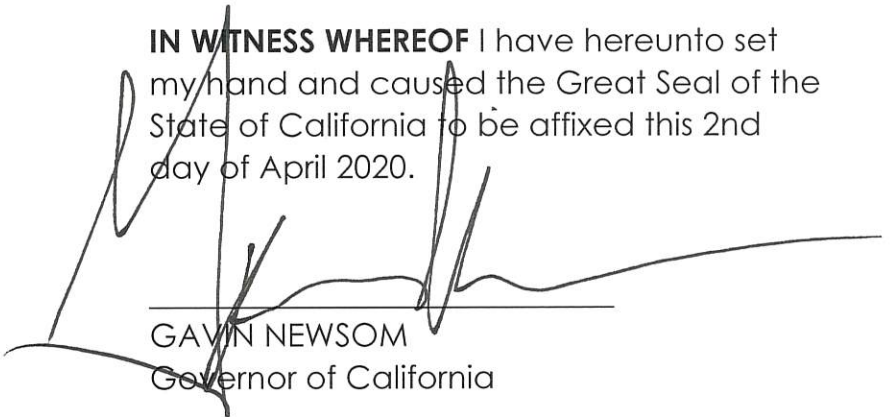
Nothing in this Order eliminates the obligation of water customers to pay for water service, prevents a water system from charging a customer for such service, or reduces the amount a customer already may owe to a water system.

Nothing in this Order modifies the obligations of urban and community waters systems to comply with provisions of the Water Shutoff Protection Act not specifically addressed by this Order or other applicable laws, regulations, and guidelines.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 2nd day of April 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

ORDINANCE NO. 1874

**AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF PORTERVILLE REQUIRING THE USE OF
FACE COVERINGS IN CONFORMITY WITH THE REQUIREMENTS SET
BY THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH**

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease which the Centers for Disease Control and Prevention (CDC) considers to be a very serious public health threat with outcomes ranging from mild to severe sickness and death;

WHEREAS, COVID-19 has been found to be easily transmissible from person to person;

WHEREAS, on January 31, 2020, the United States Department of Public Health and Human Services declared a public emergency for COVID-19 beginning on January 27, 2020;

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency in the State of California due to the number of confirmed cases of COVID-19 in the State;

WHEREAS, on March 21, 2020, Tulare County declared an emergency, thus enabling the County to take extraordinary measures;

WHEREAS, on March 17, 2020, due the actions of the Federal and State Governments, and due to the presence of confirmed cases in Tulare County and the Porterville area, the Porterville City Council adopted Resolution No. 22-2020, a Resolution of the City Council of the City of Porterville to Proclaim the Existence of a Local Emergency;

WHEREAS, on June 18, 2020, the California Department of Public Health issued Guidance for the Use of Face Coverings, which mandates that face coverings be worn state-wide in certain settings and circumstances;

WHEREAS, as of July 7, 2020, Tulare County remains on the State of California Covid-19 “watch list,” due to continuing spread of the disease in the County, including in the Porterville area;

WHEREAS, on July 7, 2020, the Porterville City Council ordered that the face covering requirements of the State be enforced within the City via the City’s administrative citation regulations and through aggressive education efforts, and directed that an urgency ordinance be prepared consistent with the order;

WHEREAS, the City of Porterville is authorized to enforce the state-wide order concerning Face Coverings pursuant to the California Constitution, Porterville City Charter Section 4, and applicable State laws and City regulations; and

WHEREAS, substantial scientific evidence shows that when combined with physical distancing and other health and safety practices such as hand washing and the regular disinfection of surfaces, wearing Face Coverings will assist in allowing additional business and other activities

to be resumed in the safest way possible, and will help protect Porterville's community members and in particular those that are most vulnerable due to age or health conditions;

THE CITY COUNCIL OF THE CITY OF PORTERVILLE does ordain as follows:

Section 1. The provisions of this urgency ordinance are necessary for the immediate preservation of the health and safety of the public; will help protect all community members who live, work and are present in the City of Porterville; and will assist in state-wide efforts to mitigate the spread of Covid-19.

Section 2. Individuals, while in the City of Porterville, are required to comply with all guidance within the California Department of Public Health's "Guidance for the Use of Face Coverings," (hereinafter "Face Covering Requirements") as currently set forth and as may be further revised by the State of California. A copy of the Face Covering Requirements, released June 18, 2020, and revised on June 29, 2020, is attached hereto as Exhibit "A."

Section 3. Businesses operating in the City of Porterville are required to comply with all applicable Industry Guidance issued by the California Department of Public Health, which incorporate the Face Covering Requirements.

Section 4. The City is authorized to utilize education efforts in any effort to gain cooperation and compliance with the Face Covering Requirements;

Section 5. City staff is further authorized to engage in code enforcement efforts to remedy violations of the Face Covering Requirements. Violations of these requirements are punishable as permitted by State law. Furthermore, the City is hereby authorized to enforce violations of the requirements pursuant to its Administrative Citation regulations set forth in Chapter 2, Article 14, Sections 2-141 through 2-155 of the Porterville Municipal Code.

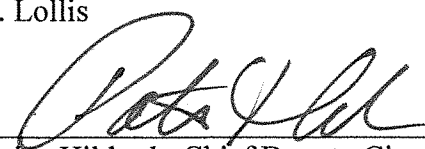
Section 6. This Ordinance is exempt from the requirements of CEQA pursuant to California Public Resources Code Section 21080(b) (4).

Section 7. This Ordinance shall take effect immediately upon adoption by at least a 4/5 vote of the all members of the Porterville City Council, pursuant to Section 13 of the Porterville City Charter.

THE FOREGOING ORDINANCE was approved by the City Council of the City of Porterville, State of California, on July 21, 2020 at a regular meeting of said Council duly and regularly convened.


Martha A. Flores, Mayor

ATTEST:
John D. Lollis

By: 
Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA)
CITY OF PORTERVILLE) (SS)
COUNTY OF TULARE)

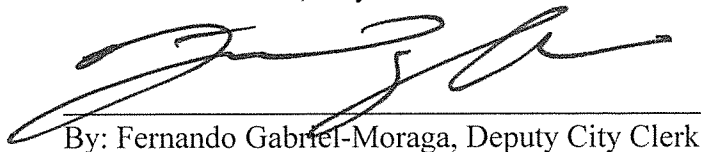
I, JOHN D. LOLLIS, the duly qualified City Clerk of the City of Porterville do hereby certify:

THAT the foregoing ordinance is a true and correct copy of Urgency Ordinance No. 1874, passed and adopted by the Council of the City of Porterville at a regular meeting held on the 21st day of July, 2020, that said ordinance has been duly published pursuant to law, and that by the terms and provisions of the Charter of the City of Porterville, said ordinance to be in full force and effect immediately upon adoption.

THAT said ordinance was introduced by Council and the same was duly passed and adopted by the following vote:

COUNCIL:	PEÑALOZA	REYES	FLORES	STOWE	GURROLA
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk



By: Fernando Gabriel-Moraga, Deputy City Clerk



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

Released June 18, 2020

- Revised on June 29, 2020 to clarify that children under two years old are exempt from wearing face coverings due to risk of suffocation

GUIDANCE FOR THE USE OF FACE COVERINGS

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing CDPH guidance for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

Guidance

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;¹
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;²
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
 - Interacting in-person with any member of the public;
 - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

¹ Unless exempted by state guidelines for specific public settings

² Unless directed otherwise by an employee or healthcare provider



- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

The following individuals are exempt from wearing a face covering:

- Persons younger than two years old. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

- Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

Note: Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Background

What is a cloth face covering?

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

How well do cloth face coverings work to prevent spread of COVID-19?

There is scientific evidence to suggest that use of cloth face coverings by the public during a pandemic could help reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill, but they may be helpful when combined with these primary interventions.

When should I wear a cloth face covering?

You should wear face coverings when in public places, particularly when those locations are indoors or in other areas where physical distancing is not possible

How should I care for a cloth face covering?

It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric

###

Overview of the Emergency Rental Assistance Program

Background

On December 27, 2020 the federal Consolidated Appropriations Act 2021 was signed into law and \$25 billion was allocated to the United States Treasury (UST) for the Emergency Rental Assistance Program (ERAP) to assist households that are unable to pay rent or utilities due to the COVID-10 pandemic. California received \$2.6 of the federal ERAP funds. To implement these rental assistance resources, the state of CA worked with state legislation to develop a programmatic framework to ease administration burden and deploy these resources to those most in need.

On January 28th, the Legislature approved SB 91. This bill extended the eviction protections and created a mechanism to deploy the \$2.6 billion in ERAP resources to assist struggling tenants and landlords impacted by COVID-19. The bill allocated \$1.5 billion to the state and \$1.1 billion directly to local governments with populations with more than 200,000. The bill establishes the criteria and prioritization for use of the state-administered rental assistance funding from the federal bill.

Local governments with populations of 200,000 and greater that received a direct allocation of funding for rental assistance from the federal government could also qualify for block grant funding from the state's \$1.5 billion share. Counties were given the option to take the funds and administer their own program or to participate in the state-administered program. Tulare County has opted to participate in the state administered program. The state administered program will be managed centrally by the Local Initiatives Support Corporation (LISC).

Under state statute the rental assistance program is to be implemented by March 15, 2021. Ninety percent of the funding is to be directed towards financial assistance and ten percent for administration of the program.

Program Requirements

While not a full comprehensive list, the key program requirements include the following:

- For those landlords who agree to participate, funding will be available to pay up to 80 percent of an eligible household's unpaid rent accumulated from April 2020 through March 2021, provided that the landlord agrees to forgive the remaining 20 percent.
- In cases where the landlord chooses not to participate, tenants can apply for assistance for rental arrears, but are be limited to compensation of 25% of the eligible household's unpaid rent accumulated from April 2020 through March 2021 which will be paid to the landlord. The program also allows for prospective payments of 25% of the monthly rent for the months of April, May, and June 2021.
- Funds are to be administered in a least three rounds to eligible households. Prioritizing: (1) those households under 50% of the area median income (AMI) or unemployed for 90 days; (2) Below 80% AMI and in communities disproportionately affected by COVID-19 (as determined by the Department of Housing and Community Development); (3) Below 80% AMI not included in round 1 and 2.
- The top priority for the use of assistance funding would be rental arrears; followed by prospective rent payments, utility payments (both arrears and prospective payments)

LISC and Local Partnership

Given the rapid implementation timeframes, the one-time nature of these funds, among other considerations, the State believed that a central administrative structure would be most effective in deploying these resources in an effective and compliant manner. They contracted with LISC to administering the Emergency Rental Assistance Program (ERAP). LISC will be responsible in providing the following support and oversight:

- State outreach and education campaign with adaptability for local messaging.
- Standardized, federally consistent application and eligibility criteria, accessible to both landlords and tenants.
- Contracted solution with a state-wide network, including rural areas.
- Robust, multi-lingual client support and technical assistance.
- Processing of Applications (input, review, verification, fraud control, notifications to tenant and landlord, verification of accounts, disbursement of payment, reporting per state and federal government requirements, downstream audit management).
- Central privacy protections and fraud control.
- Management of duplication of benefits in accordance with the Consolidated Appropriations Act, 2021.
- Application portal to begin receiving applications from landlords and tenants.

LISC is seeking nonprofit and community-based organizations with capacity to provide local on-the-ground support to residents to help them access rental assistance. LISC will work with local partners and organizations within Tulare County to ensure all potential applicants know about the ERAP and receive the needed program assistance.

There are three tiers of partnership: Tier 1-Promotion, Tier 2-Outreach, and Tier 3-Technical Assistance. Local partners who want to partner with LISC will need to submit an application. Partner requirements include:

- Registered non-profits and quasi-government entities providing services to residents in communities served by this program
- Must have an EIN
- Must have a DUNS number
- Must be active on the CA Secretary of State website
- Must be registered on SAM website
- If applicable, non-profits must have actively filed 990 Forms

Organizations that do not have the above information are not eligible for Tier 2 and Tier 3 partnership but may still apply under the Tier 1 program. All applicants will be considered based on capacity to successfully reach their proposed community. Tier 2 and 3 will also be evaluated based on ability to successfully administer federal funds. First round of applications were due Monday, February 22. However, ongoing applications can still be submitted after the 22nd and will be reviewed on an ongoing basis throughout the program. To apply go to <https://lisc.tfaforms.net/308>

Eviction Protections

- SB 91 extends the states current eviction moratorium for tenants unable to pay rent due to COVID related financial hardships, as established under AB 3088, by five months, from January 31, 2021 through June 30, 2021.
- Tenants must continue to pay 25% of their rental obligations, as required under AB 3088, through June 30, 2021. During this time as tenants continue to pay at least 25% of their rent, then they are protected from eviction for any unpaid rent that has accumulated through June 30 and it can never be used as the basis for eviction. The 25% may be paid monthly or as a lump sum by June 30, 2021.

FACT SHEET: The Coronavirus State and Local Fiscal Recovery Funds Will Deliver \$350 Billion for State, Local, Territorial, and Tribal Governments to Respond to the COVID-19 Emergency and Bring Back Jobs

May 10, 2021

Aid to state, local, territorial, and Tribal governments will help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery

Today, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Funds, established by the American Rescue Plan Act of 2021, to provide \$350 billion in emergency funding for eligible state, local, territorial, and Tribal governments. Treasury also released details on how these funds can be used to respond to acute pandemic response needs, fill revenue shortfalls among these governments, and support the communities and populations hardest-hit by the COVID-19 crisis. With the launch of the Coronavirus State and Local Fiscal Recovery Funds, eligible jurisdictions will be able to access this funding in the coming days to address these needs.

State, local, territorial, and Tribal governments have been on the frontlines of responding to the immense public health and economic needs created by this crisis – from standing up vaccination sites to supporting small businesses – even as these governments confronted revenue shortfalls during the downturn. As a result, these governments have endured unprecedented strains, forcing many to make untenable choices between laying off educators, firefighters, and other frontline workers or failing to provide other services that communities rely on. Faced with these challenges, state and local governments have cut over 1 million jobs since the beginning of the crisis. The experience of prior economic downturns has shown that budget pressures like these often result in prolonged fiscal austerity that can slow an economic recovery.

To support the immediate pandemic response, bring back jobs, and lay the groundwork for a strong and equitable recovery, the American Rescue Plan Act of 2021 established the Coronavirus State and Local Fiscal Recovery Funds, designed to deliver \$350 billion to state, local, territorial, and Tribal governments to bolster their response to the COVID-19 emergency and its economic impacts. Today, Treasury is launching this much-needed relief to:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Replace lost public sector revenue to strengthen support for vital public services and help retain jobs;
- Support immediate economic stabilization for households and businesses; and,
- Address systemic public health and economic challenges that have contributed to the unequal impact of the pandemic on certain populations.

The Coronavirus State and Local Fiscal Recovery Funds provide substantial flexibility for each jurisdiction to meet local needs—including support for households, small businesses, impacted industries, essential workers, and the communities hardest-hit by the crisis. These funds also deliver resources that recipients can invest in building, maintaining, or upgrading their water, sewer, and broadband infrastructure.

Starting today, eligible state, territorial, metropolitan city, county, and Tribal governments may request Coronavirus State and Local Fiscal Recovery Funds through the Treasury Submission Portal. Concurrent with this program launch, Treasury has published an Interim Final Rule that implements the provisions of this program.

FUNDING AMOUNTS

The American Rescue Plan provides a total of \$350 billion in Coronavirus State and Local Fiscal Recovery Funds to help eligible state, local, territorial, and Tribal governments meet their present needs and build the foundation for a strong recovery. Congress has allocated this funding to tens of thousands of jurisdictions. These allocations include:

Type	Amount (\$ billions)
States & District of Columbia	\$195.3
Counties	\$65.1
Metropolitan Cites	\$45.6
Tribal Governments	\$20.0
Territories	\$4.5
Non-Entitlement Units of Local Government	\$19.5

Treasury expects to distribute these funds directly to each state, territorial, metropolitan city, county, and Tribal government. Local governments that are classified as non-entitlement units will receive this funding through their applicable state government. Treasury expects to provide further guidance on distributions to non-entitlement units next week.

Local governments should expect to receive funds in two tranches, with 50% provided beginning in May 2021 and the balance delivered 12 months later. States that have experienced a net increase in the unemployment rate of more than 2 percentage points from February 2020 to the latest available data as of the date of certification will receive their full allocation of funds in a single payment; other states will receive funds in two equal tranches. Governments of U.S. territories will receive a single payment. Tribal governments will receive two payments, with the first payment available in May and the second payment, based on employment data, to be delivered in June 2021.

USES OF FUNDING

Coronavirus State and Local Fiscal Recovery Funds provide eligible state, local, territorial, and Tribal governments with a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. Within the categories of eligible uses, recipients have broad flexibility to decide how best to use this funding to meet the needs of their communities. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to:

- **Support public health expenditures**, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- **Address negative economic impacts caused by the public health emergency**, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- **Replace lost public sector revenue**, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Within these overall categories, Treasury’s Interim Final Rule provides guidelines and principles for determining the types of programs and services that this funding can support, together with examples of allowable uses that recipients may consider. As described below, Treasury has also designed these provisions to take into consideration the disproportionate impacts of the COVID-19 public health emergency on those hardest-hit by the pandemic.

1. Supporting the public health response

Mitigating the impact of COVID-19 continues to require an unprecedented public health response from state, local, territorial, and Tribal governments. Coronavirus State and Local Fiscal Recovery Funds provide resources to meet these needs through the provision of care for those impacted by the virus and through services that address disparities in public health that have been exacerbated by the pandemic. Recipients may use this funding to address a broad range of public health needs across COVID-19 mitigation, medical expenses, behavioral healthcare, and public health resources. Among other services, these funds can help support:

- **Services and programs to contain and mitigate the spread of COVID-19, including:**
 - ✓ Vaccination programs
 - ✓ Medical expenses
 - ✓ Testing
 - ✓ Contact tracing
 - ✓ Isolation or quarantine
 - ✓ PPE purchases
 - ✓ Support for vulnerable populations to access medical or public health services
 - ✓ Public health surveillance (e.g., monitoring for variants)
 - ✓ Enforcement of public health orders
 - ✓ Public communication efforts
 - ✓ Enhancement of healthcare capacity, including alternative care facilities
 - ✓ Support for prevention, mitigation, or other services in congregate living facilities and schools
 - ✓ Enhancement of public health data systems
 - ✓ Capital investments in public facilities to meet pandemic operational needs
 - ✓ Ventilation improvements in key settings like healthcare facilities

- **Services to address behavioral healthcare needs exacerbated by the pandemic, including:**
 - ✓ Mental health treatment
 - ✓ Substance misuse treatment
 - ✓ Other behavioral health services
 - ✓ Hotlines or warmlines
 - ✓ Crisis intervention
 - ✓ Services or outreach to promote access to health and social services
- **Payroll and covered benefits expenses** for public health, healthcare, human services, public safety and similar employees, to the extent that they work on the COVID-19 response. For public health and safety workers, recipients can use these funds to cover the full payroll and covered benefits costs for employees or operating units or divisions primarily dedicated to the COVID-19 response.

2. **Addressing the negative economic impacts caused by the public health emergency**

The COVID-19 public health emergency resulted in significant economic hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 20 million jobs were lost between February and April 2020. Although many have since returned to work, as of April 2021, the economy remains more than 8 million jobs below its pre-pandemic peak, and more than 3 million workers have dropped out of the labor market altogether since February 2020.

To help alleviate the economic hardships caused by the pandemic, Coronavirus State and Local Fiscal Recovery Funds enable eligible state, local, territorial, and Tribal governments to provide a wide range of assistance to individuals and households, small businesses, and impacted industries, in addition to enabling governments to rehire public sector staff and rebuild capacity. Among these uses include:

- **Delivering assistance to workers and families**, including aid to unemployed workers and job training, as well as aid to households facing food, housing, or other financial insecurity. In addition, these funds can support survivor's benefits for family members of COVID-19 victims.
- **Supporting small businesses**, helping them to address financial challenges caused by the pandemic and to make investments in COVID-19 prevention and mitigation tactics, as well as to provide technical assistance. To achieve these goals, recipients may employ this funding to execute a broad array of loan, grant, in-kind assistance, and counseling programs to enable small businesses to rebound from the downturn.
- **Speeding the recovery of the tourism, travel, and hospitality sectors**, supporting industries that were particularly hard-hit by the COVID-19 emergency and are just now beginning to mend. Similarly impacted sectors within a local area are also eligible for support.
- **Rebuilding public sector capacity**, by rehiring public sector staff and replenishing unemployment insurance (UI) trust funds, in each case up to pre-pandemic levels. Recipients may also use this funding to build their internal capacity to successfully implement economic relief programs, with investments in data analysis, targeted outreach, technology infrastructure, and impact evaluations.

3. Serving the hardest-hit communities and families

While the pandemic has affected communities across the country, it has disproportionately impacted low-income families and communities of color and has exacerbated systemic health and economic inequities. Low-income and socially vulnerable communities have experienced the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000.

Coronavirus State and Local Fiscal Recovery Funds allow for a broad range of uses to address the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households. Eligible services include:

- **Addressing health disparities and the social determinants of health**, through funding for community health workers, public benefits navigators, remediation of lead hazards, and community violence intervention programs;
- **Investments in housing and neighborhoods**, such as services to address individuals experiencing homelessness, affordable housing development, housing vouchers, and residential counseling and housing navigation assistance to facilitate moves to neighborhoods with high economic opportunity;
- **Addressing educational disparities** through new or expanded early learning services, providing additional resources to high-poverty school districts, and offering educational services like tutoring or afterschool programs as well as services to address social, emotional, and mental health needs; and,
- **Promoting healthy childhood environments**, including new or expanded high quality childcare, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

Governments may use Coronavirus State and Local Fiscal Recovery Funds to support these additional services if they are provided:

- within a Qualified Census Tract (a low-income area as designated by the Department of Housing and Urban Development);
- to families living in Qualified Census Tracts;
- by a Tribal government; or,
- to other populations, households, or geographic areas disproportionately impacted by the pandemic.

4. Replacing lost public sector revenue

State, local, territorial, and Tribal governments that are facing budget shortfalls may use Coronavirus State and Local Fiscal Recovery Funds to avoid cuts to government services. With these additional resources, recipients can continue to provide valuable public services and ensure that fiscal austerity measures do not hamper the broader economic recovery.

Many state, local, territorial, and Tribal governments have experienced significant budget shortfalls, which can yield a devastating impact on their respective communities. Faced with budget shortfalls and pandemic-related uncertainty, state and local governments cut staff in all 50 states. These budget shortfalls and staff cuts are particularly problematic at present, as these entities are on the front lines of battling the COVID-19 pandemic and helping citizens weather the economic downturn.

Recipients may use these funds to replace lost revenue. Treasury's Interim Final Rule establishes a methodology that each recipient can use to calculate its reduction in revenue. Specifically, recipients will compute the extent of their reduction in revenue by comparing their actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic. Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency and projects forward at either (a) the recipient's average annual revenue growth over the three full fiscal years prior to the public health emergency or (b) 4.1%, the national average state and local revenue growth rate from 2015-18 (the latest available data).

For administrative convenience, Treasury's Interim Final Rule allows recipients to presume that any diminution in actual revenue relative to the expected trend is due to the COVID-19 public health emergency. Upon receiving Coronavirus State and Local Fiscal Recovery Funds, recipients may immediately calculate the reduction in revenue that occurred in 2020 and deploy funds to address any shortfall. Recipients will have the opportunity to re-calculate revenue loss at several points through the program, supporting those entities that experience a lagged impact of the crisis on revenues.

Importantly, once a shortfall in revenue is identified, recipients will have broad latitude to use this funding to support government services, up to this amount of lost revenue.

5. Providing premium pay for essential workers

Coronavirus State and Local Fiscal Recovery Funds provide resources for eligible state, local, territorial, and Tribal governments to recognize the heroic contributions of essential workers. Since the start of the public health emergency, essential workers have put their physical well-being at risk to meet the daily needs of their communities and to provide care for others.

Many of these essential workers have not received compensation for the heightened risks they have faced and continue to face. Recipients may use this funding to provide premium pay directly, or through grants to private employers, to a broad range of essential workers who must be physically present at their jobs including, among others:

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

Treasury's Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

In addition, employers are both permitted and encouraged to use Coronavirus State and Local Fiscal Recovery Funds to offer retrospective premium pay, recognizing that many essential workers have not yet received additional compensation for work performed. Staff working for third-party contractors in eligible sectors are also eligible for premium pay.

6. Investing in water and sewer infrastructure

Recipients may use Coronavirus State and Local Fiscal Recovery Funds to invest in necessary improvements to their water and sewer infrastructures, including projects that address the impacts of climate change.

Recipients may use this funding to invest in an array of drinking water infrastructure projects, such as building or upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines.

Recipients may also use this funding to invest in wastewater infrastructure projects, including constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works.

To help jurisdictions expedite their execution of these essential investments, Treasury's Interim Final Rule aligns types of eligible projects with the wide range of projects that can be supported by the Environmental Protection Agency's Clean Water State Revolving Fund and Drinking Water State Revolving Fund. Recipients retain substantial flexibility to identify those water and sewer infrastructure investments that are of the highest priority for their own communities.

Treasury's Interim Final Rule also encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

7. Investing in broadband infrastructure

The pandemic has underscored the importance of access to universal, high-speed, reliable, and affordable broadband coverage. Over the past year, millions of Americans relied on the internet to participate in remote school, healthcare, and work.

Yet, by at least one measure, 30 million Americans live in areas where there is no broadband service or where existing services do not deliver minimally acceptable speeds. For millions of other Americans, the high cost of broadband access may place it out of reach. The American Rescue Plan aims to help remedy these shortfalls, providing recipients with flexibility to use Coronavirus State and Local Fiscal Recovery Funds to invest in broadband infrastructure.

Recognizing the acute need in certain communities, Treasury's Interim Final Rule provides that investments in broadband be made in areas that are currently unserved or underserved—in other words, lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. Recipients are also encouraged to prioritize projects that achieve last-mile connections to households and businesses.

Using these funds, recipients generally should build broadband infrastructure with modern technologies in mind, specifically those projects that deliver services offering reliable 100 Mbps download and 100

Mbps upload speeds, unless impracticable due to topography, geography, or financial cost. In addition, recipients are encouraged to pursue fiber optic investments.

In view of the wide disparities in broadband access, assistance to households to support internet access or digital literacy is an eligible use to respond to the public health and negative economic impacts of the pandemic, as detailed above.

8. Ineligible Uses

Coronavirus State and Local Fiscal Recovery Funds provide substantial resources to help eligible state, local, territorial, and Tribal governments manage the public health and economic consequences of COVID-19. Recipients have considerable flexibility to use these funds to address the diverse needs of their communities.

To ensure that these funds are used for their intended purposes, the American Rescue Plan Act also specifies two ineligible uses of funds:

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent.** The American Rescue Plan ensures that funds needed to provide vital services and support public employees, small businesses, and families struggling to make it through the pandemic are not used to fund reductions in net tax revenue. Treasury's Interim Final Rule implements this requirement. If a state or territory cuts taxes, they must demonstrate how they paid for the tax cuts from sources other than Coronavirus State Fiscal Recovery Funds—by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be paid back to the Treasury.
- **No recipient may use this funding to make a deposit to a pension fund.** Treasury's Interim Final Rule defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions for employees whose wages and salaries are an eligible use of funds.

Treasury's Interim Final Rule identifies several other ineligible uses, including funding debt service, legal settlements or judgments, and deposits to rainy day funds or financial reserves. Further, general infrastructure spending is not covered as an eligible use outside of water, sewer, and broadband investments or above the amount allocated under the revenue loss provision. While the program offers broad flexibility to recipients to address local conditions, these restrictions will help ensure that funds are used to augment existing activities and address pressing needs.



TOMÁS J. ARAGÓN, MD, DrPH
Director and State Public Health Officer

State of California—Health and Human Services Agency California Department of Public Health



GAVIN NEWSOM
Governor

June 9, 2021

Note: This guidance is effective June 15, 2021 and supersedes all prior face coverings guidance.

GUIDANCE FOR THE USE OF MASKS

Background

The COVID-19 vaccines are effective in preventing infection, disease, and spread. Unvaccinated persons are more likely to get infected and spread the virus which is transmitted through the air and concentrates indoors. About 15% of our population remains without the option for vaccination (children under 12 years old are not yet eligible) and risk for COVID-19 exposure and infection will remain until we reach full community immunity.

The purpose of this guidance is to align with CDC recommendations and provide information about higher risk settings where masks are required or recommended to prevent transmission to persons with higher risk of infection (e.g., unvaccinated or immunocompromised persons), to persons with prolonged, cumulative exposures (e.g., workers), or to persons whose vaccination status is unknown. When people who are not fully vaccinated wear a mask correctly, they protect others as well as themselves. Consistent and correct mask use by people who are not fully vaccinated is especially important indoors.

In workplaces, employers are subject to the Cal/OSHA COVID-19 [Emergency Temporary Standards \(ETS\)](#) or in some workplaces the [CalOSHA Aerosol Transmissible Diseases Standard](#), and should consult those regulations for additional applicable requirements.

Guidance for Individuals

Masks are **not required for fully vaccinated individuals, except** in the following settings where masks are required for everyone, regardless of vaccination status:

- On [public transit](#)¹ (examples: airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares) and in transportation hubs (examples: airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation)
- **Indoors** in [K-12 schools](#)², [childcare](#)³ and other youth settings.
 - Note: This may change as updated K-12 schools guidance is forthcoming, pending updates for K-12 operational guidance from the CDC.

¹ CDC Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs

² CDC Operational Strategy for K-12 Schools through Phased Prevention

³ CDC Guidance for Operating Child Care Programs during COVID-19

- [Healthcare settings⁴](#) (including [long term care facilities⁵](#))
- State and local [correctional facilities and detention centers⁶](#)
- [Homeless shelters⁷](#), [emergency shelters⁸](#) and [cooling centers⁹](#)

Additionally, masks are **required* for unvaccinated individuals** in indoor public settings and businesses (examples: retail, restaurants, theaters, family entertainment centers, meetings, state and local government offices serving the public)

For additional information, individuals should refer to [CDC Recommendations for Safer Activities](#) (see CDPH Masking Guidance Frequently Asked Questions for more information).

***Guidance for Businesses, Venue Operators or Hosts**

In settings where masks are required only for unvaccinated individuals, businesses, venue operators or hosts may choose to:

- Provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance prior to entry.
- Implement vaccine verification to determine whether individuals are required to wear a mask.
- Require all patrons to wear masks.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to masks requirements

The following **individuals** are exempt from wearing masks at all times:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

⁴ CDC Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination

⁵ CDC Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes

⁶ CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

⁷ CDC Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)

⁸ CDC Interim Guidance for General Population Disaster Shelters During the COVID-19 Pandemic

⁹ CDC Interim guidance to reduce the risk of introducing and transmitting SARS COV-2 in cooling centers.



State of California—Health and Human
Services Agency
**California Department of
Public Health**



August 18, 2021

TO: All Californians

SUBJECT: Beyond the Blueprint for Industry and Business Sectors

Related Materials: Beyond the Blueprint Q&A

Updates as of August 18, 2021:

- Applied vaccine verification or negative testing requirement to Indoor Mega Events involving 1,000 or more participants.
- Removed self-attestation as a mode for both vaccine verification and for verification of negative COVID-19 test for indoor events scheduled after September 20, 2021.
- Extended date for requirements and recommendations to remain in place to November 1, 2021.

Background:

On June 15, California fully reopened the economy and moved beyond the Blueprint for a Safer Economy. All sectors listed in the Blueprint Activities and Business Tiers Chart returned to usual operations (with the limited exceptions noted below for Mega Events).

California has made great strides in vaccinating its residents, with more than 75 percent of those eligible at least partially vaccinated. Although vaccinations provide a powerful protection against COVID-19 hospitalization and death, the Delta variant, which is currently the most common strain of COVID-19 in California, is highly transmissible and may cause more severe illness.[1] In fact, recent data suggests that viral load is roughly 1,000 times higher in people infected with the Delta variant than those infected with the original coronavirus strain. California is currently experiencing the fastest increase in COVID-19 cases during the entire pandemic with 25.7 new cases per 100,000 people per day, with case rates increasing eleven-fold within two months. Given the rapid spread of the highly transmissible Delta variant, additional precautionary measures must be taken in large, indoor events, which have the potential to cause large, substantial, and severe outbreaks.

Large events involve several factors that increase the risk of transmission including (a) persons attending often travel from outside the immediate area, from areas with higher levels of transmission, and some types of travel may increase the risk of exposure; (b) events have prolonged duration; (c) crowding is common in large events; (d) even in counties or venues with universal masking requirements, masks are removed for eating and drinking; and

(e) the larger the number of people gathered in crowded settings, the greater the likelihood that contagious persons are present and the more individuals who are exposed with the potential of becoming infected and spreading infections within their families, communities, schools, and workplaces.

Indoor settings are especially high risk for transmission. While universal masking reduces the spread of infectious droplets and aerosols, masks are often removed for eating and drinking. Activities like singing, yelling, or cheering increase transmission risk, even when masks are being worn.

The immediate and primary call to action continues to be for eligible Californians to get vaccinated. A secondary call to action is for all unvaccinated Californians to comply with indoor masking requirements and for all Californians to consider their personal choices around harm reduction and risk tolerance in the face of the Delta variant and the likelihood of additional variants emerging in the future.

Additionally, a key method to reduce transmission in large gatherings is to expand the number of events that require attendees to be verified fully-vaccinated against COVID-19 or verified tested negative, both indoors and outdoors.

CDPH is therefore updating the general public health requirements and recommendations as follows, effective September 20, 2021. These updated measures will remain in place until **November 1, 2021**:

	Restrictions Applying to Indoor & Outdoor Settings
UPDATE: Definitions of Mega Events	Crowds greater than 1,000 (indoors) attendees Crowds greater than 10,000 (outdoors) attendees
UPDATE: Vaccine Verification / Negative Testing	Required for Indoor Mega Events Recommended for Outdoor Mega Events Self-attestation may not be used to verify status as fully vaccinated or as proof of negative test result for indoor settings. For outdoor settings, it is recommended not to use self-attestation to verify status as fully vaccinated or as proof of negative test result.
Capacity Limitations	No restrictions
Physical Distancing	No restrictions for attendees, customers, and guests
Masking	Follow current CDPH Guidance for Face Coverings
Travelers	Recommend following CDC recommendations.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the CalOSHA Aerosol Transmissible Diseases Standard, and should consult those regulations for additional applicable requirements.

Limited Requirements for Mega Events:

Mega Events are characterized by large crowds greater than 1,000 indoor OR 10,000 outdoor attendees. Mega Events may have either assigned or unassigned seating, and may be either general admission or gated, ticketed, and permitted events. Mega Events do not include venues such as shopping malls or museums that are open to

public circulation as part of their regular operations, except to the extent that such venues host qualifying events.

Mega Events are considered higher risk for COVID transmission because:

- Participants and attendees are spending extensive periods of time physically close to large numbers of people they don't usually interact with.
- The frequency and total duration of close contact between attendees is increased, thereby increasing the risk that respiratory particles will be transmitted between attendees and participants.
- They draw from beyond the nearby community and will often draw attendees and participants from other states and countries who may be infected with more infectious COVID variants.
- Effective contact tracing may be difficult given the number of potential uncontrolled mixing between groups and attendees among individuals who are unlikely to be together again and the nature of the events.

For Indoor Mega Events (example: conventions/conferences/expos/sporting events and concerts[2]):

In addition to the general public health recommendations:

- Verification of fully vaccinated status* or pre-entry negative test** result is required of all attendees.
 - Indoor venue and event operators may not use self-attestation as a mode of verification.
- Information will be prominently placed on all communications, including the reservation and ticketing systems, to ensure guests are aware of testing and vaccination requirements (including acceptable modes of verification).
- Attendees must follow CDPH Guidance for Face Coverings.
- Venues should make masks available to attendees upon request.

For Outdoor Mega Events (example: music or food festivals/car shows/large endurance events and marathons/parades/sporting events and concerts):

In addition to the general public health recommendations:

- Verification of fully vaccinated status or pre-entry negative test result is strongly recommended for all attendees.
 - If implemented, venue and event operators are recommended to not use self-attestation as a mode of verification but rather use verification options for providing proof of vaccination in the CDPH Vaccine Record Guidelines & Standards.
- Attendees must follow CDPH Guidance for Face Coverings.
- Information will be prominently placed on all communications, including the reservation and ticketing systems, to ensure guests are aware that the State strongly recommends that they be fully vaccinated or obtain a negative COVID-19 test prior to attending the event.
- Venues should make masks available to attendees upon request.

Additional recommendations for sponsors of Mega Events:

- Encourage everyone to get vaccinated when eligible.

- Facilitate increased ventilation of indoor spaces (i.e., open all windows and doors to increase natural air flow), following current CDPH and CalOSHA guidance.
- Encourage everyone to sign up for CA Notify as an added layer of protection for themselves and the community to receive alerts when they have been in close contact with someone who tests positive for COVID-19.
- Convey the risk of attending large, crowded events where the vaccine status of others in attendance may be unknown to the individuals.
- Convey the risk of attending large, crowded events for populations that may not currently be eligible for vaccination or may be immunocompromised and whose vaccine protection may be incomplete.
- Encourage all venues along any parade or event route to provide outdoor spaces for eating/drinking/congregating to reduce the risk of transmission in indoor settings.

The requirements and recommendations for negative testing / vaccine verification will be in place effective September 20, 2021 through November 1, 2021. The state will assess conditions by October 15, 2021, to determine whether updated requirements or recommendations are needed beyond November 1, 2021.

[1] CDC - Delta Variant: What We Know About the Science

[2] These requirements continue to be recommended but not mandatory for places of worship meeting the definition of a mega event.

* Fully vaccinated

1. Definition: See current CDPH Guidance for Fully Vaccinated Persons for definitions, acceptable vaccines, and updates on additional vaccines as they are approved.
2. Verification: See current Options for Providing Proof of Vaccination in the CDPH Vaccine Record Guidelines & Standards for acceptable methods of vaccine verification.

** Pre-entry negative testing

1. Definition: Testing must be conducted within 72 hours before event start time (both PCR and antigen are acceptable). Results of the test must be available prior to entry into the event or venue.
2. Verification: See current CDPH Updated Testing Guidance for acceptable methods of proof of negative COVID-19 test result.

Originally Published on May 21, 2021

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)



CITY OF PORTERVILLE
UTILITIES
PAST DUE BALANCES

	AS OF 3/31/2020	AS OF 12/31/2020	AS OF 1/31/2021	AS OF 2/28/2021	AS OF 3/31/2021	AS OF 4/30/2021	AS OF 5/31/2021	AS OF 6/30/2021	AS OF 7/31/2021	AS OF 8/31/2021	AS OF 9/30/2021	Mar20-Sep21 Difference
WATER	155,942	544,934	519,526	571,536	527,676	463,170	470,677	503,738	481,955	543,626	602,471	446,528
SEWER	171,185	335,513	337,317	349,334	294,515	283,873	305,374	292,298	282,188	300,471	320,062	148,877
REFUSE	155,172	300,283	303,605	316,767	268,798	253,119	273,951	262,133	248,199	267,486	282,828	127,656
	482,299	1,180,729	1,160,448	1,237,637	1,090,989	1,000,161	1,050,002	1,058,170	1,012,342	1,111,583	1,205,360	723,061
<u>ESTIMATED PENALTIES</u>		AS OF 12/31/2020	AS OF 1/31/2021	AS OF 2/28/2021	AS OF 3/31/2021	AS OF 4/30/2021	AS OF 5/31/2021	AS OF 6/30/2021	AS OF 7/31/2021	AS OF 8/31/2021	AS OF 9/30/2021	
WATER		130,155	133,344	150,734	143,479	136,401	138,598	145,220	132,986	147,937	145,259	
SEWER		86,320	89,124	91,957	75,987	75,827	84,055	79,686	73,592	78,818	77,245	
REFUSE		79,776	82,219	84,750	69,309	68,561	75,935	71,125	65,677	70,806	68,894	
		296,250	304,687	327,441	288,775	280,789	298,589	296,032	272,256	297,561	291,399	
TOTALS		1,476,979	1,465,135	1,565,077	1,379,764	1,280,950	1,348,590	1,354,201	1,284,597	1,409,144	1,496,759	

Vaccination Incentives Report

	KIUG Event August 19, 2021	SVMC/Imperial Ambulance Clinic August 27, 2021	SVMC/Imperial Ambulance September 16-18, 2021	SVMC/Imperial Ambulance October 7-9, 2021	Total Amount per Vendor
2.0 Coffee Co.					
Airway Café		\$400		\$4,600	\$5,000
Chaguito's Bakery		\$500		\$4,500	\$5,000
China's Alley		\$2,500		\$2,500	\$5,000
Deli Delicious	\$500	\$1,100		\$3,900	\$5,000
Don Vinos	\$500		\$2,700	\$3,000	\$3,500
El Jacalito		\$3,000	\$2,300	\$2,300	\$8,500
El Nuevo Mexicali (Main Street)	\$500	\$2,000	\$3,200	\$5,000	\$10,200
El Nuevo Mexicali (Prospect)		\$2,200	\$2,200	\$2,800	\$5,500
El Tapatio	\$500				\$2,000
Giovanni's Pizzeria	\$500		\$5,000	\$5,000	\$10,500
Habi Sushi		\$5,000		\$5,000	\$10,000
Hergesheimer's Donuts				\$1,000	\$1,000
Java Express		\$4,000		\$1,000	\$5,000
Mom's U Bake		\$2,500		\$5,000	\$7,500
Nanlangka		\$3,000			\$8,000
Pho Sho			\$5,000		\$5,000
Porterville Grocery Outlet			\$1,500	\$3,500	\$5,000
RJ's Café		\$4,400		\$5,600	\$10,000
Rosa's Italian Restaurant		\$700		\$4,300	\$5,000
Stafford's	\$600	\$300		\$4,700	\$5,000
Subway	\$2,800	\$3,000	\$7,000	\$11,000	\$21,000
Super Burger		\$10,000		\$5,000	\$10,000
Thai Kitchen		\$5,000		\$5,000	\$7,000
The Anvil		\$1,100		\$3,900	\$7,500
The Vault		\$1,500		\$3,500	\$11,500
Tony's Pizza	\$1,500	\$3,500		\$6,500	\$5,000
Town & Country Market		\$5,000		\$5,800	\$30,000
Total:	\$7,400	\$25,600	\$19,200	\$110,400	\$230,200

Vaccines	74	366	795	1104 =	1235
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RESOLUTION 2021-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AFFIRMING ITS PROCLAMATION OF A LOCAL EMERGENCY, RATIFYING THE
PROCLAMATION OF A STATE OF EMERGENCY BY ASSEMBLY BILL 361 ISSUED
ON SEPTEMBER 16, 2021, AND AUTHORIZING REMOTE TELECONFERENCE
MEETINGS OF ALL LEGISLATIVE BODIES OF THE CITY OF PORTERVILLE FOR
THE PERIOD OF THIRTY (30) DAYS PURSUANT TO BROWN ACT PROVISIONS

WHEREAS, the City Council is committed to preserving and nurturing public access and participation in meetings of all City of Porterville legislative bodies; and,

WHEREAS, all meetings of the City's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950-54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and,

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(s), subject to the existence of certain conditions; and,

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and,

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme period to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological, or human-caused disasters; and,

WHEREAS, it is further required that State or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and,

WHEREAS, such conditions now exist in the City, specifically, a State of Emergency has been proclaimed by the Governor of the State of California; and,

WHEREAS, State and local officials continue to promote social distancing measures and City's conference chambers limited capacity would present imminent risk to health and safety of attendees; and,

WHEREAS, the City does hereby reaffirm its proclamation of a local emergency due to the novel coronavirus (COVID-19) that has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to reaffirm its local emergency and ratify the proclamation of emergency by the Governor of the State of California; and,

WHEREAS, as a consequence of the local and state emergency, the City does hereby find that the legislative bodies of the City shall conduct their meetings without compliance with paragraph three (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph two (2) of subdivision (c) of section 54953; and,

WHEREAS, the City will give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body; and,

WHEREAS, the legislative body will not take any further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored; and,

WHEREAS, the legislative body will not require public comments to be submitted in advance of the meeting and specifies that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time; and,

WHEREAS, the legislative body will not close the public comment until the public comment period has elapsed or until a reasonable amount of time has elapsed as specified.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Porterville as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference; and,

SECTION 2. Reaffirmation of Local Emergency. The City hereby reaffirms that a local emergency now exists through the City, and that State and local officials

continue to promote social distancing measures and City's conference chambers limited capacity would present imminent risk to health and safety of attendees; and,

SECTION 3. Ratification of Governor's Proclamation of a State of Emergency. The City hereby ratifies the Governor of the State of California's Proclamation of March 2, 2020; and,

SECTION 4. Remote Teleconference Meetings. The City Manager and legislative bodies of City of Porterville are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act; and,

SECTION 5. Effective Date of Resolutions. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of November 18, 2021, or such time the Council adopts a subsequent Resolution in accordance with Government Code section 54953 (e)(3) to extend the time during which the legislative bodies of City of Porterville may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED, APPROVED, AND ADOPTED this 19th day of October, 2021.

Adrian Monte Reyes, Mayor

ATTEST:

John D. Lollis, City Clerk

By: _____

Patrice Hildreth, Chief Deputy City Clerk