

The City of Hanford
CALIFORNIA



City Council Meeting Agenda

September 7, 2021
7:00 PM – Regular Meeting
Council Chambers
400 N. Douty St.

Council Members will meet in-person in the Council Chambers.
The meeting will also be lived streamed on the City's website:
<http://livestream.hanford.city/>

5:00 PM CALL TO ORDER STUDY AND CLOSED SESSION:

ROLL CALL BY THE CITY CLERK:

PUBLIC COMMENT:

*Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

STUDY SESSION:

Discussion of Downtown traffic circulation and related improvements to improve Safety and Walkability and potential funding opportunities

CLOSED SESSION DISCUSSION FOR THE FOLLOWING:

- A. CONFERENCE WITH LEGAL COUNSEL – REAL PROPERTY NEGOTIATIONS (GC 54956.8):

Property: 426 W. Lacey Blvd.

APN: 010-253-001-000

Agency Negotiators: Mario Cifuentez and Ty Mizote

Negotiating Party: MSI and Habitat for Humanity

Property: 109 E. Eighth Street

APN: 012-041-017-000

Agency Negotiators: Mario Cifuentez Ty Mizote

Negotiating Party: Carnegie Museum of Kings County (CMKC) and Carnegie Museum Inc.

B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (GC 54956.9

(d)(2)):

2 potential cases

CALL TO ORDER REGULAR SESSION:

ROLL CALL:

INVOCATION:

Pastor Stan Plooy

FLAG SALUTE:

CLOSED SESSION ACTION REPORT :

RECOGNITIONS/PROCLAMATIONS:

Recognition of Jose Espinoza with the Citizens Life Saving Medal

STAFF COMMUNICATIONS:

COUNCIL REPORTS/COMMENTS:

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda and that are within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence*

CONSENT CALENDAR:

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 and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

- A. PROCEDURAL WAIVER: Waive reading in full of resolutions and ordinances and approval and adoption of same by reading title the only.
- B. City Clerk: Approval of the Minutes of the February 5, 2021 Special Meeting
- C. City Clerk: Approval of the Minutes of the February 17, 2021 Special Meeting
- D. City Clerk: Approval of the Minutes of the February 19, 2021 Special Meeting

- E. Administration: Introduction of Ordinance No. 21-05, Amending those sections of Title 2 of the Hanford Municipal Code to set the number of seats on all City Commissions at 5 and making several other revisions to Chapters 2.20, 2.28, 2.32, and 2.36 of the Municipal Code.
- F. Parks and Community Services: Approval of the Rental Agreement with Magic Ice, USA, for the rental of the "Winter Wonderland" Ice Rink.
- G. Community Development: Historic Resources Permit No. 2021-05 - a request by the Carnegie Museum of Kings County to hang a 5' x 11' (55 sq. ft.) banner on the exterior of the Carnegie Library Building, located at 109 E. Eighth Street (APN 012-041-017) from September 15 through October 25, 2021, in order to advertise an upcoming exhibit. The project site is located within the Historic Overlay Zone.
- H. Public Works: Authorize the purchase of street right-of-way located at 1094 W Davis Street, in the amount of \$1,900 plus escrow fees, accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deeds with the Kings County Recorder's Office, and accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement. (APN 012-290-020).
- I. Public Works: Authorize the exchange of street right-of-way located on the north west corner of Emma Lee Lane and Conquistador Street, in the amount of \$0 plus escrow fees, accept both of the attached Grant Deeds for exchange and authorize the City Manager to execute and the City Clerk to attest and file said deeds with the Kings County Recorder's Office, and accept the attached Exchange Agreement and authorize City staff to execute said agreement. (APN 008-470-021).
- J. Public Works: Authorization to purchase street right-of-way located on Emma Lee Lane, 100 feet west of Jana Way, as shown on the attached map, in the amount of \$160 plus escrow fees, accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deed with the Kings County Recorder's Office, and accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement. (APN 008-470-020).
- K. Public Works: Authorization to purchase street right-of-way located at the northwest corner of Emma Lee Lane and Grangeville Boulevard, in the amount of \$21,700 plus escrow fees, Approve acceptance of the attached Grant Deed and Authorization for the City Manager to execute and the City Clerk to attest and file said deed with the Kings County Recorder's Office, and accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement. (APN 008-460-005).
- L. Public Works: Award of an annual contract to The Experienced Gardener of Visalia, CA to perform spraying services for the City's drainage basins and easements for an amount not to exceed \$36,500.
- M. Public Works: Award the annual contract for curb and gutter, sidewalk, driveways and ADA ramp repair work to Cen-Cal Construction of Bakersfield CA for a not to exceed budgeted amount of \$90,000.00.
- N. Finance: City of Hanford 2021-2022 Investment Policy Update
- O. Finance: Approval of a Professional Services Agreement with NHA Advisors LLC (San Rafael, CA) for Municipal Financial Advisory Services for a term up to five years

- P. Finance: Authorize the sole source award and execution of a professional services agreement, in an amount not to exceed \$68,000, with SDI Presence LLC (Carmichael, CA) and appropriate said funding from the Computer Replacement Fund (0414) to complete the Tyler Software Implementation.

PUBLIC HEARINGS:

- A. City Attorney: Adoption of Resolution of Necessity 21-36-R for APN 001-040-015 (the “Property”) authorizing the City Attorney to take the steps necessary to finalize the acquisition of the property (Arthur Delgado Eminent Domain) for the widening of 12th avenue by the City (the “Project”).
- B. City Attorney: Adoption of Resolution of Necessity 21-37-R for APN 007-360-016 (the “Property”) authorizing the City Attorney to take the steps necessary to finalize the acquisition of the property (Paul Singh Eminent Domain) for the City’s expansion of the Tank Site 6 and repair of Well 41 at that site.

GENERAL BUSINESS:

- A. Finance: American Rescue Plan Act (ARPA) funding information regarding \$13,077,740 from Coronavirus State and Local Fiscal Recovery funding and allocate \$8.2 million of the funding due to reduction of revenue, appropriate \$699,105 for Public Safety Radios, \$30,000 for City Hall Covid Mitigation Improvements and \$40,000 for ARPA Community Outreach and seek initial input on future allocation
- B. Public Works: Adoption of Emergency Resolution No. 21-39-R, approving the emergency repair of Well No. 45 and Well No. 49 by Valley Pump and Dairy Systems of Armona, CA, for a not to exceed price of \$250,000, and approve an additional appropriation of \$250,000 from Water Capital Reserves.
- C. Police: Approval of the Annual Agreement between the City of Hanford and the Hanford Joint Union High School District for providing School Resource Officers.
- D. Administration: Approval of a contract with BBK Consulting Services for the full redistricting services, at a cost not to exceed \$45,000, including conducting the required public hearings, participation in public outreach meetings, and the online mapping tool, for the 2020 Census Redistricting Process.
- E. Council: Discussion of Annual Conference Resolutions; Approval of the City’s position on the resolutions, and Direction to the voting representative to advance the City’s position at the League of California Cities Annual Conference.

COUNCIL FUTURE AGENDA ITEMS:

Council Future Agenda Items

Upcoming Important Dates:

September 12: Protect and Serve Sunday New Testament Baptist Church 10:00 am – 12:00pm

September 17: Distinguished Awards Banquet 6:00 pm -8:00 pm Children's Storybook Garden
September 21: Regular City Council Meeting
September 22-24: League of Cities Annual Conference Sacramento

ADJOURNMENT:

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available to public inspection in the City Clerk's Office located at 319 N. Douty Street, Hanford, California 93230, during normal business hours. Such agendas are also available at the city's website, www.cityofhanfordca.com subject to staff's ability to post the agenda before the meeting.

If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's office, 559-585-2515, 319 N. Douty Street, Hanford, California 93230, at least 2 days prior to the meeting {28 CFR 35.102.35.104 ADA Title II}



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION:
-------------------------------	------------------------

SUBJECT:

Recognition of Jose Espinoza with the Citizens Life Saving Medal

RECOMMENDATION:

That the City Council recognize Mr. Espinoza for his life saving efforts.

BACKGROUND:

On August 5th, 2021 Hanford Fire Department was responded to a structure fire on 1100 block of Wren Dr. Engines arrived on scene to find a large amount of fire coming from the east and south sides of the structure. Crews began deploying hose lines to extinguish the fire. The IC requested an ambulance for rehabilitation, due to excessive heat. Upon arrival the ambulance was diverted to assist with the owner who was possibly suffering from burns and smoke inhalation. A second ambulance was responded to replace the one now being used to transport the home owner. Crews worked in 100+ temperatures and one firefighter was transported for a heat related event. As the incident was winding down a video began to be shared around the incident of a man hurdling a fence and running toward a burning building. Seeing the flag on the roof it became clear this was our incident. Then the story began to unfold. Jose Espinoza, living across the street, saw his neighbor in the doorway and immediately, and literally, jumped into action to pull the owner from the house. The owner struggled as he attempted to reenter the house to rescue his dog, who unfortunately was lost during the fire. The efforts of Mr. Espinoza directly contributed to saving the life of the homeowner, as well as preventing further injury from smoke and fire.

When I discussed the events with Mr. Espinoza, he humbly stated that he saw the fire and noticed his neighbor in the doorway. Jose just reacted as he ran toward the house to pull his neighbor to safety. Efforts such as these are truly heroic and continue to demonstrate the value people place on each other in our City.

FISCAL IMPACT:

None

ATTACHMENTS:

Jose Espinoza - Citizen Heroism Award

11.a

Citizen Heroism Award

Presented to:
Jose Espinoza



The Citizen Heroism Award may be made for a conspicuous act of valor and heroism by a citizen under hazardous conditions in which the person placed in a life threatening position to save the life of another.

On August 5, 2021 the Hanford Fire Department was dispatched to a structure fire at 1129 Wren Court. On this day, Hanford Fire Crews arrived to find a well-involved residence with fire damage exceeding 50% of the structure and impinging on the residence to the south. Prior to their arrival JOSE ESPINOZA reacted decisively and with urgency, removing the occupant from the house. He was instrumental in the reduction of injury to his neighbor. His vigilance, quick-thinking and willingness to place himself in harm's way was heroic.

Steven Pendergrass, Fire Chief

Attachment:

Packet Pg. 8



**AGENDA
STAFF REPORT**

MEETING DATE: 9/7/2021	AGENDA SECTION: B
-------------------------------	--------------------------

SUBJECT:

City Clerk: Approval of the Minutes of the February 5, 2021 Special Meeting

Recommendation:

Approve the minutes of the February 5, 2021 Special Meeting.

FISCAL IMPACT:

ATTACHMENTS:

2.5.2021 Special Meeting



CITY COUNCIL MEETING MINUTES

**February 5, 2021 4:00 PM
Council Chambers
400 N. Douty St.**

CALL TO ORDER SPECIAL CLOSED SESSION:

Mayor Ramirez called the meeting to order at 4:00 p.m.

ROLL CALL BY THE CITY CLERK:

Attendee Name	Title	Status	Arrived
John Draxler	Council Member	Present	3:55 PM
Diane Sharp	Vice Mayor	Present	3:53 PM
Art Brieno	Council Member	Excused	
Kalish Morrow	Council Member	Late	4:05 PM
Francisco Ramirez	Mayor	Present	3:55 PM

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Bob Ramos commented on the Council Chambers being closed to the public during the February 2nd City Council Meeting.

CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING:

Mayor Ramirez adjourned to closed session at 4:03 p.m.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (gc 54956.9(d)(2)):

One potential case.

A. City Attorney: Record of Threatened Litigation

CLOSED SESSION ACTION REPORT:

None.

ADJOURNMENT:

Mayor Ramirez adjourned the meeting at 5:17 p.m.

Attachment: 2.5.2021 Special Meeting (Clerk: 2.5.2021 Minutes)

Respectfully submitted,

Natalie Corral
City Clerk



**AGENDA
STAFF REPORT**

MEETING DATE: 9/7/2021	AGENDA SECTION: C
-------------------------------	--------------------------

SUBJECT:

City Clerk: Approval of the Minutes of the February 17, 2021 Special Meeting

Recommendation:

Approve the minutes of the February 17, 2021 Special Meeting.

FISCAL IMPACT:

ATTACHMENTS:

2.17.2021 Special Meeting



CITY COUNCIL MEETING MINUTES

February 17, 2021 5:00 PM

Council Chambers

400 N. Douty St.

CALL TO ORDER SPECIAL SESSION:

Mayor Ramirez called the meeting to order 5:00 p.m.

ROLL CALL BY THE CITY CLERK:

Attendee Name	Title	Status	Arrived
John Draxler	Council Member	Present	4:55 PM
Diane Sharp	Vice Mayor	Present	4:55 PM
Art Brieno	Council Member	Absent	
Kalish Morrow	Council Member	Present	4:55 PM
Francisco Ramirez	Mayor	Present	4:55 PM

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

None.

CLOSED SESSION DISUSSION OF THE FOLLOWING:

Mayor Ramirez adjourned to closed session at 5:01 p.m.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (GC 54956.9(d)(2)):

One potential case.

City Attorney: Record of Threatened Litigation

CLOSED SESSION ACTION REPORT :

None.

ADJOURNMENT:

Mayor Ramirez adjourned the meeting at 6:38 p.m.

Respectfully submitted,

Natalie Corral
City Clerk



**AGENDA
STAFF REPORT**

MEETING DATE: 9/7/2021	AGENDA SECTION: D
-------------------------------	--------------------------

SUBJECT:

City Clerk: Approval of the Minutes of the February 19, 2021 Special Meeting

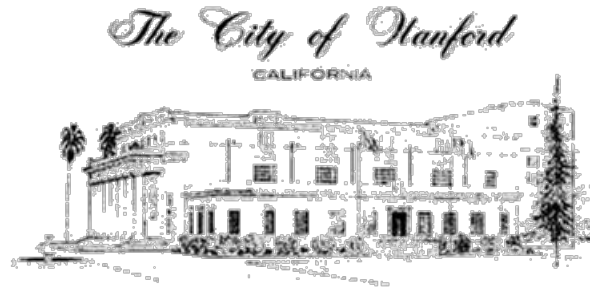
Recommendation:

Approve the minutes of the February 19, 2021 Special Meeting.

FISCAL IMPACT:

ATTACHMENTS:

2.19.2021 Special Meeting



CITY COUNCIL MEETING MINUTES

**February 19, 2021 9:00 AM
Training Room
319 N. Douty**

9:00 AM CALL TO ORDER SPECIAL SESSION:

Mayor Ramirez called the meeting to order at 9:03 a.m.

ROLL CALL BY THE CITY CLERK:

Attendee Name	Title	Status	Arrived
John Draxler	Council Member	Present	8:48 AM
Diane Sharp	Vice Mayor	Present	8:50 AM
Art Brieno	Council Member	Absent	
Kalish Morrow	Council Member	Present	8:58 AM
Francisco Ramirez	Mayor	Present	8:23 AM

WELCOME & INTRODUCTIONS :

Workshop Facilitator, Stan Carrizosa and City Manager Cifuentez provided opening remarks. Mr. Carrizosa also provided an overview of the Workshop agenda. There was no scheduled formal action taken by the Council during the workshop.

Staff in attendance:

City Attorney Ty Mizote, City Clerk Natalie Corral, Public Works Director John Doyle, Interim Finance Director Eric Frost, Parks and Community Services Director Brad Alert, Police Chief Parker Sever, Fire Chief Steve Pendergrass, Senior Planner Gabrielle Myers, Building Official Tom Webb, and Housing Analyst Sandra Lerma-Martinez.

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

None.

OVERVIEW IF BEST PRACTICES FOR EFFECTIVE PUBLIC GOVERNANCE:

Facilitator Carrizosa provided an overview of best practices for participatory governance and he discussed the Council's roles and responsibilities. The Council and Senior Staff participated in a Self-Assessment exercise by submitting their feedback on a questionnaire form.

10:00 AM BREAK:

Break 10:00 a.m. - 10:15 a.m.

REVIEW OF BUDGET POLICIES AND MID-YEAR FORECAST :

Finance: Finance Director's Update on budget status

Interim Finance Director Eric Frost presented an overview of Budget Policies, Budget Financial Structure, Emerging Risk Management needs, and the current fiscal health of the City. He also provided an update on the budget status.

ROUND-TABLE ROTATION: 2020-21 MID YEAR GOALS UPDATE :

Facilitator Carrizosa provided an overview of the Round-Table Rotation activity for the Council and Staff. The Council took 15 minutes of quiet time to review the current goals and make notes of any questions or thoughts they may have concerning each goal. Staff met in small groups with each Council Member for 15 minutes, and discussed their division's progress toward the annual goals.

12:30 PM LUNCH :

The meeting was adjourned to lunch at 12:30 p.m.

1:15 PM RECONVENE:

Facilitator Carrizosa reconvened the meeting at 1:19 p.m. and discussed the outcome of the Round Table Activity. He also discussed the results of the questionnaire given to the Council and Staff before the Round Table activity.

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

None.

COUNCIL INPUT/FEEDBACK/NOTES ON GOALS FOR THE 2021-22 FISCAL YEAR :

Facilitator Carrizosa discussed the current goals and objectives and the Council's concerns from last year's meeting. The Council reviewed and discussed each of the goals and objectives. The Council Members had the opportunity to give their input on each of the goals and objectives. It was a consensus of the Council to keep and continue the current goals and objectives for the new fiscal year to allow progress and formal action.

Facilitator Carrizosa will take the Council's feedback and prepare a draft Goals and Objective for FY 2021-22 for Council's review and consideration at a future City Council Meeting. He will also prepare Professional Governance Standards for Councils review and consideration for adoption.

CONTINUE COUNCIL INPUT:

None.

BONUS ROUND:

During the Bonus Round each of the City Council Members shared their individual interests and topics for future Council discussion and action.

ADJOURNMENT:

Mayor Ramirez thanked the staff and Council and adjourned the meeting at 3:15 p.m.

Respectfully submitted,

Natalie Corral
City Clerk



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: E
-------------------------------	--------------------------

SUBJECT:

Administration: Introduction of Ordinance No. 21-05, Amending those sections of Title 2 of the Hanford Municipal Code to set the number of seats on all City Commissions at 5 and making several other revisions to Chapters 2.20, 2.28, 2.32, and 2.36 of the Municipal Code.

RECOMMENDATION:

That the City Council, by motion, waive the first reading of Ordinance No. 21-05 and pass the ordinance to the second reading.

BACKGROUND:

At the July 20, 2020 Council meeting, Council directed the Staff to make several revisions to the City's Municipal Code, related to City Commissions. The City Manager and City Attorney have worked to incorporate those changes into revised sections of Title 2 of the Municipal Code and the attached "Redline" version of the Chapters detail the various changes.

The following is a summary of significant changes to HMC Chapters 2.20, 2.28, 2.32, and 2.36 that are contained in the attached Ordinance:

- Set the number of commissioner seats at five (5) for all City Commissions
- Removed the requirement that Council appoint liaisons to each commission
- Added language to strengthen residency requirements for Commissioners
- Allowed for members to remain seated, past term expiration, to allow Council ample time to appoint new members.
- Established a lower threshold of absences for members to insure commissioners remain engaged in matters related to those commissions

FISCAL IMPACT:

No Impact

ATTACHMENTS:

Commission Changes Ordinance

Title 2 Commission Ordinance Updates - Final

Title 2 Commission Ordinance Updates - Redline

ORDINANCE NO. 21-05**AN ORDINANCE AMENDING HANFORD MUNICIPAL CODE CHAPTERS 2.20, 2.28, 2.32 AND 2.36 RELATING TO ESTABLISHMENT AND CONDUCT OF CITY COMMISSIONS.**

The City Council of the City of Hanford does ordain as follows:

Section 1: Hanford Municipal Code Chapters 2.20, 2.28, 2.32 and 2.36 contains regulations relating to the establishment and conduct of City Commissions.

Section 2: The regulations contained in Chapters 2.20, 2.28, 2.32 and 2.36 were adopted many years ago, and the Council has determined that the chapters need updates for the effective operation and administration of the City's Commissions.

Section 3: The City Council of the City of Hanford does ordain that Chapters 2.20, 2.28, 2.32 and 2.36 of the Hanford Municipal Code are hereby amended and restated as shown in the attached Exhibits "A", "B", "C", and "D", which are incorporated herein by reference.

Section 4: This ordinance shall take effect thirty (30) days after its passage and shall be published once in the Hanford Sentinel within fifteen (15) days after its passage or a summary of this ordinance shall be published in the Hanford Sentinel in a manner consistent with the requirements of the California Government Code.

Passed and adopted at a regular meeting of the City Council of the City of Hanford duly called and held on _____, 2021, by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

APPROVED

Francisco Ramirez
MAYOR of the City of Hanford

ATTEST:

NATALIE CORRAL
CITY CLERK

Attachment: Commission Changes Ordinance (Admin: Commission Ordinance Revisions)

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I NATALIE CORRAL, City Clerk of the City of Hanford, do hereby certify the foregoing ordinance was duly introduced at a regular meeting of the City Council of the City of Hanford on the 7th day of September, 2021, and it was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the day ____ of _____, 2021.

NATALIE CORRAL
CITY CLERK

Attachment: Commission Changes Ordinance (Admin: Commission Ordinance Revisions)

Exhibit “A”

Chapter 2.20 CITY COMMISSIONERS GENERALLY

2.20.010 Establishing city commissions.

The city council does establish the parking and traffic commission, the parks and recreation commission, and the planning commission, and is authorized to establish other commissions as required by state law or as deemed necessary. (Ord. 15-13 § 1, 2015; Ord. 09-06, 2009; Ord. 05-05, 2005; Ord. 00-03, 2000; prior code § 2-8.01)

2.20.020 Structuring commissions.

Every commission shall have a specific statement of duties, responsibilities and functions which shall be reexamined periodically to determine its effectiveness.

The size and number of members of each commission shall be determined by the city council and the membership of each commission shall be related to the duties, responsibilities and functions of such commission.

2.20.030 Appointing commission members.

Members of all commissions shall be appointed by the mayor with the approval of a majority of the members of the city council.

At the first city council meeting in January of each year, the mayor shall endeavor to appoint members to commissions and committees, to fill vacancies caused by the regular expiration of terms of membership. All such appointments shall be approved by a majority of the members of the city council.

Vacancies occurring due to resignation or other cause, shall be noticed as required by state law and appointment made by the mayor at the earliest date possible. All such appointments shall be approved by a majority of the members of the city council.

All vacancies shall be advertised so that any interested citizen may make application. City residency shall be required for all commission members and shall be confirmed by each applicant and each member under penalty of perjury. The City may require a member to confirm his or her residency throughout the member's term. (Prior code § 2-8.03)

2.20.040 Terms and reappointments.

Terms of commission members shall be four years. Upon expiration of a member's term, the member shall, however, continue to serve until his or her replacement is appointed in accordance with Section 2.20.030. Upon the expiration of the first term of any member, the mayor with the approval of a majority of the members of the council may reappoint such member; however, in no event shall any one member serve more than two (2) consecutive terms on any one commission, exclusive of appointments to fill unexpired terms.

No individual, having served the maximum allowable number of terms, on a commission, may be reappointed to that commission, for at least one year from the last date served.

No individual may serve on more than one commission at any one time. This shall not preclude any member of a commission from also serving on a special ad hoc committee established by the city council for a specific purpose.

Members serve at the pleasure of the city council and may be removed for cause or no-cause. Members may be removed by the city council for cause for various reasons, including three (3) consecutive absences or a member attends less than thirty (30) percent of the meetings held over a 12 month period, unless extenuating circumstances apply and are noted for the record. (Ord. 16-10 § 1, 2016; prior code § 2-8.04)

2.20.050 Commission operating policies.

Each commission shall annually elect a chair and vice-chair from among its members.

All meetings of commissions are open to the public in accordance with the public meeting laws of the state of California.

The number of meetings, dates and times, related to business needs of the commission, may be set by each commission. Notices of all meetings, including date, time, place and subjects to be discussed, shall be published or posted in accordance with the public meeting laws of the state of California.

Minutes of all meetings shall be kept in accordance with the public meeting laws of the state of California. (Ord. 00-03, 2000; prior code § 2-8.05)

2.20.060 Compensation.

All members of commissions shall serve without compensation. (Prior code § 2-8.06)

Exhibit “B”

Chapter 2.28 PARKING AND TRAFFIC COMMISSION**2.28.010 Created.**

- A. There is created a parking and traffic commission, which shall consist of five (5) members appointed in accordance with Section 2.20.030.
- B. Present members of the parking and traffic commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be for four (4) year terms.
- C. The city engineer or designee shall serve as secretary to the commission.
- D. The parking and traffic commission shall have the following duties and responsibilities:
 - 1. To suggest the most practical means for coordinating the activities of all officers and agencies of the city having authority with respect to the enforcement of the parking and traffic laws and ordinances;
 - 2. To stimulate and assist in the preparation of the publication of parking and traffic reports;
 - 3. To receive comments and complaints from the public having to do with parking and traffic matters;
 - 4. To recommend to the city council ways and means of improving parking and traffic conditions and the administration and enforcement of the parking and traffic laws and ordinances; and
 - 5. Perform any other functions, which may be assigned by the city council. (Ord. 16-01, 2016; prior code § 2-8.08)

Exhibit “C”

Chapter 2.32 PARKS AND RECREATION COMMISSION

2.32.010 Created.

A. There is created a parks and recreation commission which shall consist of five (5) members appointed in accordance with Section [2.20.030](#).

B. Notwithstanding subsection A., present members of the existing parks and recreation commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be made for four (4) year terms.

C. The director of the Parks & Community Services department or designee shall serve as secretary to the commission.

D. The parks and recreation commission shall have the following duties and responsibilities:

1. To become informed and knowledgeable about the city parks and recreation programs, facilities, and recreational needs;
2. Interpret the city's recreational programs to the general citizenry in order to promote understanding and public support;
3. Foster cooperation between the city and other governmental agencies and civic groups interested in the development of a community parks and recreation program;
4. Encourage a sound program of parks and recreation development and maintenance;
5. Advise the council on programs that will enhance the city's parks and recreation facilities or programs;
6. Recommend and encourage the adoption of a plan for future development of parks and recreation;
7. Receive and report on all matters referred to them by the council, as well as initiate studies and surveys for plans and reports for recommendations to the city council except that all expenditures of city funds shall be subject to prior approval by the city council;
8. Review the annual recreation department budget and make recommendations to the city council;
9. To recommend to the city the planting, care and/or removal of trees and shrubbery on property owned by the city and upon city streets and alleys;
10. Perform any other functions which may be assigned by the city council. (Ord. 17-01 § 1, 2017; Ord. 15-13 § 2, 2015; prior code § 2-8.09)

Exhibit “D”

Chapter 2.36 PLANNING COMMISSION

2.36.010 Planning commission.

A. There is created a planning commission which shall consist of five (5) members appointed in accordance with Section [2.20.030](#).

B. Notwithstanding subsection A., present members of the existing planning commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be made for four (4) year terms.

C. The director of the community development department or designee shall serve as secretary to the commission.

D. The planning commission shall have the powers and duties provided by the California [Government Code](#) and the Hanford Municipal Code. The planning commission shall also perform any other functions which may be assigned by the city council.

E. The planning commission may employ or contract with planning consultants, engineers, or other city planning specialists provided such employment has first been authorized by the city council and all expenditure of city funds shall be subject to prior approval by the city council. (Ord. 17-01 § 2, 2017; Ord. 15-13 § 3, 2015; prior code § 2-8.10)

Chapter 2.20 CITY COMMISSIONERS GENERALLY

2.20.010 Establishing city commissions.

The city council does establish the parking and traffic commission, the parks and recreation commission, and the planning commission, and is authorized to establish other commissions as required by state law or as deemed necessary. (Ord. 15-13 § 1, 2015; Ord. 09-06, 2009; Ord. 05-05, 2005; Ord. 00-03, 2000; prior code § 2-8.01)

2.20.020 Structuring commissions.

Every commission shall have a specific statement of duties, responsibilities and functions which shall be reexamined periodically to determine its effectiveness.

The size and number of members of each commission shall be determined by the city council and the membership of each commission shall be related to the duties, responsibilities and functions of such commission.

2.20.030 Appointing commission members.

Members of all commissions shall be appointed by the mayor with the approval of a majority of the members of the city council.

At the first city council meeting in January of each year, the mayor shall endeavor to appoint members to commissions and committees, to fill vacancies caused by the regular expiration of terms of membership. All such appointments shall be approved by a majority of the members of the city council.

Vacancies occurring due to resignation or other cause, shall be noticed as required by state law and appointment made by the mayor at the earliest date possible. All such appointments shall be approved by a majority of the members of the city council.

All vacancies shall be advertised so that any interested citizen may make application. City residency shall be required for all commission members and shall be confirmed by each applicant and each member under penalty of perjury. The City may require a member to confirm his or her residency throughout the member's term. (Prior code § 2-8.03)

2.20.040 Terms and reappointments.

Terms of commission members shall be four years. Upon expiration of a member's term, the member shall, however, continue to serve until his or her replacement is appointed in accordance with Section 2.20.030. Upon the expiration of the first term of any member, the mayor with the approval of a majority of the members of the council may reappoint such member; however, in no event shall any one member serve more than two (2) consecutive terms on any one commission, exclusive of appointments to fill unexpired terms.

No individual, having served the maximum allowable number of terms, on a commission, may be reappointed to that commission, for at least one year from the last date served.

No individual may serve on more than one commission at any one time. This shall not preclude any member of a commission from also serving on a special ad hoc committee established by the city council for a specific purpose.

Members serve at the pleasure of the city council and may be removed for cause or no-cause. Members may be removed by the city council for cause for various reasons, including three (3) consecutive absences or a member attends less than thirty (30) percent of the meetings held over a 12 month period, unless extenuating circumstances apply and are noted for the record. (Ord. 16-10 § 1, 2016; prior code § 2-8.04)

2.20.050 Commission operating policies.

Each commission shall annually elect a chair and vice-chair from among its members.

All meetings of commissions are open to the public in accordance with the public meeting laws of the state of California.

The number of meetings, dates and times, related to business needs of the commission, may be set by each commission. Notices of all meetings, including date, time, place and subjects to be discussed, shall be published or posted in accordance with the public meeting laws of the state of California.

Minutes of all meetings shall be kept in accordance with the public meeting laws of the state of California. (Ord. 00-03, 2000; prior code § 2-8.05)

2.20.060 Compensation.

All members of commissions shall serve without compensation. (Prior code § 2-8.06)

Chapter 2.28 PARKING AND TRAFFIC COMMISSION

2.28.010 Created.

- A. There is created a parking and traffic commission, which shall consist of five (5) members appointed in accordance with Section [2.20.030](#).
- B. Present members of the parking and traffic commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be for four (4) year terms.
- C. The city engineer or designee shall serve as secretary to the commission.
- D. The parking and traffic commission shall have the following duties and responsibilities:
 - 1. To suggest the most practical means for coordinating the activities of all officers and agencies of the city having authority with respect to the enforcement of the parking and traffic laws and ordinances;
 - 2. To stimulate and assist in the preparation of the publication of parking and traffic reports;
 - 3. To receive comments and complaints from the public having to do with parking and traffic matters;
 - 4. To recommend to the city council ways and means of improving parking and traffic conditions and the administration and enforcement of the parking and traffic laws and ordinances; and
 - 5. Perform any other functions, which may be assigned by the city council. (Ord. 16-01, 2016; prior code § 2-8.08)

Chapter 2.32 PARKS AND RECREATION COMMISSION

2.32.010 Created.

A. There is created a parks and recreation commission which shall consist of five (5) members appointed in accordance with Section [2.20.030](#).

B. Notwithstanding subsection A., present members of the existing parks and recreation commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be made for four (4) year terms.

C. The director of the Parks & Community Services department or designee shall serve as secretary to the commission.

D. The parks and recreation commission shall have the following duties and responsibilities:

1. To become informed and knowledgeable about the city parks and recreation programs, facilities, and recreational needs;
2. Interpret the city's recreational programs to the general citizenry in order to promote understanding and public support;
3. Foster cooperation between the city and other governmental agencies and civic groups interested in the development of a community parks and recreation program;
4. Encourage a sound program of parks and recreation development and maintenance;
5. Advise the council on programs that will enhance the city's parks and recreation facilities or programs;
6. Recommend and encourage the adoption of a plan for future development of parks and recreation;
7. Receive and report on all matters referred to them by the council, as well as initiate studies and surveys for plans and reports for recommendations to the city council except that all expenditures of city funds shall be subject to prior approval by the city council;
8. Review the annual recreation department budget and make recommendations to the city council;
9. To recommend to the city the planting, care and/or removal of trees and shrubbery on property owned by the city and upon city streets and alleys;
10. Perform any other functions which may be assigned by the city council. (Ord. 17-01 § 1, 2017; Ord. 15-13 § 2, 2015; prior code § 2-8.09)

Chapter 2.36 PLANNING COMMISSION

2.36.010 Planning commission.

A. There is created a planning commission which shall consist of five (5) members appointed in accordance with Section [2.20.030](#).

B. Notwithstanding subsection A., present members of the existing planning commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be made for four (4) year terms.

C. The director of the community development department or designee shall serve as secretary to the commission.

D. The planning commission shall have the powers and duties provided by the California [Government Code](#) and the Hanford Municipal Code. The planning commission shall also perform any other functions which may be assigned by the city council.

E. The planning commission may employ or contract with planning consultants, engineers, or other city planning specialists provided such employment has first been authorized by the city council and all expenditure of city funds shall be subject to prior approval by the city council. (Ord. 17-01 § 2, 2017; Ord. 15-13 § 3, 2015; prior code § 2-8.10)

Chapter 2.20 CITY COMMISSIONERS GENERALLY

2.20.010 Establishing city commissions.

The city council does establish the parking and traffic commission, the parks and recreation commission, and the planning commission, and is authorized to establish other commissions as required by state law or as deemed necessary. (Ord. 15-13 § 1, 2015; Ord. 09-06, 2009; Ord. 05-05, 2005; Ord. 00-03, 2000; prior code § 2-8.01)

2.20.020 Structuring commissions.

Every commission shall have a specific statement of duties, responsibilities and functions which shall be reexamined periodically to determine its effectiveness.

The size and number of members of each commission shall be determined by the city council and the membership of each commission shall be related to the duties, responsibilities and functions of such commission.

~~At the first city council meeting in January of each year, the mayor shall appoint city council liaison members to the established commissions. The city council liaison member is responsible for attending meetings and making reports to the council on the commission activities. (Prior code § 2-8.02)~~

2.20.030 Appointing commission members.

Members of all commissions shall be appointed by the mayor with the approval of a majority of the members of the city council.

At the first city council meeting in January of each year, the mayor shall endeavor to appoint members to commissions and committees, to fill vacancies caused by the regular expiration of terms of membership. All such appointments shall be approved by a majority of the members of the city council.

Vacancies occurring due to resignation or other cause, shall be noticed as required by state law and appointment made by the mayor at the earliest date possible. All such appointments shall be approved by a majority of the members of the city council.

All vacancies shall be advertised so that any interested citizen may make application. City residency shall be required for all commission members and shall be confirmed by each applicant and each member under penalty of perjury ~~unless members with the appropriate expertise cannot be found within the city.~~ The City may require a member to confirm his or her residency throughout the member's term. (Prior code § 2-8.03)

2.20.040 Terms and reappointments.

Terms of commission members shall be four years. Upon expiration of a member's term, the member shall, however, continue to serve until his or her replacement is appointed in accordance with Section 2.20.030. Upon the expiration of the first term of any member, the mayor with the approval of a majority of the members of the council may reappoint such member; however, in no event shall any one member serve more than two (2) consecutive terms on any one commission, exclusive of appointments to fill unexpired terms.

No individual, having served the maximum allowable number of terms, on a commission, may be reappointed to that commission, for at least one year from the last date served.

No individual may serve on more than one commission at any one time. This shall not preclude any member of a commission from also serving on a special ad hoc committee established by the city council for a specific purpose.

Members serve at the pleasure of the city council and may be removed for cause or no-cause.

Members may be removed by the city council for cause for various reasons, including if they have three (3) consecutive absences or a member attends less than ~~seventy-three~~ (73) percent of the meetings held over a 12 month period, unless extenuating circumstances apply and are noted for the record. (Ord. 16-10 § 1, 2016; prior code § 2-8.04)

2.20.050 Commission operating policies.

Each commission shall annually elect a chair and vice-chair from among its members.

All meetings of commissions are open to the public in accordance with the public meeting laws of the state of California.

~~All commissions shall meet at least once a month.~~ The number of meetings, dates and times, related to business needs of the commission, may be set by each commission. Notices of all meetings, including date, time, place and subjects to be discussed, shall be published or posted in accordance with the public meeting laws of the state of California.

Minutes of all meetings shall be kept in accordance with the public meeting laws of the state of California. (Ord. 00-03, 2000; prior code § 2-8.05)

2.20.060 Compensation.

All members of commissions shall serve without compensation. (Prior code § 2-8.06)

Chapter 2.28 PARKING AND TRAFFIC COMMISSION

2.28.010 Created.

A. There is created a parking and traffic commission, which shall consist of five (5) members appointed in accordance with Section 2.20.030. ~~One member of the city council appointed by the mayor with the approval of a majority of the city council, and the city engineer, or designee, shall serve as nonvoting ex officio members.~~

B. Present members of the parking and traffic commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be for four (4) year terms.

C. The city engineer or designee shall serve as secretary to the commission.

D. The parking and traffic commission shall have the following duties and responsibilities:

1. To suggest the most practical means for coordinating the activities of all officers and agencies of the city having authority with respect to the enforcement of the parking and traffic laws and ordinances;

2. To stimulate and assist in the preparation of the publication of parking and traffic reports;

3. To receive comments and complaints from the public having to do with parking and traffic matters;

4. To recommend to the city council ways and means of improving parking and traffic conditions and the administration and enforcement of the parking and traffic laws and ordinances; and

5. Perform any other functions, which may be assigned by the city council. (Ord. 16-01, 2016; prior code § 2-8.08)

Chapter 2.32 PARKS AND RECREATION COMMISSION

2.32.010 Created.

A. There is created a parks and recreation commission which shall consist of ~~seven~~ five (75) members appointed in accordance with Section 2.20.030. ~~One member of the city council appointed by the mayor with the approval of a majority of the city council, the director of the recreation department, or designee, and the parks superintendent, or designee, shall serve as nonvoting ex officio members.~~

B. Notwithstanding subsection A., Present members of the existing parks and recreation commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be made for four (4) year terms.

C. The director of the Parks & Community Services~~recreation~~ department or designee shall serve as secretary to the commission.

D. The parks and recreation commission shall have the following duties and responsibilities:

1. To become informed and knowledgeable about the city parks and recreation programs, facilities, and recreational needs;
2. Interpret the city's recreational programs to the general citizenry in order to promote understanding and public support;
3. Foster cooperation between the city and other governmental agencies and civic groups interested in the development of a community parks and recreation program;
4. Encourage a sound program of parks and recreation development and maintenance;
5. Advise the council on programs that will enhance the city's parks and recreation facilities or programs;
6. Recommend and encourage the adoption of a plan for future development of parks and recreation;
7. Receive and report on all matters referred to them by the council, as well as initiate studies and surveys for plans and reports for recommendations to the city council except that all expenditures of city funds shall be subject to prior approval by the city council;
8. Review the annual recreation department budget and make recommendations to the city council;
9. To recommend to the city the planting, care and/or removal of trees and shrubbery on property owned by the city and upon city streets and alleys;
10. Perform any other functions which may be assigned by the city council. (Ord. 17-01 § 1, 2017; Ord. 15-13 § 2, 2015; prior code § 2-8.09)

Chapter 2.36 PLANNING COMMISSION

2.36.010 Planning commission.

A. There is created a planning commission which shall consist of ~~five~~^{seven} (57) members appointed in accordance with Section 2.20.030. ~~One member of the city council appointed by the mayor with the approval of a majority of the city council, and the director of the community development department, or designee, shall serve as nonvoting ex officio members.~~

B. Notwithstanding subsection A., Present members of the existing planning commission shall hold office for the balance of their respective terms. Thereafter, appointments shall be made for four (4) year terms.

C. The director of the community development department or designee shall serve as secretary to the commission.

D. The planning commission shall have the powers and duties provided by the California Government Code and the Hanford Municipal Code. The planning commission shall also perform any other functions which may be assigned by the city council.

E. The planning commission may employ or contract with planning consultants, engineers, or other city planning specialists provided such employment has first been authorized by the city council and all expenditure of city funds shall be subject to prior approval by the city council. (Ord. 17-01 § 2, 2017; Ord. 15-13 § 3, 2015; prior code § 2-8.10)



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: F
-------------------------------	--------------------------

SUBJECT:

Parks and Community Services: Approval of the Rental Agreement with Magic Ice, USA, for the rental of the "Winter Wonderland" Ice Rink.

RECOMMENDATION:

Staff recommends that the City Council, by motion, approve the Equipment Rental Agreement with Magic Ice USA, Inc. and authorize the City Manager to sign it.

Recommended motion: I move to approve the Magic Ice USA, Inc. Equipment Rental Agreement and authorize the City Manager to sign the Agreement.

BACKGROUND:

During an August 3, 2021 study session, staff reviewed Hanford's Winter Wonderland event that will center around a temporary ice skating rink.

The City has been in negotiations with Magic Ice USA, Inc. (Magic Ice) for the City to rent a temporary ice skating rink for the event. The attached Equipment Rental Agreement was created by Magic Ice following negotiations. The Agreement's terms are summarized as follows:

- **Rented Equipment:** 50' x 70' temporary ice rink, ice painting equipment, 300 pairs of skates, string lighting, 1,000 square feet of rubber matting, and associated equipment.
- **Magic Ice Responsibilities:** Provide tools, supplies, and supervision for installation; and train City staff to operate and maintain the ice rink equipment.

- **City's Responsibilities:** Provide power to rink site; provide electrician during rink installation; laser level site prior to installation; provide four laborers for installation; provide hotel lodging for Magic Ice's installation supervisor; manage and operate the rink.
- **Rental Term:** November 14, 2021 through January 16, 2022, including six days for installation and six days for removal.
- **Projected Dates for Rink Operation:** November 20, 2021 through January 9, 2021.
- **Cost of Repairs:** City will be responsible for the cost of repairing the ice rink equipment if repairs are needed due to the City's negligence or failure to maintain the equipment.
- **Rental Fees:** \$97,000.00. 50% payable upon signature of Agreement; 40% due when equipment is ready to ship (approximately November 1, 2021); and 10% balance due when rink is ready for use.
- **Termination and Refunds:** The City may terminate the Agreement and receive a pro rata refund if the rink is unavailable for use for ten consecutive days and the failure is not caused by the City. The refund will reflect the number of days remaining in the term.
- **Maintenance and Repairs:** The City will be responsible for the daily maintenance of the ice rink equipment. Magic Ice will be responsible for repairing the equipment in the event of break down; however, the City will be responsible for repair costs if the City damages the equipment.
- **Property Insurance:** The City's property insurance will cover the ice rink equipment for loss due to fire, theft, vandalism, etc. for full replacement value (approximately \$450,000.00).

- **Venue and Attorneys' Fees:** Lawsuits involving the Agreement will be heard by a court in Miami-Dade County, Florida. In the event of litigation, each party will pay its own legal fees, regardless of whether a party wins or loses.
- **Limit on Liability:** Magic Ice's liability to the City is limited to the \$97,000.00 rental amount. In other words, if defective ice rink equipment injures a member of the public and the injured party sues the City, the maximum that Magic Ice will pay to the City is \$97,000.00.

Magic Ice's role will be limited to providing the ice rink equipment and repairing it if it fails due to no fault of the City. The City will have control over the day-to-day operation and maintenance of the ice rink. As a result, the City will have potential liability for incidents and injuries associated with the rink and ice skating.

ATTACHMENTS:

Magic Ice USA, Inc. Equipment Rental Agreement.

FISCAL IMPACT:

ATTACHMENTS:

2021.08.23 Ice Rink Agreement - Signed by Vendor

EQUIPMENT RENTAL AGREEMENT

Magic Ice USA, Inc., a Florida corporation ("Lessor") and The City of Hanford, CA ("Lessee") hereby enter this Equipment Rental Agreement ("Agreement") this ____ day of July, 2021 in Miami-Dade County, Florida;

WHEREAS, Lessor represents and warrants that it has the expertise and ability to install and remove a portable ice skating rink;

WHEREAS, Lessee represents and warrants that it has the skill, knowledge and ability to safely and reasonably operate and maintain the portable ice skating rink;

THEREFORE, in consideration of the mutual promises and benefits contained herein, the adequacy and receipt of which is acknowledged by both parties to this Agreement, Lessor and Lessee agree as follows:

1. The recitals above stated are true and correct and incorporated by reference into this Agreement and are an integral part of this Agreement.
2. During the term of this Agreement, Lessor will provide to Lessee, at The city of Hanford, CA, a turnkey equipment rental, installation and removal of a temporary ice skating rink.
3. The Equipment Rental includes without limitation: (all of which will be collectively referred to as "Equipment")
 - a. A 50'x70' ice rink pumping grid, including all header piping and plumbing transmission piping from the rink to the refrigerator system, which shall not be located more than 50 feet from the rink.
 - b. 100 ton air-cooled refrigeration system and pump; suitable for making ice.
 - c. Ice maintenance tools.
 - d. Insulation and/or vapor barriers.
 - e. Module dasher board and railing system.
 - f. Secondary refrigerant cooling liquid.
 - g. Ice painting equipment and supplies.
 - h. 300 pairs rental skates.
 - i. Overhead String Lighting.
 - j. 1,000 sf of rubber matting
4. Lessor will also provide the following:
 - a. Except as otherwise provided herein, all tools, supplies and equipment necessary for installation and removal of the Equipment.



- b. Training of local staff to maintain ice and monitor refrigeration equipment. Lessee is responsible for providing all training and staff for the operation of the ice-skating rink.
 - c. All transportation and freight to and from site.
 - d. Professional installation supervisor
 - e. Professional refrigeration technician at installation.
 - f. Travel expenses for all out-of-town professional personnel for installation and removal.
5. Lessee, at Lessee's expense, is required to have the following ready at site prior to installation of the Equipment: If the following are not provided prior or at the time of installation, and the failure to provide causes a delay in installation, at Lessor's option and in Lessor's sole and absolute discretion, Lessor can impose on Lessee a delay charge of \$950.00 per day.
- a. Connection to a power source to achieve continuous three-phase, 480-volt, 400 amp, electric capacity for connection to refrigeration system.
 - b. Access to 110-volt power for tools etc.
 - c. Electrician at site during installation to make hookup of electrical connection to refrigeration unit.
 - d. A laser leveled site on which to place the rink, via sandbox or platform.
 - e. Refrigeration system placement in the closest position to the rink possible; however, no more than 50 feet from the rink.
 - f. Graphic or cosmetic enhancement of the ice skating rink, if desired.
 - g. If lessee so desires, lessee may install a wood frame and trim boards over the header manifold along one end of the rink. If Lessee elects to install the wood frame, Lessor will supply instructions to Lessee.
 - h. Four (4) laborers to assist with installation and removal; estimated to take 6 days for installation and 6 days for removal, however actual times may differ from estimate.
 - i. All equipment needed to unload, position, and load Equipment at site, including without limitation a 5,000 lb capacity forklift on site during installation and removal periods, an operator for the same (if required by union agreement) and any other equipment reasonably required by Lessor.
 - j. Access to the site suitable for use by tractor and trailer in order to install and remove equipment.
 - k. Adjacent parking for technicians and supervisors during installation and removal periods.
 - l. Water supply adjacent to the site.



- m. Safety equipment to include without limitation first aide, traffic cones, barricades as needed.
 - n. Any local permits and licenses required to install and/or operate the facilities.
 - o. Lodging in a clean medium-priced hotel in close proximity to the site during installation and removal periods and any other time Lessee requires technician on site.
 - p. Ticket and skating booth, if desired.
 - q. Any and all warming or convenience tents, if desired.
 - r. Tent sufficient to cover ice skating rink, if desired.
 - s. All appropriate signage.
 - t. All appropriate adjacent amenities to complete the facility including without limitations skate change deck, benches, rubber floor coverings, outdoor carpeting, containment around rink facilities via picket fences, etc.
 - u. Ambient lighting, special effects lighting, if desired, sound system, public address system.
 - v. Day-to-day Professional Management.
 - w. Day-to-day operating personnel and operational items, which include but are not limited to first aid kit, cash control, janitorial, etc.
6. The term of the rental is from November 14, 2021 to January 16, 2022 which includes an anticipated period of six (6) days for installation and six (6) days for removal. Dates of operation will be November 20, 2021 thru January 9, 2022. While Lessor will use reasonable efforts to install and remove within the time period above-stated, unforeseen problems and mechanical difficulties may delay the actual times of installation. Lessor will attempt to correct all delays as quickly as possible; however, will not be liable for any damages for delay in installation and removal. Furthermore, during the period of actual usage of the ice-skating rink, temperature and humidity may affect the condition of the ice and mechanical problems may affect the Equipment and usability of the rink. Lessor will repair as quickly as possible; however, is not liable for delays or for periods of time in which the rink is not suitable for skating.
7. In the event that Equipment fails or need repairs due to negligence or misuse by Lessee, Lessee's employees, agents, representatives, or customers, or the public, Lessee is responsible to pay costs of said repair. Additionally, in the event that Equipment fails due to Lessee failure to properly maintain Equipment as directed by Lessor, Lessee is responsible for cost of repair.
8. Lessee further understands that in the event repair to Equipment is needed, that Lessor would be sending repair people from a different location, which can cause additional delay. If repairs are due to Lessee's negligence

or misuse, Lessee will provide lodging; otherwise, Lessee will not be responsible for the lodging expenses for repair personnel.

9. Removal of the equipment shall be completed no later than thirty (30) days following the conclusion of the Rental Agreement.
10. The charges for the Equipment rental and all services to be performed hereunder during the rental term specified herein is \$ 97,000.00 together with all applicable sales use and other taxes, payable as follows:
 - a. 50% of the rental charges together with all applicable taxes are due and payable upon the execution of this Rental Agreement.
 - b. 40% of the rental charges together with all applicable taxes are due and payable when the ice equipment is ready to ship (November 1, 2021).
 - c. 10% balance of the rental charges together with all applicable taxes shall be due and payable in full when the ice rink is turned over to you ready for ice skating.
11. Except as otherwise provided herein, the first deposit (50% of the rental) will be a non-refundable deposit. Lessee may terminate this Agreement by giving written notice to Lessor if the Equipment fails at no fault of Lessee and the rink is unavailable for use for then (10) consecutive days. Upon such termination, Lessee will be entitled to a pro rata refund of previously paid rental charges; the refund will reflect the number of days remaining in the term following the effective date of termination.
12. In the event that Lessee desires to utilize the ice-skating rink for a period of time greater than the term contained in this Agreement, the same will be subject to the sole and absolute discretion of Lessor, for a rental of \$22,000.00 per month, plus all applicable taxes and subject to all of the terms and conditions of this Agreement.
13. In the event that Lessee fails to provide access to the site at time of removal, or otherwise fails to honor its responsibilities at times of removal, Lessee will be liable for all delays at the cost of \$950.00 per day. In the event of material default by Lessor, Lessee may notify Lessor in writing of such default. Lessee may terminate this agreement and receive a pro rata refund of deposits previously paid if Lessor fails to remedy the default within ten (10) calendar days of Lessee's notice, in such case, termination shall be effective immediately upon Lessee's giving of written notice.
14. In the event that Lessee fails to timely remit any payments due under this Agreement, or fails to timely perform any of its obligations under this Agreement, the same will be considered a material default of this

Agreement, which will entitle the Lessor to stop all work, remove from the site all of its Equipment, and the full rental charges will be immediately due and payable.

15. If any payment is not tendered when due, in addition to all other remedies available to Lessor under this Agreement or applicable law, Lessee shall pay Lessor a late charge from the date such payment becomes due of 1 ½ % per month or the highest legally permitted interest rate, whichever is less, on the balance past due.
16. Lessee acknowledges the Equipment being leased pursuant to this Agreement may be used Equipment.
17. Lessee shall provide manpower, as specified in this Agreement, for unloading Equipment, positioning Equipment at site and loading Equipment for removal; and for providing all equipment necessary to accomplish the same.
18. Lessee shall not use, operate, maintain, or store the Equipment improperly, carelessly or in violation of any applicable law or regulation or for any purpose other than for the operation of an ice-skating rink on the premises designated in this Agreement.
19. Lessee shall not move the Equipment without the consent of Lessor, which consent could be withheld for any or no reason.
20. Lessee shall not sublease the Equipment, permit the use of the Equipment by any one other than Lessee, alter or modify Equipment, place any accessories on the Equipment, assign its rights or obligations under this Agreement, or change the use or location of the Equipment without the prior written consent of the Lessor, which consent could be withheld for any or no reason.
21. Lessor shall have the right at any time, with or without notice, to enter the premises occupied by the Equipment and inspect and repair the Equipment.
22. During the term of this Agreement, Lessee shall be responsible to maintain the equipment, check daily all applicable fluids and temperature readings as directed by Lessor and shall perform the daily and ordinary care of the Equipment as specified by Lessor. At or before delivery of the Equipment to Lessee's facility, Lessor will provide written instructions and specifications for Lessee's maintenance obligations.



23. Lessor is responsible to repair the Equipment unless the repair is necessary due to a cause for which Lessee is responsible, in which event, Lessor may charge Lessee for cost of repairs.
24. Lessee shall be liable to Lessor for all loss and damage to the Equipment, at its replacement cost.
25. Lessee acknowledges that ice-skating is a sport, which involves certain degrees of risk and injury. Lessee also acknowledges that to lessen or minimize the injury, the rink must be properly maintained, properly supervised and that an adequate number of trained personnel must be available to operate the rink and the Equipment. Lessee acknowledges that, even with all reasonable diligence and safeguards, that injuries and falls may occur. Lessee acknowledges that the operation of the ice-skating rink is Lessee's sole and absolute responsibility. Lessee agrees that it will not hold Lessor responsible or liable for any damages, including without limitation defense costs and indemnification claims arising out of, or related to the operation of the ice-skating rink. Lessee's duty to indemnify and defend will not include Lessor's negligence or intentional misconduct.
26. Lessee shall indemnify, defend and hold Lessor harmless against and from any and all claims, lawsuits, losses, damages, expense, liabilities or penalties which arise from, or relate to the operation of the ice skating rink, the negligent or willful acts or omissions of Lessee, Lessee's employees, agents, assigns, contractors or customers or any third party not employed by or under the control of the Lessor, arising out of the operation, use, handling, maintenance and/or transportation of the Equipment.
27. Lessor shall indemnify, defend and hold Lessee harmless against any and all claims, lawsuits, losses, damages, expense, liabilities or penalties which arise from, or relate to the negligence or willful acts or omissions of Lessor, Lessor's employees, agents, assigns, or subcontractors arising out of the installation and removal of the Equipment.
28. Lessee agrees, at its own expense, to secure and maintain a commercial general liability insurance policy in an aggregate amount of not less than two million dollars (\$2,000,000), one million dollars (\$1,000,000) per occurrence, insuring against any and all liability arising out of the operation and use of the Equipment and/or property on which the equipment is located. Said insurance shall be written on an occurrence basis, with an insurance company duly licensed in the state in which the Equipment is to be located and acceptable to Lessor. Lessor shall be named as an additional insured on the policy of insurance. The policy shall contain an endorsement that it cannot be cancelled without providing Lessor at least ten days prior notice of cancellation. Lessee shall provide



Lessor evidence of insurance prior to shipment of Equipment. A breach of Lessee's obligation to furnish insurance pursuant to this Agreement is a material breach entitling Lessor to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and Services to be provided pursuant to this Agreement are considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full. Alternatively, Lessee, as a public agency, maybe self insured and maintain excess insurance coverage as long as the material requirements of section 28 are satisfied.

Lessee and its subcontractors will maintain the insurance specified in the attached Exhibit "A," which is incorporated herein by reference.

29. Lessee shall also provide property insurance insuring the Equipment against loss or damage from fire, theft, vandalism, malicious mischief, and other risks of loss, customarily insured against in such policies. Said policies shall be for full replacement value (\$450,000.00) and written on an occurrence basis with an insurance company located in the state in which the Equipment is being located and acceptable to Lessor. Lessor shall be named as both a loss payee and an additional insured on such policy. Lessee shall provide Lessor evidence of insurance prior to shipment of Equipment. A breach of Lessee's obligation to furnish insurance pursuant to this Agreement is a material breach entitling Lessor to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and services to be provided pursuant to this Agreement are considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full.
30. Lessee acknowledges that it has duties and responsibilities regarding the preparation and clearance of the site necessary for the installation of the Equipment and, if desired, for the erection of the tent. Any delays by the Lessee could cause a delay in the installation of the Equipment which subjects Lessee to the charges specified in this Agreement.
31. If any provision of this Agreement is deemed unenforceable, this Agreement shall survive absent said unenforceable provision.
32. Any waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any further breach of such provision or of any other provision of this Agreement, nor shall any failure to enforce any provision of this Agreement operate as a waiver of such provision or any other provision of this Agreement.
33. The Lessor and Lessee acknowledge that this Agreement was entered into in Miami-Dade County, Florida and that Lessor performs numerous of its

obligations in Miami-Dade County, Florida. Additionally, all monies that are required to be paid under this Agreement are payable to Lessor at 10364 SW 128 Terrace, Miami, FL 33176. Lessor and Lessee acknowledge the substantial relation of this Rental Agreement to Miami-Dade County, Florida.

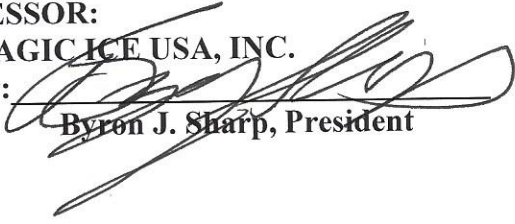
34. Lessor and Lessee agree that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without giving effect to any conflicts of law principles.
35. Except for an action limited to possession of the Equipment, any action arising out of or under this Agreement shall only be filed in a court of competent jurisdiction in either state or federal court in Miami-Dade County, Florida.
36. All parties waive any objection to venue in Miami-Dade County, Florida and grounds for transferring the case outside of Miami-Dade County, Florida, including but not limited to "*Forum Non Conveniens*".
37. It is understood and agreed by Lessor and Lessee that each is independent from the other and that the only relationship is between Lessor and Lessee.
38. Neither Lessor nor Lessee shall be considered an agent or employee of the other party for any purpose whatsoever.
39. No agreement varying or extending the warranties, remedies, or obligations contained in this Agreement will be binding upon the Lessor or Lessee unless in writing and signed by a duly authorized officer of the Lessor and Lessee.
40. Under no circumstances shall the Lessor be held liable for any special, indirect, incidental or consequential damages.
41. The contract price shall be the limit of Lessor's liability whether found in contract, statute or tort arising out of or resulting from (1) this Agreement or the performance or a breach thereof; (2) the design, manufacturer, delivery, sale, repair, replacement, installation, removal or use of the Equipment, or (3) the furnishing of any service under this Agreement.
42. The Lessor hereby informs Lessee that acts of God, power failures, acts of terrorism and/or vandalism, as well as temperature and humidity may cause the melting of the ice surface or portions thereof, and Lessor shall not be responsible for any such conditions or loss of use of the ice-skating rink or Equipment.

43. Lessee shall pay all sales and use tax, personal property taxes, license fees, registration fees, which may now or hereinafter be imposed upon the possession, lease or use of the Equipment.
44. Title to and ownership of the Equipment is and shall at all times remain with the Lessor and Lessee shall have no right, title or interest therein or thereto except the right of possession and use of the Equipment pursuant to the terms of this Agreement.
45. Lessee shall not remove or deface any of the Equipment nor remove any marking or serial number on the Equipment.
46. Lessee shall keep the Equipment free and clear of all levies, liens, security interests and encumbrance of any nature or kind and shall promptly remove the same. Failure to immediately remove any such levy, liens, security interests or encumbrance, shall constitute a material breach of this Agreement giving the Lessor the right to immediate possession of the Equipment, and in which event, the entire rental charges for the Equipment and services to be provided pursuant to this Agreement shall be considered earned in full, and the balance of the rental charges for the Equipment and services immediately due and payable in full.
47. In the event Lessor or Lessee hire an attorney to enforce any of its rights under this Agreement or institutes litigation arising under or pursuant to this Agreement, Lessor and Lessee shall each be responsible for their own costs and attorney's fees.
48. No change, modification, amendment or waiver of any of the terms or conditions of this Agreement shall be binding unless made in writing and duly executed by all parties.
49. This Agreement constitutes the entire understanding and final agreement between the parties. This Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous statements, purchase orders, agreements, negotiations and representations between the parties are expressly merged into and superceded by this Agreement.
50. This Agreement shall be binding and inure to the benefit of the Lessor, Lessee, their successors and assigns.
51. This Agreement may be signed in counterparts, with facsimile transmitted signatures being deemed an original, and all of which when signed by the respective parties when taken together will constitute the full and final agreement of the parties hereto.



Dated this 22 day of August, 2021 in Miami-Dade County, Florida.

LESSOR:
MAGIC ICE USA, INC.

By: 

Byron J. Sharp, President

LESSEE:
CITY OF HANFORD

By: _____

Attachment: 2021.08.23 Ice Rink Agreement - Signed by Vendor (Parks: Ice Rink Rental Agreement)

EXHIBIT "A"**Insurance Provisions**

a. Lessor and Lessor's subcontractors, at their own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

i. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury or disease.

ii. Commercial General Liability (CGL) Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with a limit of no less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, and a general aggregate limit of no less than FOUR MILLION AND NO/100 DOLLARS (\$4,000,000).

iii. Automobile Liability Coverage. If an automobile in connection with this Agreement, automobile liability coverage under ISO Form Number CA 0001 covering any auto (Code 1), or if Lessor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury and property damage.

If Lessor or its subcontractors maintains higher limits than the minimums shown above, Lessee requires and shall be entitled to coverage for the higher limits maintained by Lessor.

Insurance policies shall be "occurrence" policies and not "claims-made."

Lessor and its subcontractors may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, the insured party shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this section; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

b. Any deductibles or self-insured retentions must be declared to and approved by Lessee.

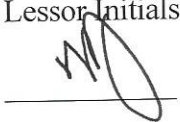
c. The policies are to contain, or be endorsed to contain, the following provisions:

i. Lessee and its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Lessor and Lessor's subcontractors including materials, parts, or equipment furnished in connection with such work or operations; products used

Lessor Initials

Page 1

Lessee Initials



by Lessor and its subcontractors; or automobiles owned, leased, hired or borrowed by Lessor and its subcontractors. General liability coverage can be provided in the form of an endorsement to Lessor's and its subcontractors' insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33 or CG 20 38 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to Lessee and its officers, officials, employees or volunteers.

ii. For any claims related to this Agreement, the insurance coverage required hereunder shall be primary coverage at least as broad as ISO CG 20 01 04 13 as to Lessee and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Lessee and/or its officers, officials, employees, or volunteers shall be in excess of Lessor's insurance and shall be non-contributory.

iii. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to Lessee.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Lessor and its subcontractors shall furnish Lessee with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Lessee before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the obligation to provide them. Lessee reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

d. Lessor and its subcontractors hereby grant to Lessee and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Lessor or Lessor's subcontractors may acquire against Lessee and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Lessor and its subcontractors agree to obtain endorsements necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not Lessee has received a waiver of subrogation endorsement from the insurer.

Lessor Initials



Page 2

Lessee Initials



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: G
-------------------------------	--------------------------

SUBJECT:

Community Development: Historic Resources Permit No. 2021-05 - a request by the Carnegie Museum of Kings County to hang a 5' x 11' (55 sq. ft.) banner on the exterior of the Carnegie Library Building, located at 109 E. Eighth Street (APN 012-041-017) from September 15 through October 25, 2021, in order to advertise an upcoming exhibit. The project site is located within the Historic Overlay Zone.

See staff report, attached.

FISCAL IMPACT:

ATTACHMENTS:

Staff Report - HR Carnegie
Resolution 21-38-R
Attachment 1 - Historic Overlay Zone and Properties
Attachment 2 - Applicant's Statement of Intent
Attachment 3 - Banner Proposals
Attachment 4 - Banner Location

**CITY OF HANFORD CITY COUNCIL
STAFF REPORT
Tuesday, September 7, 2021**

PROJECT: **Historic Resources Permit 2021-05:** a request, by the Carnegie Museum of Kings County, to hang a five-feet by 11-feet (55 square foot) banner on the exterior of the Carnegie Library Building from September 15 through October 25, 2021, in order to advertise an upcoming exhibit.

LOCATION: The project is located at 109 E. Eighth Street (APN 012-041-017).

STAFF RECOMMENDATION

Staff recommends that the City Council, by motion:

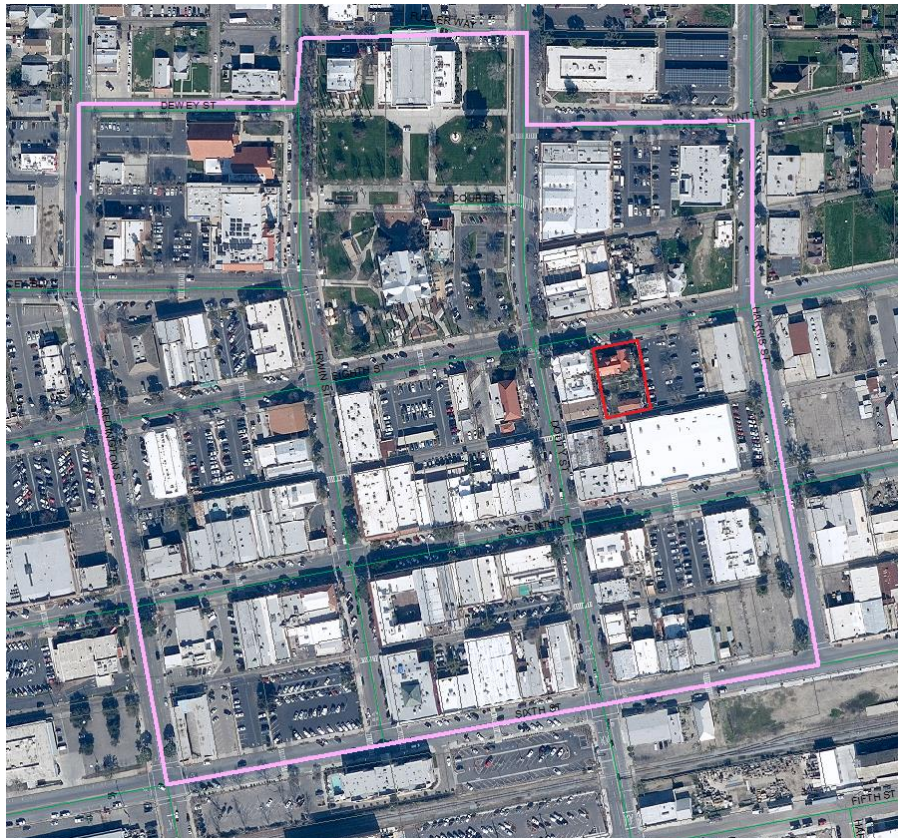
1. Adopt Resolution 21-38-R approving Historic Resources Permit 2021-05.

RECOMMENDED MOTION

1. I move to adopt Resolution 21-38-R approving Historic Resources Permit 2021-05.

PROJECT DESCRIPTION

The property is located within the Historic Overlay Zone, shown below – outlined in red.



The property is designated a contributing building in the Historic Overlay Zone, as shown on the Historic Overlay Zone Map – **Attachment 1**.

“Contributing building” means a structure within a historic district which structure retains scale, mass and other architectural characteristics to the degree that it contributes to the sense of time and place of the immediate area and the district. The building may have individual architectural significance or may be one of a grouping of background buildings that jointly contribute to the character of the immediate area and the district. Contributing buildings may reflect interim modifications if those modifications do not irreparably detract from the character of the building or if the modifications reflect an architectural style or particular era important to the development of the City. Contributing buildings shall also include structures that have a strong historical tie to activities, events, or individuals important in the development of the City.

In accordance with the Municipal Code Section 17.48, alterations to the exterior of a building located within the Historic Overlay Zone are required to be approved through a Historic Resources Permit, which must be approved by the City Council.

Section 17.48.040

No improvement or exterior architectural feature of any improvement shall be constructed or altered or enlarged which is located in the Historic Overlay District or identified as a historic site outside the District, unless a permit is issued pursuant to the terms of this chapter. The section shall not apply to any interior alteration which has no effect on the condition or appearance of any exterior architectural feature of an improvement. No structure listed on a State or National Register shall be moved or demolished, unless a permit is issued pursuant to the terms of this chapter.

“Alteration” means any exterior change or modification, through public or private action, of any property located within a designated historic district or site or a designated historical building, including exterior changes to or the modification of a structure, architectural details or visual characteristics, such as paint color and surface texture, grading, surface paving, new structures, removal of trees and other natural features, disturbance of archeological sites or areas, and the placement or removal of any exterior objects, such as signs, plaques, light fixtures, street furniture affixed to the pavement, walls, fences, steps, plantings and landscape accessories affecting the exterior visual qualities of the property.

Section 17.48.070

- A. A historic resource permit shall be required for any alteration of the exterior features of a building within a designated historic district, or a designated historic building or site, or to construct a new building or improvements upon property within a designated historic district except as otherwise provided in this Chapter 17.48, the City Council shall determine whether a historic resources permit shall be issued. A permit shall not be required for ordinary maintenance and repairs as defined in this section.
- B. Permit Procedures. An application for a historic resource permit shall be made on a form prescribed by the Community Development Department and shall be accompanied by the fees established by resolution of the City Council. The application shall include the information required by Section 17.60.020 for site plan review, complete elevation

drawings of the proposed alterations, samples of proposed colors and materials, color photographs of all sides of any existing improvement, building or structure on the site, and such other information as may be required by the Community Development Department. If applicable, the application shall include the information required by Chapter 17.58 (permit for conditional uses) and Chapter 17.62 (planned unit development).

Applications for permits requiring City Council approval shall be placed on the next regular meeting of the City Council. The City Council may approve, approve with conditions, or deny the permit.

Building History and Description

The Hanford Carnegie Library was constructed in 1905 in Romanesque Revival style. The Hanford Library was opened in the Carnegie building until 1968, when the City and Kings County libraries were combined and moved into their current location.

The Hanford Carnegie Museum opened in 1974 and operated until the building was vacated on October 1, 2020. The Carnegie Museum of Kings County resumed operation of the museum in June 2021.

The Hanford Carnegie Library is listed on the National Registry of Historic Places, as well as the California Register of Historic Resources.

Proposed Modifications

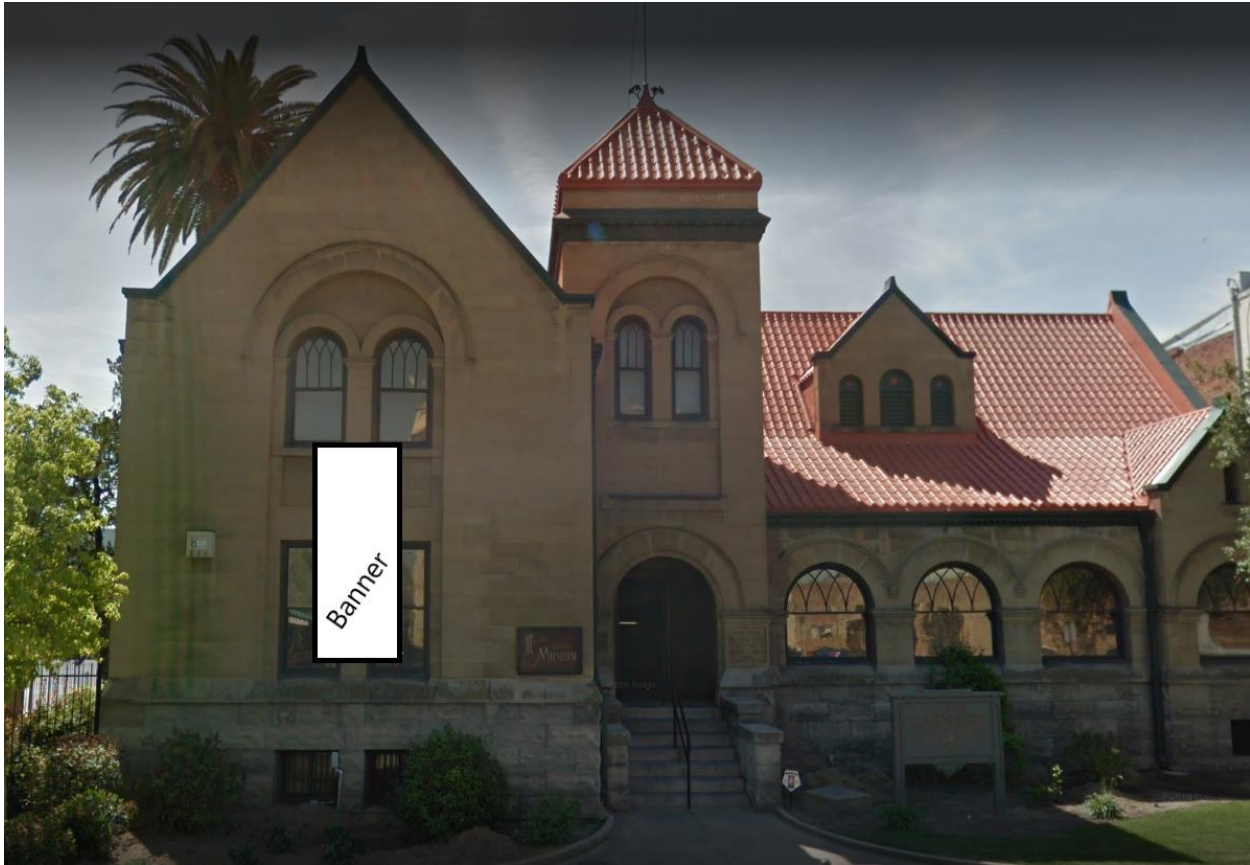
Under Historic Resources Permit No. 2021-05, the Carnegie Museum of Kings County seeks to erect a five-feet by 11-feet (55 square feet) temporary banner, in order to advertise an upcoming exhibit – A History of Naval Air Station Lemoore. The banner is proposed to remain from September 15th through October 25th.

The applicant's statement of intent is provided in **Attachment 2**.

There are currently two options for the proposed banner – shown in **Attachment 3**.

The proposed banner will be hanging from the second-story window base, as shown in **Attachment 4** and below.

Proposed Banner Location



DESIGN EVALUATION

The proposed banner is evaluated for consistency with the design criteria set forth by the Hanford Municipal Code Section 17.48.150 E. 2, below:

2. Signs.

- a. General Requirements. Signs shall be designed to contribute to the quality of the historic commercial environment. Within the historic district, each business shall be limited to one (1) primary sign, except those businesses on corners which may have a sign on each street. Each business may also appropriately establish one (1) sign directly lettered onto the window glass or the glass in the doors. Signs in the historic district shall be pedestrian oriented in size and shape. Graphics shall be simple and bold. Signs shall be flush with the wall since they usually complement architectural elements more effectively than projecting sign. Wall mounted can or cabinet type internally illuminated wall signs are not permitted. Symbolic, three-dimensional signs (such as a barber pole or a pawn shop symbol) shall be encouraged. Paper signs attached to the interiors or exteriors of store windows shall be discouraged, except where temporary presentation for public notice requires such treatment. The height of new signs shall not extend above the window sills of the second floor. Signs on one-story buildings shall not project above the cornice line, and all roof-mounted signs shall be precluded.

Analysis: The banner proposed is temporary. The Carnegie Museum already has a primary freestanding identification sign. No changes are proposed to the existing permanent sign. The temporary sign will be attached to the exterior window to serve as public notice of an upcoming exhibit.

Freestanding Sign



c. Temporary Signs.

- i. Each building tenant may use one (1) of the following two (2) types of temporary signs, but not both at the same time:
 - A. Basement, ground and second and third story tenants may use a maximum of twenty-five percent (25%) of their total window area along a single frontage for temporary signage. Such promotional or sale signs shall only be used for a period of seven (7) consecutive days per month with at least a thirty (30) day period between sign displays. Such signs shall be of professional quality.
 - B. Each building tenant shall be permitted to use one portable sign only on Fridays and Saturdays which sign is a maximum of three and one-half (3-1/2) feet high and two (2) feet wide. Such signs shall be placed immediately adjacent to the building and not next to the curb or anywhere else in the sidewalk area. Portable signs shall be removed and placed inside the business each afternoon or early evening on Fridays and Saturdays before the business closes.

Analysis: The applicant's proposed banner will be five feet by 11 feet, for a total square footage of 55 square feet. The proposed sign will be located on the exterior of the building, hanging from the second-story window, as conceptualized, in Figure 3. The proposed signage does not qualify as window signage nor a portable sign.

- ii. Commercial banner type signs on buildings or store fronts shall be prohibited except for grand openings and community events. Such signs shall only be used for a period of fourteen (14) days and then be removed. Such signs shall be of professional quality. Except for dealerships of cars, trucks, motorcycles, recreational vehicles and boats, and temporary parking lots sales which require outdoor display, canvas, plastic, cloth, paper or other types of banners or streamers suspended across private property, buildings or structures shall not be permitted. "Grand Opening" banners are permitted as stated above.

Analysis: The signage proposed herein is a commercial banner advertising a community event. The applicant proposes to exceed the 14-day period by utilizing the banner from September 15th through October 25th, in order to advertise an upcoming museum exhibit. The applicant 's request states that, "the banner is being professionally designed and manufactured through a local business, All Valley Printing." The material will either be fabric (canvas or cloth) or vinyl. Canvas and cloth are not deemed appropriate banner materials, per the

- d. Brand Names or Product Signs. Registered trademarks, the portrayal of specific commodities, or signs advertising an individual brand of products shall not exceed ten percent (10%) of the total sign area. If the trademark or commodity represents the principal activity conducted, a maximum of twenty-five percent (25%) of the total sign area for trademark use.
- e. Sign Approval Process. All signs prior to their use and installation shall require a permit and shall be approved for consistency with this chapter.
- f. Deviations from Sign Standards. The Community Development Department or the City Council are granted the authority to approve deviations from the provisions of this section as allowed pursuant to Section [17.48.080](#).

RECOMMENDATION

The City Council may approve, approve with conditions, or deny the permit.

Staff recommends that the City Council:

Adopt Resolution 21-xx-R, approving Historic Resources Permit No. 2021-05, with the following conditions:

1. That a banner permit be obtained through the Community Development Department of the City of Hanford (fee \$35), prior to installing the banner.
2. That the applicant adhere to the design criteria for the Historic Overlay Zone, set forth in Section 17.48 of the Hanford Municipal Code.
3. That approval of this project does not exempt compliance with all applicable sections of the Zoning Ordinance, Public Works Improvement Standards, fees, or other City Ordinances.

4. That the banner be permitted to remain from September 15 through October 25, 2021, in excess of the Code's 14-day period, in order to publicize an upcoming exhibit for the Carnegie Museum.
5. That the banner's material be restricted to vinyl, which is not listed as a prohibited banner material.

FINDINGS

In accordance with Section 17.48 of the Hanford Municipal Code, staff recommends approval of Historic Resources Permit 2021-05, with the cited conditions, and finds that the approval of the historic resources permit is consistent with the purpose of the Historic Overlay zone and will preserve to the extent possible historic elements of the site; and make the following findings:

1. That the proposed banner is consistent with the intent of development standards for temporary banner signage within the Historic Overlay Zone.
2. That the request will not adversely affect the public health, safety and general welfare of the citizens of Hanford.

CONDITIONS OF APPROVAL

Applicant

The Carnegie Museum of Kings County
Jack Schwartz, President
522 N. Redington Street
Hanford, CA 93230

RESOLUTION 21-38-R

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HANFORD
 APPROVING HISTORIC RESOURCES PERMIT NO. 2021-05 TO PERMIT A
 55-SQUARE-FOOT BANNER FOR THE CARNEGIE MUSEUM OF KINGS
 COUNTY FROM SEPTEMBER 15 – OCTOBER 25, 2021. THE PROJECT IS
 LOCATED AT 109 E. EIGHTH STREET (APN 012-041-017)**

At a regular meeting of the City Council of the City of Hanford duly called and held on September 7, 2021, at 7:00 p.m. in the Council Chambers of the Civic Auditorium, it was moved by Council Member _____, and seconded by Council Member _____, and duly carried, that the following resolution be adopted:

WHEREAS, an application, filed by Jack Schwartz on behalf of the Carnegie Museum of Kings County, for Historic Resources Permit No. 2021-05, as shown in **Exhibit A**, was presented to the City Council; and

WHEREAS, the proposed project is located at 109 E. Eighth Street (APN 012-041-017); and

WHEREAS, the City Council of the City of Hanford, at a regular meeting on September 7, 2021, reviewed the request for Historic Resources Permit No. 2021-05, and

WHEREAS, Section 15301 of the California Environmental Quality Act Guidelines categorically exempts “Existing Facilities” from Environmental Review; and

WHEREAS, the City Council of the City of Hanford reviewed the application for the Historic Resources Permit No. 2021-05 and found that the application is consistent with Section 17.48 of the Hanford Municipal Code and make the following findings:

1. That the proposed banner is consistent with the intent of development standards for temporary banner signage within the Historic Overlay Zone.
2. That the request will not adversely affect the public health, safety and general welfare of the citizens of Hanford.

THEREFORE, BE IT RESOLVED that the City Council of the City of Hanford hereby approves Historic Resources Permit No. 2021-05, subject to the following conditions:

1. That a banner permit be obtained through the Community Development Department of the City of Hanford (fee \$35), prior to installing the banner.
2. That the applicant adheres to the design criteria for the Historic Overlay Zone, set forth in Section 17.48 of the Hanford Municipal Code.

- 3. That approval of this project does not exempt compliance with all applicable sections of the Zoning Ordinance, Public Works Improvement Standards, fees, or other City Ordinances.
- 4. That the banner be permitted to remain from September 15 through October 25, 2021, in excess of the Code’s 14-day period, in order to publicize an upcoming exhibit for the Carnegie Museum.
- 5. That the banner’s material be restricted to vinyl, which is not listed as a prohibited banner material.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of Hanford hereby approves Historic Resources Permit No. 2021-05. Passed and adopted at a regular meeting of the City Council of the City of Hanford duly called and held on September 7, 2021 by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

APPROVED: _____
FRANCISCO RAMIREZ
MAYOR of the City of Hanford

ATTEST: _____
NATALIE CORRAL
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I, NATALIE CORRAL, City Clerk of the City of Hanford, do hereby certify the foregoing Resolution was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the 7th day of September, 2021.

Date: _____

NATALIE CORRAL
CITY CLERK

Attachment: Resolution 21-38-R (CD: Carnegie Museum - Exhibit Banner)

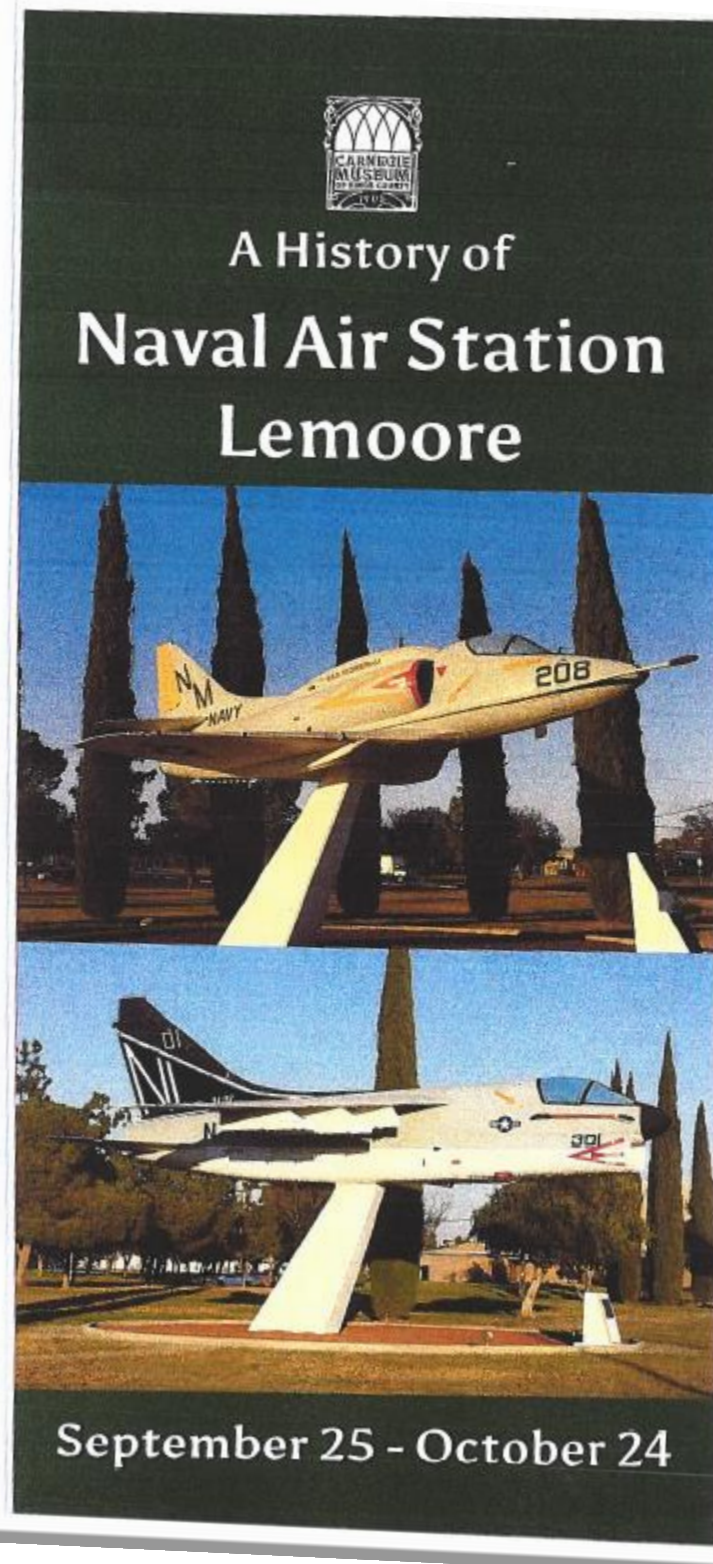
Exhibit A
Historic Resources Permit 2021-05

Banner Location



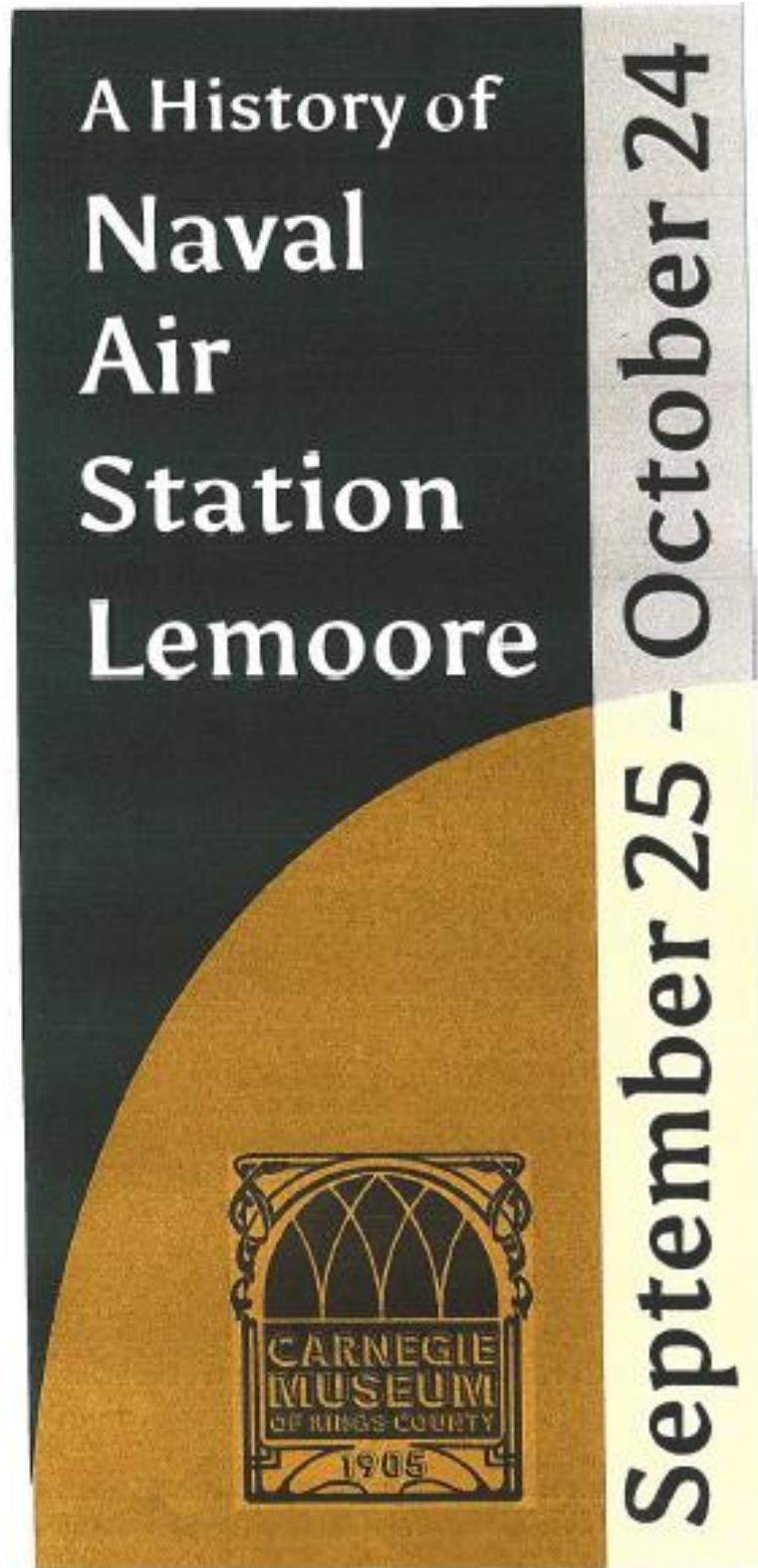
Attachment: Resolution 21-38-R (CD: Carnegie Museum - Exhibit Banner)

Banner Option 1



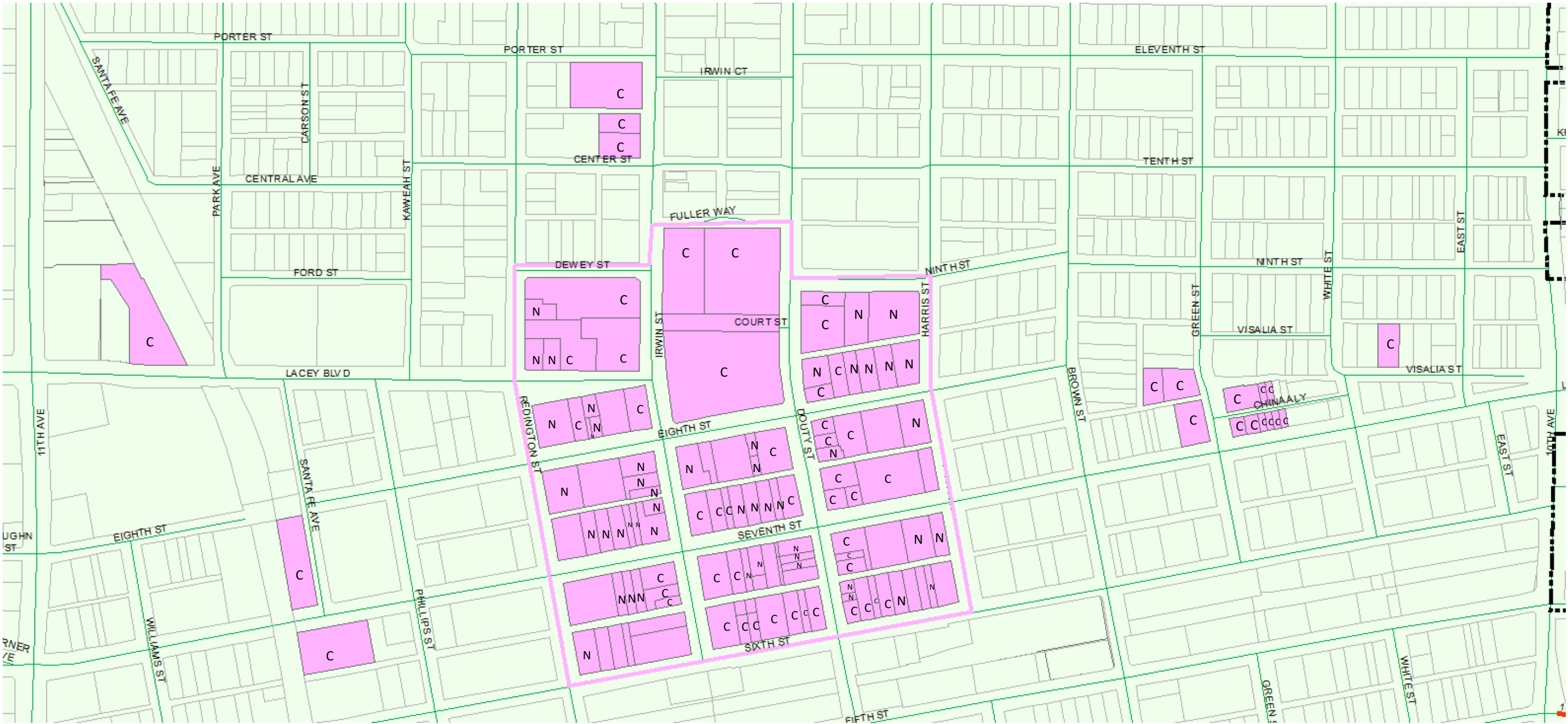
Attachment: Resolution 21-38-R (CD: Carnegie Museum - Exhibit Banner)

Banner Option 2



Attachment: Resolution 21-38-R (CD: Carnegie Museum - Exhibit Banner)

Historic Overlay Zone and Properties



Legend

- Historic Overlay Zone

- Historic Properties

C

 - Contributing Buildings

N

 - Noncontributing Buildings



The Carnegie Museum of Kings County

Working together to bring Kings County history
to life through preservation and education.

To: Hanford Community Development Department
From: Jack Schwartz, President
Date: August 30, 2021
Re: Historic Resources Permit Application – Temporary Museum Exhibit Banner: A History of Naval Air Station Lemoore



The Carnegie Museum of Kings County (CMKC) is curating an extensive visiting museum exhibit in conjunction with groups and persons associated with Lemoore Naval Air Station. The exhibit will enable the public to witness the history of the base since it was commissioned in 1961. The exhibit will be open from September 25th and run through October 24th.

As part of our advertising for the exhibit, we propose hanging a +/- 5' x' 11' banner on the exterior of the Carnegie library building as depicted in the attached rendering that accompanies our Historic Resources Permit Application (Application). The banner is being professionally designed and manufactured through a local business, All Valley Printing. The CMKC Marketing Committee is making a final decision on two potential banners, the drafts of which are attached to the Application. The drafts are substantially complete and accurately reflect the substance to be contained on the banner. Font size and colors may vary from the attached drafts.

We further propose that the banner be installed approximately ten (10) days prior to the opening of the exhibit (around September 15th) and be taken down at the end of the exhibit (around October 25th). The banner will be installed in a manner that does not deface or structurally impact the building's façade.

Museum banners announcing exhibits are a common form of museum advertising that we would like to bring to Hanford. The banner will be visually appealing, subject matter focused and broaden the community's awareness of the museum.

carnegiemuseumofkingscounty.org

559.585.7526

carnegieofhanford@gmail.com

Museum Address:
109 E Eighth St.
Hanford, CA 93230

Mailing Address:
522 N. Redington Street
Hanford, CA 93230

Attachment: Attachment 2 - Applicant's Statement of Intent (CD: Carnegie Museum - Exhibit Banner)



A History of Naval Air Station Lemoore

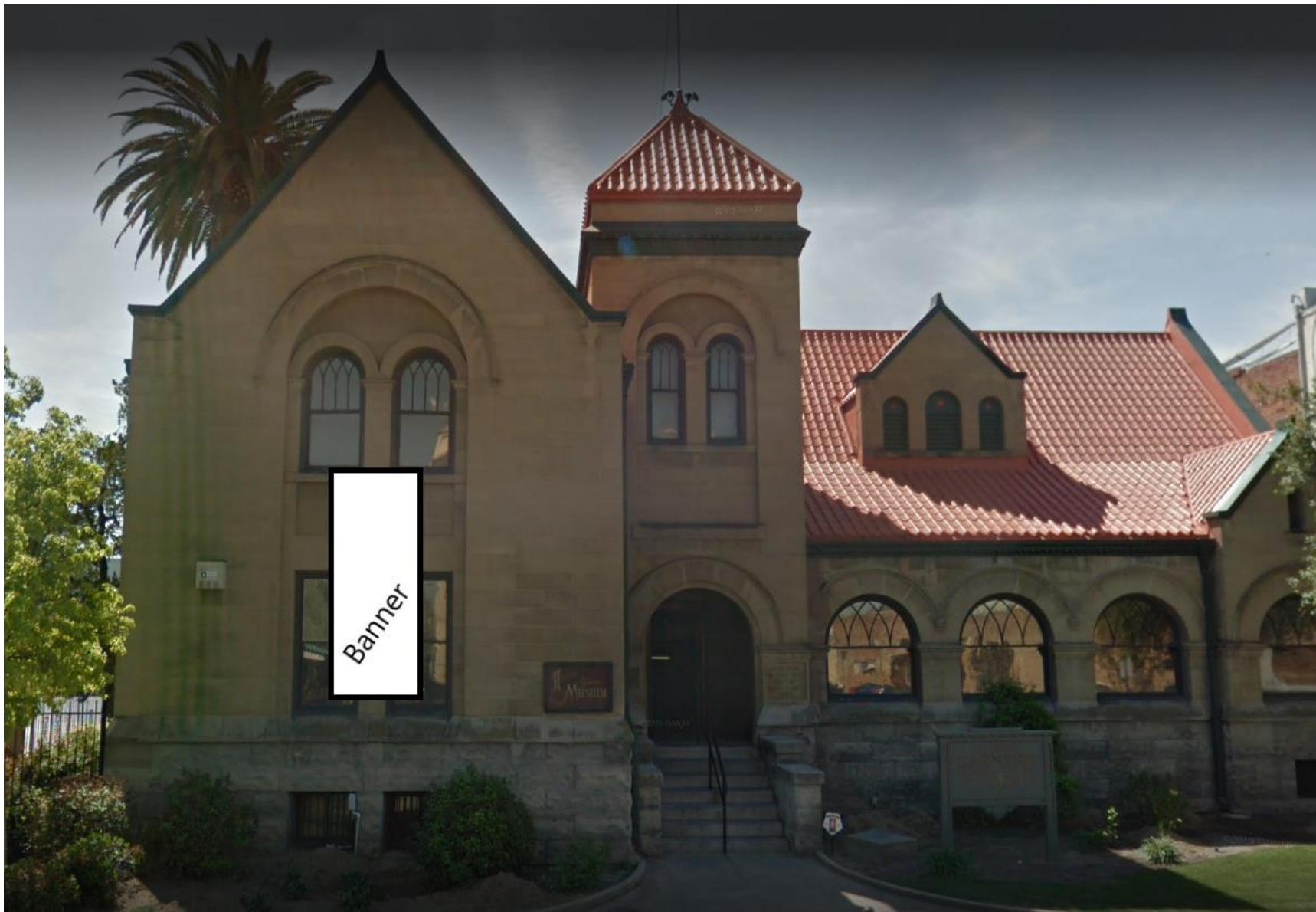


September 25 - October 24

A History of Naval Air Station Lemoore



September 25 - October 24



Attachment: Attachment 4 - Banner Location (CD: Carnegie Museum - Exhibit Banner)



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: H
-------------------------------	--------------------------

SUBJECT:

Public Works: Authorize the purchase of street right-of-way located at 1094 W Davis Street, in the amount of \$1,900 plus escrow fees, accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deeds with the Kings County Recorder's Office, and accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement. (APN 012-290-020).

RECOMMENDATION:

That the City Council, by motion:

1. Authorize the purchase of street right-of-way located at 1094 W Davis Street, in the amount of \$1,900 plus escrow fees.
2. Accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deeds with the Kings County Recorder's Office.
3. Accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement.

BACKGROUND:

City staff is currently bidding the street repaving project and coordinating the acquisition of street right-of-way necessary for the installation of upgraded ADA corner ramps.

FISCAL IMPACT:

The FY 21 Capital Improvement Program Budget provides \$1,405,000 for construction, \$957,000 of which is already dedicated for the FY 20/21 Single and Double Micro Fiber Treatment Project. \$448,000 remains for right-of-way and construction for the FY 20/21 Pavement Resurfacing on Davis Street and Northstar Drive. A copy of the Budget page is attached for Council review.

ATTACHMENTS:

GRANT DEED 012-290-020 BARAJAS
Agreement - 012-290-020 Barajas
FY21 Pavement Resurfacing Treatment

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF HANFORD
900 S. 10th Ave.
Hanford, CA 93230

SEND TAX STATEMENTS TO:

CITY OF HANFORD
315 N. Douty Street
Hanford, CA 93230

GRANT DEED

**Exempt from Recording Fees Pursuant to Gov.
Code Section 27281 and Documentary Transfer
Tax Pursuant to Revenue and Taxation Code
Section 11922**

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax, firm name

Assessor's Parcel No. 012-290-020 X City of Hanford County of Kings

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Refugio Barajas, a married woman as her sole and separate property, **hereby GRANT(S)** to the City of Hanford, a municipal corporation, the following described real property in the County of Kings, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF HEREOF

Dated: 8/31/21

Refugio Barajas
REFUGIO BARAJAS

[illegible]

Packet Pg. 79

CERTIFICATION OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Grant Deed dated _____ from _____ to the City of Hanford, a municipal corporation, is hereby accepted by order of the Council of said City of Hanford on _____, 20__ and the Grantee consents to the recordation thereof.

DATED: _____

MARIO CIFUENTEZ, II, City Manager

PARCEL NO.: 012-290-020

PROJECT: City of Hanford – Pavement Resurfacing Improvement Project

OWNER: Refugio Barajas

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into by and between

Refugio Barajas

(hereinafter called “Grantor”), and

The City of Hanford, a Municipal Corporation,

(hereinafter called “City”).

Instruments in the form of a Grant Deed (“Deed”) covering the property particularly described therein (“Property”), will be executed concurrently with this Agreement and delivered to City representatives.

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

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement, except as stated in Paragraphs 2.E. and 2.F. below.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of \$1,900.00 as consideration in full for the Property, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid when title to the Property has vested in City free and clear of all liens, encumbrances, assessments, easements and leases recorded or unrecorded, except for recorded public utility easements and public right of way.

B. RECORDATION OF INSTRUMENT - Accept the Deed and cause the same to be recorded in the office of the Kings County Recorder at such time as when clear title can be conveyed.

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

D. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which the Deeds record, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien as of the date of recordation of the Deeds.

E. CONSTRUCTION AND RESTORATION – The City shall, upon completion of construction, generally restore Grantor's remaining real property to a comparable or better condition than that which existed prior to City's project construction, to the extent reasonably practical. At no expense to the Grantor and at the time of construction, City will reconnect Grantor's existing driveway(s) to the adjacent public road at their present location and will relocate any impacted fences to the new right of way line. Upon completion of construction of said driveway(s), it/they will be considered as an encroachment under permit onto the adjacent public road, and is/are to be maintained, repaired and operated as such by Grantor in accordance with and subject to the laws, rules, and regulations of the public entity controlling said road.

Permission is hereby granted to City or its authorized agent to enter on Grantor's land to conform and reconnect Grantor's driveway(s) and relocate any fences as described herein. Grantor understands and agrees that after completion of the work described, said driveway(s) and fences will be considered as Grantor's sole property and Grantor will be responsible for their future maintenance and repair.

F. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Property.

3. The Grantor:

A. PAYMENT ON MORTGAGE OR DEED OF TRUST - Agrees that any or all monies payable under this Agreement up to and including the total amount of the unpaid principal and interest on the note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust, shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder. Grantor shall cooperate with the Escrow Officer in obtaining lien clearance documents from any and all creditors holding liens against the Property.

B. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said Property held by tenant of Grantor.

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

D. TITLE INDEMNITY AND WARRANTY - In consideration of the City waiving the requirements to clear any defects and imperfections in all matters of record title, the Grantor indemnifies and holds the City harmless from any and all claims that other parties may make or assert on the title to the Property. Grantor's obligation to indemnify the City shall not exceed the amount paid to the Grantor under this Agreement. Grantor hereby represents and warrants that he/she/they are the sole vested owners of the Property, holding all ownership and possessory rights, and are the authorized signatories to grant the rights referenced in this Agreement without conflict or claims from other parties.

E. HAZARDOUS SUBSTANCES - Represents and warrants, to the best of Grantor's knowledge, and after reasonable inquiry, the following:

During Grantor's ownership of the Property, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Property or Grantor's remaining adjacent property. Grantor further represents and warrants that Grantor has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Property, or Grantor's remaining adjacent property, which may have occurred prior to Grantor's ownership.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on or within the Property or Grantor's remaining adjacent property.

Grantor has not used the Property, or Grantor's remaining adjacent property, for any industrial operations that use hazardous substances. Grantor is not aware of any prior use of such property. Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Property or Grantor's remaining adjacent property. Grantors are not aware of any such prior installations. The purchase price of the Property being acquired reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or State law, City may elect to recover its cleanup costs from those who caused or contributed to the contamination.

F. TAX REPORTING AND WITHHOLDING - The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (Grantor) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-resident corporation or partnership. In accordance with the provisions of Section 1445 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated thereunder, Grantor shall execute an affidavit under penalty of perjury setting forth Grantor's name, address, federal tax identification number, and certifying whether Grantor is a "foreign person" in accordance with the provisions of the Internal Revenue Code. Further, tax withholding may be required in accordance with the California Revenue and Taxation Code Section 18662. It is specifically understood and agreed by Grantor that closing of this escrow is subject to, and contingent upon, deposit into escrow of a FIRPTA Affidavit of Non-Foreign Status and a California Form 593-C,

Real Estate Withholding Certificate and associated required paperwork, completed and signed by Grantor, and Escrow Agent is hereby authorized and instructed to withhold from Grantor's proceeds amounts so required by these laws and to forward any amounts withheld to the appropriate taxing authority.

4. The Parties agree:

A. ESCROW - At City's option, to open an escrow in accordance with this Agreement at an escrow company of City's choice. Opening an escrow shall be at City's sole discretion and City may decide to process this transaction without the use of an escrow agent. However, if an escrow agent is utilized, this Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

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

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow, to apply to the County Tax Collector of said County for any refund of such taxes which may be due Grantor for the period after City's acquisition.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:
 - a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's property subject to this transaction as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement;
 - c) Disburse funds and deliver Deeds when conditions of this escrow have been fulfilled by City and Grantor.
 - d) Following recording of Deeds from Grantor, if requested by City, provide City with a CLTA Standard Coverage Policy of Title Insurance in the amount of

\$1,900.00 issued by Title Company of City's choice showing that title to the Property is vested in City, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:

- 1) Real Property Taxes for the fiscal year in which escrow closes;
 - 2) Public utility easements and public rights of way;
 - 3) Other items that may be approved in writing by City in advance of the close of escrow.
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized.

B. MISCELLANEOUS REALTY ITEMS ACQUIRED - Payment in Clause 2.A. includes, but is not limited to, payment for 474 sq. ft. of lawn and sprinkler system, which are considered to be part of the realty and are being acquired by City in this transaction. The remaining sprinkler system will be repaired and left in its original working condition if it is located within the construction area.

C. JUDGMENT IN LIEU OF DEED - In the event Grantor does not deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain to pursue the acquisition of the Property, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

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

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

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

G. COUNTERPARTS - This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same document.

H. ELECTRONIC AND FACSIMILE SIGNATURES - In the event that the parties hereto utilize electronic or facsimile documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided following transmittal of the electronic or facsimile signature. Documents for recordation by the Clerk Recorder must contain original signatures.

I. NO THIRD-PARTY BENEFICIARIES INTENDED - Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

J. BINDING EFFECT - This Agreement shall inure to the benefit of and constitute a binding obligation upon the successors and assigns of the parties hereto.

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

GRANTOR:
Refugio Barajas

By: 
Refugio Barajas

Date: 8-16-2021

GRANTOR'S ADDRESS:
Refugio Barajas
P.O. Box 1512
Hanford, CA 93230

CITY OF HANFORD

By: _____
Name:
Title:

Date: _____

MAILING ADDRESS OF CITY:
The City of Hanford
Public Works Department
900 S. 10th Avenue
Hanford, CA 93230

Pavement Resurfacing Treatment

Project Background:

Pavement Resurfacing Treatment is a surface protection and pavement preservation treatment for city streets. The location of streets and the types of treatment processes will be determined by Public Works Department staff and is dependent on pavement conditions. Treatments may include slurry seal, cape seal or fiber seal coatings or other pavement preservation treatments needed to extend the useful life of roadways.

Existing Conditions:

Asphalt concrete pavement surfaces deteriorate over time due to loss of oil content from naturally occurring processes and vehicular traffic loads.

Project Justification:

Pavement Resurfacing treatments will extend the useful life of asphalt concrete pavement surfaces thereby reducing street maintenance costs. This project will provide surface treatment for approximately seven miles of roadways (207,300 SY).

Fiscal Implications:

Funding for this project will be allocated from gas tax reserves.

Project Budget Summary:

		5-Year Funding Allocation				
		2021	2022	2023	2024	2025
Expenditure	Program or Project	Construction	Construction	Construction	Construction	Construction
	Engineering / Inspection	55,000	12,000	12,000	12,000	12,000
	Construction	1,405,000	850,000	850,000	850,000	850,000
	Contingency	140,000	85,000	85,000	85,000	85,000
	Department Overhead	144,150	3,000	3,000	3,000	3,000
Total Expenditure		\$1,744,150	\$950,000	\$950,000	\$950,000	\$950,000
Revenue	Funding					
	040 Gas Tax (2105)	381,533	350,000	350,000	350,000	350,000
	050 Gas Tax (TDA Transportation)	327,028	600,000	600,000	600,000	600,000
	045 RMRA Gas Tax	1,035,589				
Total Funding		\$1,744,150	\$950,000	\$950,000	\$950,000	\$950,000



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021

AGENDA SECTION: I

SUBJECT:

Public Works: Authorize the exchange of street right-of-way located on the north west corner of Emma Lee Lane and Conquistador Street, in the amount of \$0 plus escrow fees, accept both of the attached Grant Deeds for exchange and authorize the City Manager to execute and the City Clerk to attest and file said deeds with the Kings County Recorder's Office, and accept the attached Exchange Agreement and authorize City staff to execute said agreement. (APN 008-470-021).

RECOMMENDATION:

That the City Council, by motion:

1. Authorize the exchange of street right-of-way located on the north west corner of Emma Lee Lane and Conquistador Street, in the amount of \$0 plus escrow fees.
2. Accept both of the attached Grant Deeds for exchange and authorize the City Manager to execute and the City Clerk to attest and file said deeds with the Kings County Recorder's Office.
3. Accept the attached Exchange Agreement and authorize City staff to execute said agreement.

BACKGROUND:

City staff is preparing construction plans and coordinating the acquisition of street right of way necessary for the road widening along Emma Lee Lane, from Grangeville Boulevard to Jana Way. The right of way is necessary for development of street improvements, including curb ramps, utility relocations, and the installation of sidewalks and curb and gutters.

In this instance, there is additional right-of-way that the City has not used and does not require that is being exchanged for the right-of-way the City requires to facilitate the construction.

FISCAL IMPACT:

The FY 21 Capital Improvement Program Budget provides \$635,000 for construction, including contingencies. A copy of the Budget page is attached for Council review.

ATTACHMENTS:

GRANT DEED 008-470-021 TO CITY

GRANT DEED 008-470-021 TO STEVE

Agreement - 008-470-021 STEVE

Emma Lee Lane Reconstruction Budget

Emma Lee Lane Crossing & Lift Pump Budget

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF HANFORD
900 S. 10th Ave.
Hanford, CA 93230

SEND TAX STATEMENTS TO:

CITY OF HANFORD
315 N. Douty Street
Hanford, CA 93230

GRANT DEED

**Exempt from Recording Fees Pursuant to Gov.
Code Section 27383 and Documentary Transfer
Tax Pursuant to Revenue and Taxation Code
Section 11922**

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax, firm name

Assessor's Parcel Nos. 008-470-021 X City of Hanford County of Kings

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Steven Sztukowski, a married man as his sole and separate property, **hereby GRANT(S)** to the City of Hanford, a municipal corporation, the following described real property in the County of Kings, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF HEREOF

Dated:

6-26-71


STEVEN SZTUKOWSKI

CERTIFICATION OF ACCEPTANCE

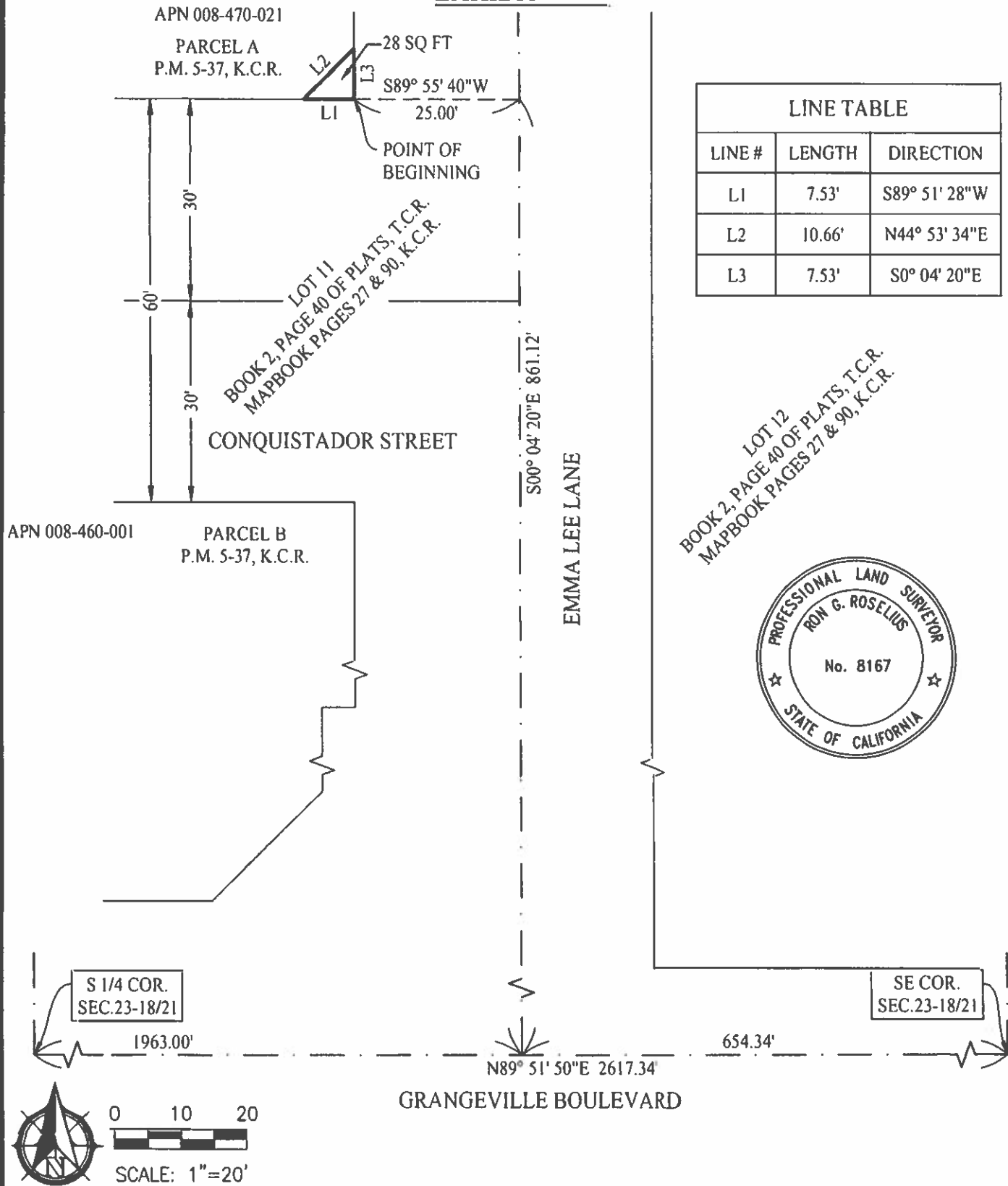
This is to certify that the interest in real property conveyed by this Grant Deed dated _____ from _____ to the City of Hanford, a municipal corporation, is hereby accepted by order of the Council of said City of Hanford on _____, 20____ and the Grantee consents to the recordation thereof.

DATED: _____

MARIO CIFUENTEZ, II, City Manager

Packet Pg. 92

EXHIBIT "A-1"



CIVIL ENGINEERS
**ZUMWALT
HANSEN &
LAND SURVEYORS**

609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

APN 008-470-021
28 S.F. RIGHT-OF-WAY
ACQUISITION
for
THE CITY OF HANFORD

Job No. 0778712
Drawn By: MO
Checked By: RR
Indexed By:
Date: 7/16/2020

Sheet No.

1 of 1

Attachment: GRANT DEED 008-470-021 TO CITY (PW: Authorize the exchange of RW on Emma Lee Lane, Accept Grant Deeds & Agreement

EXHIBIT "A"

THAT PORTION OF PARCEL A OF THAT CERTAIN MAP RECORDED IN BOOK 5, OF PARCEL MAPS, AT PAGE 37, KINGS COUNTY RECORDS, BEING A PORTION OF LOT 11 OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL A, AS SHOWN ON SAID PARCEL MAP;

THENCE SOUTH 89°51'28" WEST, ALONG THE SOUTH LINE OF SAID PARCEL A, ALSO BEING THE NORTH RIGHT OF WAY LINE OF CONQUISTADOR STREET, AS SHOWN ON SAID PARCEL MAP, A DISTANCE OF 7.53 FEET;

THENCE NORTH 44°53'34" EAST A DISTANCE OF 10.66 FEET, TO A POINT ON THE EAST LINE OF SAID PARCEL A, ALSO BEING THE WEST RIGHT OF WAY LINE OF EMMA LEE LANE, AS SHOWN ON SAID PARCEL MAP;

THENCE SOUTH 00°04'20" EAST, ALONG THE EAST LINE OF SAID PARCEL A, A DISTANCE OF 7.53 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 28 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

STEVE SZTUKOWSKI
P.O. BOX 1421
Hanford, CA 93230

SEND TAX STATEMENTS TO:

STEVE SZTUKOWSKI
P.O. BOX 1421
Hanford, CA 93232

GRANT DEED

**Exempt from Recording Fees Pursuant to Gov.
Code Section 27383 and Documentary Transfer
Tax Pursuant to Revenue and Taxation Code
Section 11922**

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax, firm name

Assessor's Parcel Nos. 008-470-021 X City of Hanford County of Kings

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the City of Hanford, a municipal corporation, **hereby GRANT(S)** to Steven Sztukowski, a married man as his sole and separate property, the following described real property in the County of Kings, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF HEREOF

CITY OF HANFORD,
a municipal corporation

DATED: _____

By: _____
MARIO CIFUENTEZ, II, City Manager

[illegible]

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

(SEAL)

Page 2 of 2

LOT 10
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.
APN 008-470-020

LOT 5
CEDAR GROVE ESTATES
L.S.P. 15-56, K.C.R.

LOT 9
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.
APN 008-430-022

NORTH LINE OF
PARCEL A & LOT 11

LOT 11
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.

PARCEL A
P.M. 5-37, K.C.R.

APN 008-470-021

EMMA LEE LANE

LOT 12
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.



S 1/4 COR.
SEC.23-18/21

SE COR.
SEC.23-18/21

1963.00'

654.34'

N89° 51' 50"E 2617.34'

GRANGEVILLE BOULEVARD



0 10 20

SCALE: 1"=20'

CIVIL ENGINEERS

**ZUMWALT
HANSEN**

LAND SURVEYORS

609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

**EMMA LEE LANE
296 S.F. RIGHT-OF-WAY
RELINQUISHMENT
for
THE CITY OF HANFORD**

Job No. 0778712
 Drawn By: MO
 Checked By: RR
 Indexed By: _____
 Date: 7/16/2020

Sheet No.

1 of 1

EXHIBIT "A"

THAT PORTION OF THE EXISTING EMMA LEE LANE RIGHT OF WAY AS SHOWN ON THAT CERTAIN MAP RECORDED IN BOOK 5, OF PARCEL MAPS, AT PAGE 37, KINGS COUNTY RECORDS, BEING A PORTION OF LOT 11 OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL A, AS SHOWN ON SAID PARCEL MAP;

THENCE NORTH 89°51'28" EAST, ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL A, ALSO BEING THE NORTH LINE OF SAID LOT 11, A DISTANCE OF 15.65 FEET, TO A POINT ON THE NEW WESTERLY RIGHT OF WAY LINE OF EMMA LEE LANE, SAID POINT BEING THE BEGINNING OF A NON TANGENT CURVE;

THENCE SOUTHWESTERLY ALONG A NON TANGENT 179.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE SOUTHEAST, A RADIAL BEARING TO SAID POINT BEARS NORTH 62°58'03" WEST, THROUGH A CENTRAL ANGLE OF 14°57'22", A DISTANCE OF 46.73 FEET, TO A POINT ON THE EAST LINE OF SAID PARCEL A, ALSO BEING A POINT ON THE EXISTING WESTERLY RIGHT OF WAY LINE OF EMMA LEE LANE;

THENCE NORTH 00°04'20" WEST, ALONG THE EAST LINE OF SAID PARCEL A, A DISTANCE OF 43.87 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 296 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

PARCEL NO.: 008-470-021

PROJECT: City of Hanford – Emma Lee Lane Reconstruction

OWNER: Steven Sztukowski

EXCHANGE AGREEMENT

THIS AGREEMENT is made and entered into by and between

Steven Sztukowski

(hereinafter called “Grantor”), and

The City of Hanford, a Municipal Corporation,

(hereinafter called “City”).

Grantor owns that real property (“Grantor Property”) more particularly described in the attached Exhibit “A,” which is incorporated herein by reference. The City intends to improve the roadway adjacent to the Grantor Property and requires a portion of the Grantor Property for the project. In exchange for that portion of the Grantor Property described herein, the City will convey to Grantor the City-owned land described below. Grantor is accepting from the City the real property and other consideration described in this Agreement as full compensation for the land that Grantor is conveying to the City.

Instruments in the form of Grant Deeds (collectively “Deeds”; singularly “Deed”) covering the property particularly described herein, will be executed concurrently with this Agreement and delivered to City representatives. The Deed executed by Grantor is hereinafter referred as the “Grantor Deed.”

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

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement, except as stated in Paragraphs 2.D. and 2.E. below.

2. The City shall:

A. PROPERTY TO BE EXCHANGED - City agrees to convey to Grantor the real property owned by City containing 296 square-feet more particularly described in Exhibits B and B-1 (Emma Lee Lane 296 S.F. Right-of-Way Relinquishment for the City of Hanford) (“City Exchange Property”). The conveyance includes all improvements, easements, appurtenances and hereditaments pertaining to the property.

B. RECORDATION OF INSTRUMENTS - Cause the Deeds to be recorded in the office of the Kings County Recorder at such time as when clear title to the Grantor Exchange Property (defined below) can be conveyed.

C. MISCELLANEOUS COSTS - Pay any escrow, title insurance, property line adjustments, and recording fees incurred in this transaction.

D. CONSTRUCTION AND RESTORATION – The City shall, upon completion of the construction described above, generally restore Grantor’s remaining real property to a comparable condition than that which existed prior to City’s project construction, to the extent reasonably practical. At no expense to the Grantor and at the time of construction, City will reconnect Grantor’s existing driveway(s) to the adjacent public road at their present location and will relocate any impacted fences to the new right of way line. Upon completion of construction of said driveway(s), it/they will be considered as an encroachment under permit onto the adjacent public road, and is/are to be maintained, repaired and operated as such by Grantor in accordance with and subject to the laws, rules, and regulations of the public entity controlling said road.

Permission is hereby granted to City or its authorized agent to enter on Grantor’s land to conform and reconnect Grantor’s driveway(s) and relocate impacted fences as described herein. Grantor understands and agrees that after completion of the work described, said driveway(s) will be considered as Grantor’s sole property and Grantor will be responsible for their future maintenance, repair, and improvement.

E. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Grantor Property.

3. The Grantor:

A. PROPERTY TO BE EXCHANGED - Grantor agrees to convey to City that portion of the Grantor Property containing 28 square-feet more particularly described in Exhibits C and C-1 (APN 006-470-021 28 S.F. Right-of-Way Acquisition for the City of Hanford) (“Grantor Exchange Property”). The conveyance includes all improvements, easements, appurtenances and hereditaments pertaining to the property.

B. PAYMENT ON MORTGAGE OR DEED OF TRUST - Grantor shall assist, to the best of their abilities, the Escrow Officer (defined below) in obtaining lien clearance documents from any and all creditors holding security interests in the Grantor Exchange Property prior to close of escrow.

C. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Grantor Exchange Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease held by tenant of Grantor.

B. RECORDATION OF INSTRUMENTS - Cause the Deeds to be recorded in the office of the Kings County Recorder at such time as when clear title to the Grantor Exchange Property (defined below) can be conveyed.

C. MISCELLANEOUS COSTS - Pay any escrow, title insurance, property line adjustments, and recording fees incurred in this transaction.

D. CONSTRUCTION AND RESTORATION – The City shall, upon completion of the construction described above, generally restore Grantor’s remaining real property to a comparable condition than that which existed prior to City’s project construction, to the extent reasonably practical. At no expense to the Grantor and at the time of construction, City will reconnect Grantor’s existing driveway(s) to the adjacent public road at their present location and will relocate any impacted fences to the new right of way line. Upon completion of construction of said driveway(s), it/they will be considered as an encroachment under permit onto the adjacent public road, and is/are to be maintained, repaired and operated as such by Grantor in accordance with and subject to the laws, rules, and regulations of the public entity controlling said road.

Permission is hereby granted to City or its authorized agent to enter on Grantor’s land to conform and reconnect Grantor’s driveway(s) and relocate impacted fences as described herein. Grantor understands and agrees that after completion of the work described, said driveway(s) will be considered as Grantor’s sole property and Grantor will be responsible for their future maintenance, repair, and improvement.

E. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Grantor Property.

3. The Grantor:

A. PROPERTY TO BE EXCHANGED - Grantor agrees to convey to City that portion of the Grantor Property containing 28 square-feet more particularly described in Exhibits C and C-1 (APN 006-470-021 28 S.F. Right-of-Way Acquisition for the City of Hanford) (“Grantor Exchange Property”). The conveyance includes all improvements, easements, appurtenances and hereditaments pertaining to the property.

B. PAYMENT ON MORTGAGE OR DEED OF TRUST - Grantor shall cooperate with the Escrow Officer (defined below) in obtaining lien clearance documents from any and all creditors holding security interests in the Grantor Exchange Property prior to close of escrow.

C. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Grantor Exchange Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease held by tenant of Grantor.

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

E. TITLE INDEMNITY AND WARRANTY - In consideration of the City waiving the requirements to clear any non-monetary encumbrances, defects, and imperfections affecting title to the Grantor Exchange Property, the Grantor indemnifies and holds the City harmless from any and all claims that other parties may make or assert on the title to the Grantor Exchange Property. Grantor hereby represents and warrants that he/she/they are the sole vested owners of the Grantor Exchange Property, holding all ownership and possessory rights, and are the authorized signatories to grant the rights referenced in this Agreement without conflict or claims from other parties.

F. HAZARDOUS SUBSTANCES - Represents and warrants, to the best of Grantor's knowledge, and after reasonable inquiry, the following:

During Grantor's ownership of the Grantor Exchange Property, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Grantor Exchange Property or Grantor's remaining adjacent property. Grantor further represents and warrants that Grantor has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Grantor Exchange Property, or Grantor's remaining adjacent property, which may have occurred prior to Grantor's ownership.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on or within the Grantor Exchange Property or Grantor's remaining adjacent property.

Grantor has not used the Grantor Exchange Property, or Grantor's remaining adjacent property, for any industrial operations that use hazardous substances. Grantor is not aware of any prior use of such property. Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Grantor Exchange Property or Grantor's remaining adjacent property. Grantor is not aware of any such prior installations. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or State law, City may elect to recover its cleanup costs from those who caused or contributed to the contamination.

G. CLEARANCE OF MONETARY ENCUMBRANCES, ASSESSMENTS, AND DELINQUENT TAXES - Grantor shall assist, to the best of their abilities, the Escrow Officer in obtaining and shall cause the removal of the following from the Grantor Exchange Property's chain of title: (i) monetary encumbrances, including, without limitation, deeds of trusts, liens, and abstracts of judgment, recorded against the Grantor Exchange Property; (ii) delinquent taxes due in any year except the year in which the Deeds record, together with penalties and interest thereon; and (iii) delinquent and unpaid non-delinquent assessments which have become a lien as of the date of recordation of the Deeds.

H. TAX REPORTING AND WITHHOLDING - The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (Grantor) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-resident corporation or partnership. In accordance with the provisions of Section 1445 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated thereunder, Grantor shall execute an affidavit under penalty of perjury setting forth Grantor's name, address, federal tax identification number, and certifying whether Grantor is a "foreign person" in accordance with the provisions of the Internal Revenue Code. Further, tax withholding may be required in accordance with the California Revenue and Taxation Code Section 18662. It is specifically understood and agreed by Grantor that closing of escrow is subject to, and contingent upon, deposit into escrow of a FIRPTA Affidavit of Non-Foreign Status and a California Form 593-C, Real Estate Withholding Certificate and associated required paperwork, completed and signed by Grantor, and Escrow Agent is hereby authorized and instructed to withhold from Grantor's proceeds amounts so required by these laws and to forward any amounts withheld to the appropriate taxing authority.

I. ACCEPTANCE OF CITY EXCHANGE PROPERTY - Grantor accepts the City Exchange Property in an "as-is," "where-is" condition. With the exception of the work described in this Agreement, City will have no obligation to repair, improve, or remediate any aspect of the City Exchange Property following the close of escrow. Grantor hereby releases the City from any liability associated with or arising from the condition of the City Exchange Property that exists at the close of escrow.

4. The Parties agree:

A. ESCROW - At City's option, to open an escrow in accordance with this Agreement at an escrow company of City's choice. Opening an escrow shall be at City's sole discretion and City may decide to process this transaction without the use of an escrow agent. However, if an escrow agent ("Escrow Officer" or "Escrow Agent") is utilized, this Agreement constitutes the joint escrow instructions of City and Grantor, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

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

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow, to apply to the County Tax Collector of said County for any refund of such taxes which may be due

Grantor for the period after City's acquisition. The City will not require the re-assessment of the remaining property.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:
 - a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's property subject to this transaction as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement;
 - c) Record the Deeds when conditions of this escrow have been fulfilled by City and Grantor.
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date the Deeds are recorded in the office of the County Recorder. Recordation of Deeds is hereby authorized when the conditions set forth herein have been satisfied.

B. VALUATION OF PARCELS - For purposes of the City's acquisition of the Grantor Exchange Property, the parties agree that the value of the City Exchange Property and other consideration provided hereunder is equal to or greater than the value of the Grantor Exchange Property.

C. SETTLEMENT OF A DIFFERENCE IN VALUE - Neither party shall pay the other any money to settle any actual or perceived difference in the values of the properties. Grantor acknowledges that the consideration that Grantor is receiving under this Agreement represents the fair market value of the Grantor Exchange Property and that Grantor will not be entitled to the payment of any money or any additional consideration for the Grantor Exchange Property.

D. JUDGMENT IN LIEU OF DEED - In the event Grantor does not deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain and seek specific performance to enforce this Agreement, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

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

F. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral.

This Agreement may not be amended except in writing by the parties hereto or their successors or assigns. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

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

H. COUNTERPARTS - This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same document.

I. ELECTRONIC AND FACSIMILE SIGNATURES - In the event that the parties hereto utilize electronic or facsimile documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided following transmittal of the electronic or facsimile signature. Documents for recordation by the County Recorder must contain original signatures.

J. NO THIRD-PARTY BENEFICIARIES INTENDED - Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

K. BINDING EFFECT - This Agreement shall inure to the benefit of and constitute a binding obligation upon the successors and assigns of the parties hereto.

L. ATTORNEYS' FEES - If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

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

GRANTOR:
Steven Sztukowski

By: 
Steven Sztukowski

Date: 8-26-21

GRANTOR'S ADDRESS:
Steven Sztukowski
PO Box 1421
Hanford, CA 93232

CITY OF HANFORD

By: _____

Name:

Title:

Date: _____

MAILING ADDRESS OF CITY:

The City of Hanford
Public Works Department
900 S. 10th Avenue
Hanford, CA 93230

EXHIBIT "A"

P.M. 5-37

PARCEL MAP

OF

LOT 11 OF EMMA LEE COLONY, ACCORDING TO MAP THEREOF RECORDED IN BOOK 42 AT PAGE 40 OF MAPS, TULARE COUNTY RECORDS BEING A PORTION OF THE SOUTH-EAST QUARTER OF SECTION 23, T. 18 S., R. 21 E., M.D.B. & M.

SURVEYOR'S CERTIFICATE

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AT THE REQUEST OF STEVE OVAZ ON NOVEMBER 28, 1977. I HEREBY STATE THAT THE PARCEL MAP, PREPARED BY ME OR UNDER MY DIRECTION, HAS BEEN COMPILED WITH AND THAT THE PARCEL MAP CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE, REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE PARCEL MAP TO THE FILING OF PALE HOLCOMB, L.S. 4160

CITY ENGINEER'S CERTIFICATE

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE

DATED 5/13/77

Paul J. Stewart
CITY ENGINEER RUC 7120

RECORDER'S CERTIFICATE

DCC NO. 6921 FEE \$500
FILED THIS 25 TH DAY OF MAY 1977 AT 3:15 PM IN BOOK 5 OF PARCEL MAPS. AT PAGE 37, AT THE REQUEST OF PALE HOLCOMB

JOAN L. GULLOCK
COUNTY RECORDER

BY *Anthony J. Lomake*
DEPUTY

OWNER'S CERTIFICATE

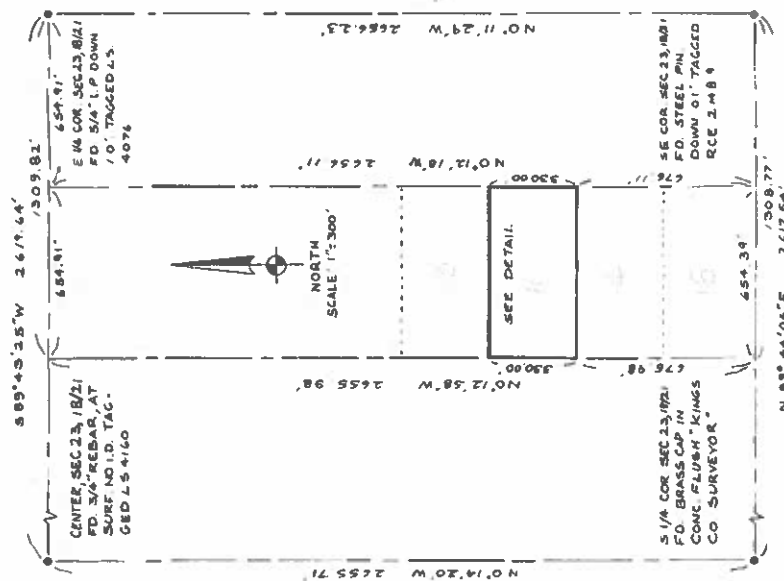
WE THE UNDERSIGNED ARE ALL THE PARTIES HAVING ANY RECORD TITLE INTEREST IN THE REAL PROPERTY BEING SUBDIVIDED, SUBJECT TO THE PROVISIONS OF SECTION 6436 OF THE GOVERNMENT CODE AND WE HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND OFFER FOR DEDICATION THE RIGHT OF WAY SHOWN HEREON AND ALSO OFFER FOR DEDICATION THE UTILITY EASEMENTS SHOWN HEREON

Stephen A. Ditz
Stephen A. Ditz

STATE OF CALIFORNIA
COUNTY OF KINGS

ON FEB. 11, 1972, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED STEPHEN A. DIAZ AND NADINE A. DIAZ, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME.

SHEET 1 OF 1



CITY CLERK'S CERTIFICATE

I HEREBY CERTIFY THAT AT A REGULAR MEETING HELD MAY 23, 1977, THE HANFORD CITY COUNCIL DID ACCEPT FOR PUBLIC USE, THE RIGHT OF WAY DEDICATION OFFERED HEREON.

DATED MAY 24, 1977

Paul J. Stewart
HANFORD CITY CLERK

SEAL

SIGNATURE

BASIS OF BEARINGS

THE SOUTH LINE OF THE SE 1/4 OF SEC. 23, T. 18 S., R. 21 E., M.D.B. & M. BEARS N 89° 44' 05" E AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN VOL. 4, AT PAGE 97, KINGS COUNTY RECORDS

LEGEND

- FOUND MONUMENT AS SHOWN
- SET 3/4" I.P. AT SURFACE TAGGED L.S. 4160
- LOT NUMBER EMMA LEE COLONY
- PUE PUBLIC UTILITY EASEMENT

POI

ADDITIONAL 5' RIGHT OF WAY DEDICATION

NOTE: OFF-SITE IMPROVEMENTS WILL BE REQUIRED PRIOR TO THE ISSUANCE OF PERMIT FOR DEVELOPMENT OF PARCEL A AND "B".

EXHIBIT "A" "B"

THAT PORTION OF THE EXISTING EMMA LEE LANE RIGHT OF WAY AS SHOWN ON THAT CERTAIN MAP RECORDED IN BOOK 5, OF PARCEL MAPS, AT PAGE 37, KINGS COUNTY RECORDS, BEING A PORTION OF LOT 11 OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL A, AS SHOWN ON SAID PARCEL MAP;

THENCE NORTH 89°51'28" EAST, ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL A, ALSO BEING THE NORTH LINE OF SAID LOT 11, A DISTANCE OF 15.65 FEET, TO A POINT ON THE NEW WESTERLY RIGHT OF WAY LINE OF EMMA LEE LANE, SAID POINT BEING THE BEGINNING OF A NON TANGENT CURVE;

THENCE SOUTHWESTERLY ALONG A NON TANGENT 179.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE SOUTHEAST, A RADIAL BEARING TO SAID POINT BEARS NORTH 62°58'03" WEST, THROUGH A CENTRAL ANGLE OF 14°57'22", A DISTANCE OF 46.73 FEET, TO A POINT ON THE EAST LINE OF SAID PARCEL A, ALSO BEING A POINT ON THE EXISTING WESTERLY RIGHT OF WAY LINE OF EMMA LEE LANE;

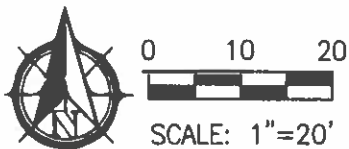
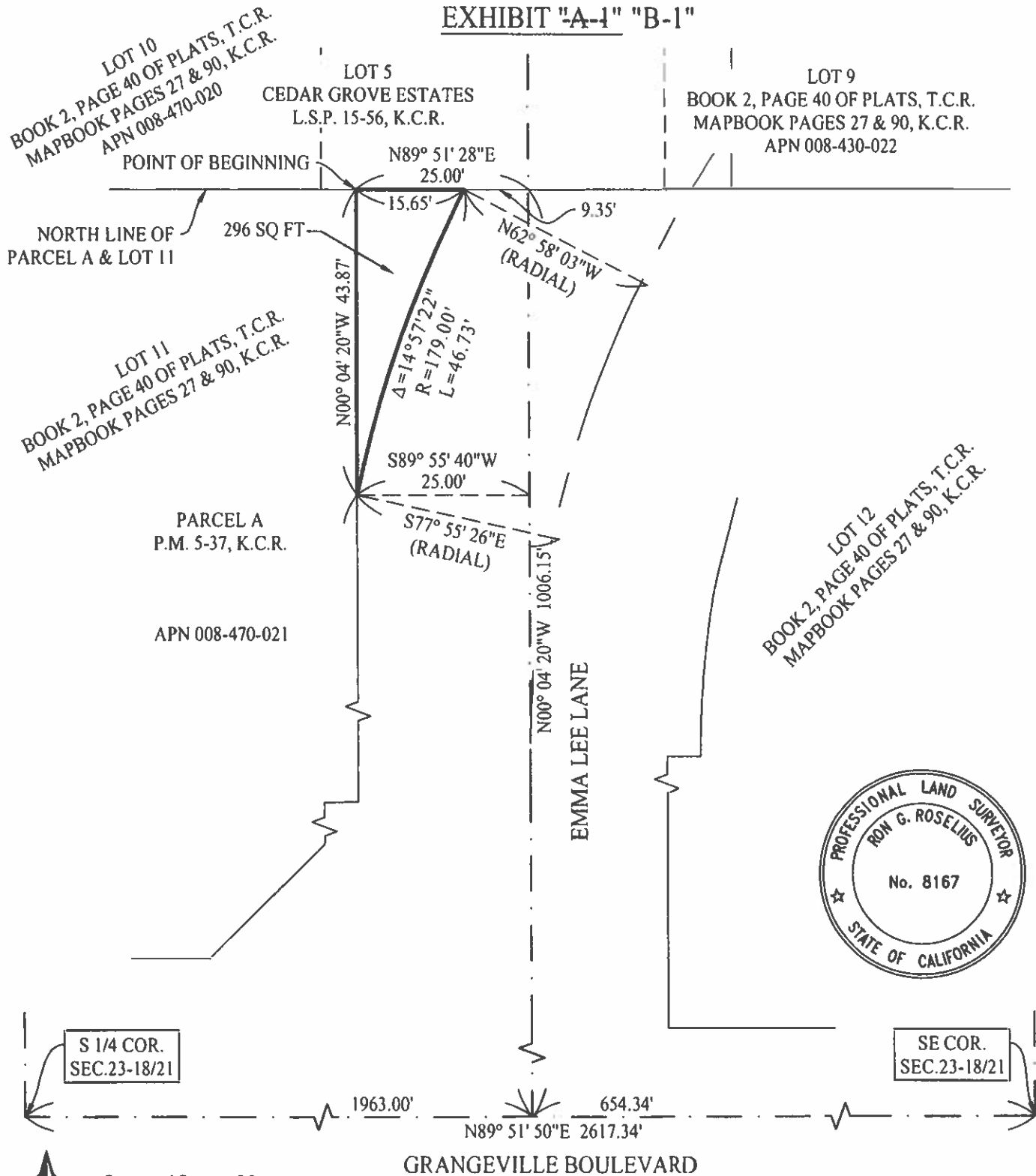
THENCE NORTH 00°04'20" WEST, ALONG THE EAST LINE OF SAID PARCEL A, A DISTANCE OF 43.87 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 296 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

EXHIBIT "A-1" "B-1"



Civil Engineers
ZUMWALT
HANSEN &
Land Surveyors

609 N. Irwin St.
 Hanford, CA 93230
 Office: (559) 582-1056
 Fax: (559) 584-4143

EMMA LEE LANE
296 S.F. RIGHT-OF-WAY
RELINQUISHMENT
for
THE CITY OF HANFORD

Job No. 0778712
 Drawn By: MO
 Checked By: RR
 Indexed By: _____
 Date: 7/16/2020

Sheet No.

1 of 1

Attachment - Agreement - 008-470-021 STEVE (PW: Authorize the exchange of RW on Emma Lee Lane, Accept Grant Deeds & Agreement (008-

EXHIBIT "A" "C"

THAT PORTION OF PARCEL A OF THAT CERTAIN MAP RECORDED IN BOOK 5, OF PARCEL MAPS, AT PAGE 37, KINGS COUNTY RECORDS, BEING A PORTION OF LOT 11 OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL A, AS SHOWN ON SAID PARCEL MAP;

THENCE SOUTH 89°51'28" WEST, ALONG THE SOUTH LINE OF SAID PARCEL A, ALSO BEING THE NORTH RIGHT OF WAY LINE OF CONQUISTADOR STREET, AS SHOWN ON SAID PARCEL MAP, A DISTANCE OF 7.53 FEET;

THENCE NORTH 44°53'34" EAST A DISTANCE OF 10.66 FEET, TO A POINT ON THE EAST LINE OF SAID PARCEL A, ALSO BEING THE WEST RIGHT OF WAY LINE OF EMMA LEE LANE, AS SHOWN ON SAID PARCEL MAP;

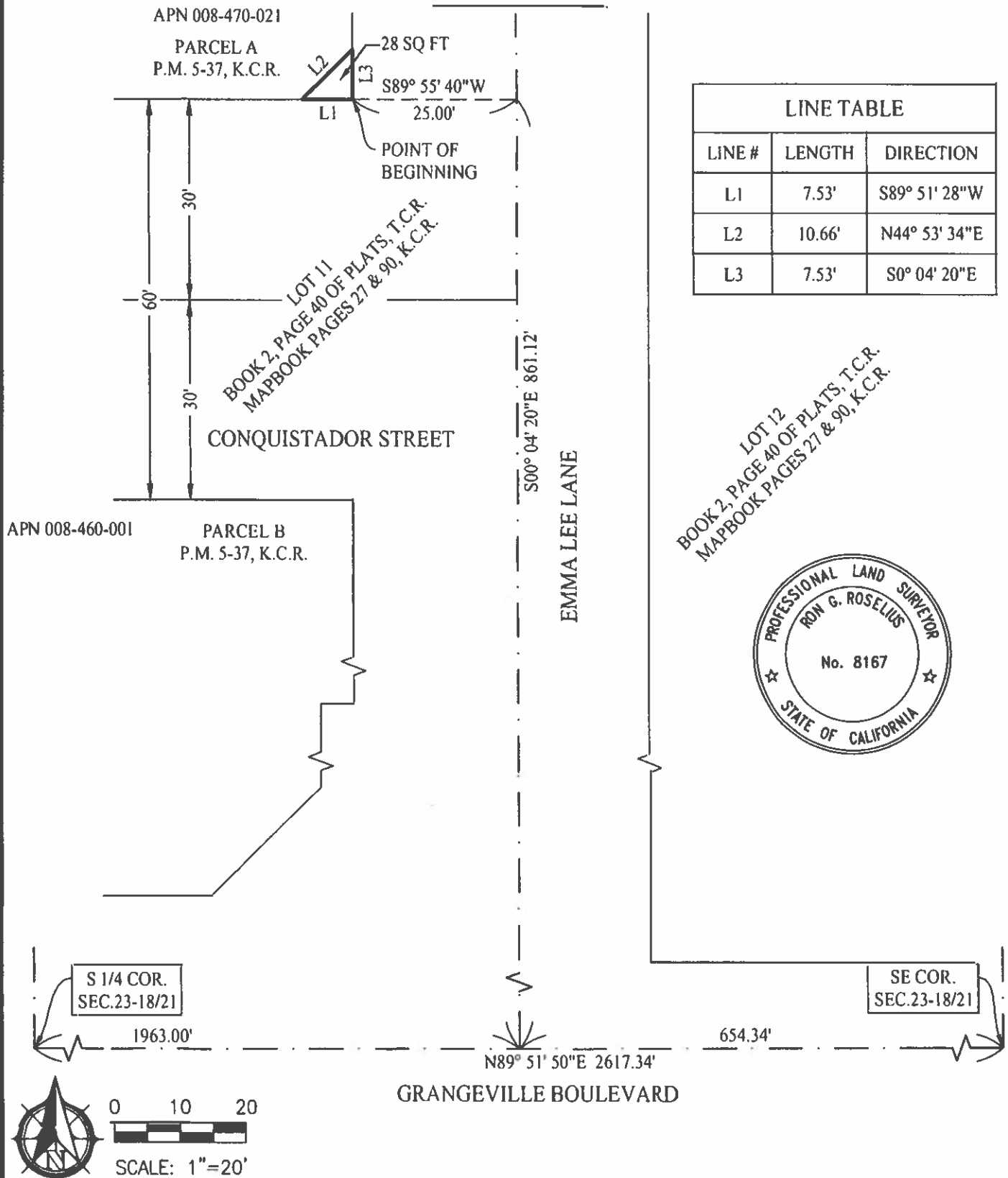
THENCE SOUTH 00°04'20" EAST, ALONG THE EAST LINE OF SAID PARCEL A, A DISTANCE OF 7.53 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 28 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

EXHIBIT "A-1" "C-1"



609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

APN 008-470-021
28 S.F. RIGHT-OF-WAY
ACQUISITION
for
THE CITY OF HANFORD

Job No. 0778712
Drawn By: MO
Checked By: RR
Indexed By:
Date: 7/16/2020

Sheet No.

1 of 1

City of Hanford Fiscal Year 2018-2019 Budget

Emma Lee Lane Reconstruction, Grangeville Boulevard to Conquistador Street

Project Background:

This project will involve the reconstruction of Emma Lee Lane, from Grangeville Boulevard to Conquistador Street. Improvements to include installation of curb, gutter, sidewalk, ADA ramps, storm drainage collection system and reconstruction of street.

Existing Conditions:

Emma Lee Lane is a residential street that lacks a proper drainage system and is in need of total reconstruction.

Project Justification:

This project will extend the useful life of the street by approximately 25-30 years.

Fiscal Implications:

Funding for this project will be allocated from gas tax reserves.

Project Budget Summary:

		5-Year Funding Allocation				
		2019	2020	2021	2022	2023
Expenditure	Program or Project	Design	Construction			
	Engineering / Inspection	15,000	8,000			
	Construction		350,000			
	Contingency		35,000			
	Department Overhead	3,000	2,000			
	Total Expenditure	\$18,000	\$395,000	\$0	\$0	\$0
Revenue	Funding					
	040 Gas Tax (2105)	18,000	395,000			
	Total Funding	\$18,000	\$395,000	\$0	\$0	\$0

Emma Lee Lane Crossing / Lift Station #37

Project Background:

Pursuant to an agreement between the City of Hanford and the People's Ditch Company, the City of Hanford is responsible for any and all road crossings over the ditch within the city limits.

Existing Conditions:

During a recent inspection, the People's Ditch Company notified the City that the galvanized culverts that transfer water under Emma Lee Lane were failing and in need of repair or replacement. Storm Lift Station #37 also discharges under this crossing and must be relocated to affect the repairs.

Project Justification:

To prevent a failure of the pipes and the possible subsequent road collapse, the culvert pipes must be repaired or replaced and the lift station outlet relocated.

Fiscal Implications:

Funding for this project will be allocated from storm drainage reserves.

Project Budget Summary:

		3-Year Funding Allocation				
		2019	2020	2021	2022	2023
Expenditure	Program or Project	Construction				
	Engineering / Inspection	7,500				
	Construction	225,000				
	Contingency	25,000				
	Department Overhead	2,500				
Total Expenditure		\$260,000	\$0	\$0	\$0	\$0
Revenue	Funding					
	358 Storm Drainage Capital	260,000				
Total Funding		\$260,000	\$0	\$0	\$0	\$0



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: J
-------------------------------	--------------------------

SUBJECT:

Public Works: Authorization to purchase street right-of-way located on Emma Lee Lane, 100 feet west of Jana Way, as shown on the attached map, in the amount of \$160 plus escrow fees, accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deed with the Kings County Recorder's Office, and accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement. (APN 008-470-020).

RECOMMENDATION:

That the City Council, by motion:

1. Authorize the purchase of street right-of-way located on Emma Lee Lane, 100 feet west of Jana Way, as shown on the attached map, in the amount of \$160 plus escrow fees.
2. Accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deed with the Kings County Recorder's Office.
3. Accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement.

BACKGROUND:

City staff is preparing construction plans and coordinating the acquisition of street right of way necessary for the road widening along Emma Lee Lane, from Grangeville Boulevard to Jana Way. The right of way is necessary for development of street improvements, including curb ramps, utility relocations, and the installation of sidewalks and curb and gutters.

FISCAL IMPACT:

The FY 21 Capital Improvement Program Budget provides \$635,000 for construction, including contingencies. A copy of the Budget page is attached for Council review.

ATTACHMENTS:

GRANT DEED 008-470-020 SOARES
Agreement - 008-470-020 Soares
Emma Lee Lane Reconstruction Budget
Emma Lee Lane Crossing & Lift Pump Budget

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF HANFORD
900 S. 10th Ave.
Hanford, CA 93230

SEND TAX STATEMENTS TO:

CITY OF HANFORD
315 N. Douty Street
Hanford, CA 93230

GRANT DEED

**Exempt from Recording Fees Pursuant to Gov.
Code Section 27281 and Documentary Transfer
Tax Pursuant to Revenue and Taxation Code
Section 11922**

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax, firm name

Assessor's Parcel No. 008-470-020 X City of Hanford _____ County of Kings

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Steven Soares and Leslie Soares, husband and wife as joint tenants, **hereby GRANT(S)** to the City of Hanford, a municipal corporation, the following described real property in the County of Kings, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF HEREOF

Dated: 8-31-21


STEVEN SOARES


LESLIE SOARES

Packet Pg. 117

CERTIFICATION OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Grant Deed dated _____ from _____ to the City of Hanford, a municipal corporation, is hereby accepted by order of the Council of said City of Hanford on _____, 20__ and the Grantee consents to the recordation thereof.

DATED: _____

MARIO CIFUENTEZ, II, City Manager

EXHIBIT "A-1"

LOT 10
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.
APN 008-470-020

LOT 5
CEDAR GROVE ESTATES
L.S.P. 15-56, K.C.R.

60' WIDE EASEMENT FOR
THE PEOPLE'S DITCH

LOT 9
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.

$\Delta=5^{\circ}58'19''$ $R=179.00'$ $L=18.66'$

78 SQ FT

POINT OF
BEGINNING

SOUTH LINE OF LOT 5 L.S.P. 15-56,
K.C.R. & SOUTH LINE OF LOT 10
MAPBOOK PAGES 27 & 90, K.C.R.

PARCEL A
P.M. 5-37, K.C.R.

LOT 11
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.
APN 008-470-021

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	9.35'	S89° 51' 28"W
L2	16.12'	S0° 04' 20"E

LOT 12
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.



S 1/4 COR.
SEC.23-18/21

SE COR.
SEC.23-18/21

1963.00'

654.34'

N89° 51' 50"E 2617.34'

GRANGEVILLE BOULEVARD



0 10 20

SCALE: 1"=20'

CIVIL ENGINEERS
ZUMWALT
HANSEN &
LAND SURVEYORS

609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

APN 008-470-020
78 S.F. RIGHT-OF-WAY
ACQUISITION
for
THE CITY OF HANFORD

Job No. 0778712
Drawn By: MO
Checked By: RR
Indexed By:
Date: 7/16/2020

Sheet No.

1 of 1

EXHIBIT "A"

THAT PORTION OF LOT 5 OF THAT CERTAIN MAP RECORDED IN VOLUME 15, OF LICENSED SURVEYORS' PLATS, AT PAGE 56, KINGS COUNTY RECORDS, BEING A PORTION OF LOT 10 AS SHOWN ON THE MAP OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5, ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 10, AND BEING A POINT ON THE CENTERLINE OF THE 40.00 FOOT WIDE ROADWAY AS SHOWN ON SAID MAPS OF EMMA LEE COLONY;

THENCE SOUTH 89°51'28" WEST, ALONG THE SOUTH LINE OF SAID LOT 5, ALSO BEING THE SOUTH LINE OF SAID LOT 10, A DISTANCE OF 9.35 FEET, TO A POINT ON THE NEW WESTERLY RIGHT OF WAY LINE OF EMMA LEE LANE, SAID POINT BEING THE BEGINNING OF A NON TANGENT CURVE;

THENCE NORTHEASTERLY ALONG A NON TANGENT 179.00 FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE SOUTHEAST, A RADIAL BEARING TO SAID POINT BEARS NORTH 62°58'03" WEST, THROUGH A CENTRAL ANGLE OF 5°58'19", A DISTANCE OF 18.66 FEET, TO A POINT ON THE EAST LINE OF SAID LOT 5, ALSO BEING A POINT ON THE EAST LINE OF SAID LOT 10;

THENCE SOUTH 00°04'20" EAST, ALONG THE EAST LINE OF SAID LOT 5, A DISTANCE OF 16.12 FEET, TO THE **POINT OF BEGINNING**.

CONTAINING 78 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

PARCEL NO.: 008-470-020

PROJECT: City of Hanford – Emma Lee Lane Reconstruction

OWNER: Steven Soares and Leslie Soares, Husband and Wife as Joint Tenants

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into by and between
Steven Soares and Leslie Soares, Husband and Wife as Joint Tenants
(hereinafter called “Grantor”), and

The City of Hanford, a Municipal Corporation,
(hereinafter called “City”).

Instruments in the form of a Grant Deed (“Deed”) covering the property particularly described therein (“Property”), will be executed concurrently with this Agreement and delivered to City representatives.

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

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement, except as stated in Paragraphs 2.E. and 2.F. below.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of \$160 as consideration in full for the Property, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid when title to the Property has vested in City free and clear of all liens, encumbrances, assessments, easements and leases recorded or unrecorded, except for recorded public utility easements and public right of way.

B. RECORDATION OF INSTRUMENT - Accept the Deed and cause the same to be recorded in the office of the Kings County Recorder at such time as when clear title can be conveyed.

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

D. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which the Deeds record, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien as of the date of recordation of the Deeds.

E. CONSTRUCTION AND RESTORATION – The City shall, upon completion of construction, generally restore Grantor's remaining real property to a comparable or better condition than that which existed prior to City's project construction, to the extent reasonably practical. At no expense to the Grantor and at the time of construction, City will reconnect Grantor's existing driveway(s) to the adjacent public road at their present location and will relocate any impacted fences to the new right of way line. Upon completion of construction of said driveway(s), it/they will be considered as an encroachment under permit onto the adjacent public road, and is/are to be maintained, repaired and operated as such by Grantor in accordance with and subject to the laws, rules, and regulations of the public entity controlling said road.

Permission is hereby granted to City or its authorized agent to enter on Grantor's land to conform and reconnect Grantor's driveway(s) and relocate any fences as described herein. Grantor understands and agrees that after completion of the work described, said driveway(s) and fences will be considered as Grantor's sole property and Grantor will be responsible for their future maintenance and repair.

F. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Property.

3. The Grantor:

A. PAYMENT ON MORTGAGE OR DEED OF TRUST - Agrees that any or all monies payable under this Agreement up to and including the total amount of the unpaid principal and interest on the note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust, shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder. Grantor shall cooperate with the Escrow Officer in obtaining lien clearance documents from any and all creditors holding liens against the Property.

B. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said Property held by tenant of Grantor.

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

D. TITLE INDEMNITY AND WARRANTY - In consideration of the City waiving the requirements to clear any defects and imperfections in all matters of record title, the Grantor indemnifies and holds the City harmless from any and all claims that other parties may make or assert on the title to the Property. Grantor's obligation to indemnify the City shall not exceed the amount paid to the Grantor under this Agreement. Grantor hereby represents and warrants that he/she/they are the sole vested owners of the Property, holding all ownership and possessory rights, and are the authorized signatories to grant the rights referenced in this Agreement without conflict or claims from other parties.

E. HAZARDOUS SUBSTANCES - Represents and warrants, to the best of Grantor's knowledge, and after reasonable inquiry, the following:

During Grantor's ownership of the Property, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Property or Grantor's remaining adjacent property. Grantor further represents and warrants that Grantor has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Property, or Grantor's remaining adjacent property, which may have occurred prior to Grantor's ownership.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on or within the Property or Grantor's remaining adjacent property.

Grantor has not used the Property, or Grantor's remaining adjacent property, for any industrial operations that use hazardous substances. Grantor is not aware of any prior use of such property. Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Property or Grantor's remaining adjacent property. Grantors are not aware of any such prior installations. The purchase price of the Property being acquired reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or State law, City may elect to recover its cleanup costs from those who caused or contributed to the contamination.

F. TAX REPORTING AND WITHHOLDING - The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (Grantor) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-resident corporation or partnership. In accordance with the provisions of Section 1445 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated thereunder, Grantor shall execute an affidavit under penalty of perjury setting forth Grantor's name, address, federal tax identification number, and certifying whether Grantor is a "foreign person" in accordance with the provisions of the Internal Revenue Code. Further, tax withholding may be required in accordance with the California Revenue and Taxation Code Section 18662. It is specifically understood and agreed by Grantor that closing of this escrow is subject to, and contingent upon, deposit into escrow of a FIRPTA Affidavit of Non-Foreign Status and a California Form 593-C,

Real Estate Withholding Certificate and associated required paperwork, completed and signed by Grantor, and Escrow Agent is hereby authorized and instructed to withhold from Grantor's proceeds amounts so required by these laws and to forward any amounts withheld to the appropriate taxing authority.

4. The Parties agree:

A. ESCROW - At City's option, to open an escrow in accordance with this Agreement at an escrow company of City's choice. Opening an escrow shall be at City's sole discretion and City may decide to process this transaction without the use of an escrow agent. However, if an escrow agent is utilized, this Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

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

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow, to apply to the County Tax Collector of said County for any refund of such taxes which may be due Grantor for the period after City's acquisition.

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

- a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's property subject to this transaction as required to convey clear title.
- b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement;
- c) Disburse funds and deliver Deeds when conditions of this escrow have been fulfilled by City and Grantor.
- d) Following recording of Deeds from Grantor, if requested by City, provide City with a CLTA Standard Coverage Policy of Title Insurance in the amount of

\$160.00 issued by Title Company of City's choice showing that title to the Property is vested in City, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:

- 1) Real Property Taxes for the fiscal year in which escrow closes;
 - 2) Public utility easements and public rights of way;
 - 3) Other items that may be approved in writing by City in advance of the close of escrow.
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized.

B. MISCELLANEOUS REALTY ITEMS ACQUIRED - Payment in Clause 2.A. includes, but is not limited to, payment for 78 sq. ft, which is considered to be part of the realty and is being acquired by City in this transaction.

C. JUDGMENT IN LIEU OF DEED - In the event Grantor does not deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain to pursue the acquisition of the Property, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

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

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

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

G. COUNTERPARTS - This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same document.

H. ELECTRONIC AND FACSIMILE SIGNATURES - In the event that the parties hereto utilize electronic or facsimile documents which include signatures, such documents shall be

accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided following transmittal of the electronic or facsimile signature. Documents for recordation by the Clerk Recorder must contain original signatures.

I. NO THIRD-PARTY BENEFICIARIES INTENDED - Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

J. BINDING EFFECT - This Agreement shall inure to the benefit of and constitute a binding obligation upon the successors and assigns of the parties hereto.

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

GRANTOR:

Steven Soares and Leslie Soares, Husband and Wife as Joint Tenants

By: Steven Soares Date: 8.1.21
Steven Soares

By: Leslie Soares Date: 8.12/
Leslie Soares

GRANTOR'S ADDRESS:

Steven and Leslie Soares
1901 Theresa Avenue
Hanford, CA 93230

CITY OF HANFORD

By: _____ Date: _____
Name:
Title:

MAILING ADDRESS OF CITY:

The City of Hanford
Public Works Department
900 S. 10th Avenue
Hanford, CA 93230

EXHIBIT "A"

THAT PORTION OF LOT 5 OF THAT CERTAIN MAP RECORDED IN VOLUME 15, OF LICENSED SURVEYORS' PLATS, AT PAGE 56, KINGS COUNTY RECORDS, BEING A PORTION OF LOT 10 AS SHOWN ON THE MAP OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 5, ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 10, AND BEING A POINT ON THE CENTERLINE OF THE 40.00 FOOT WIDE ROADWAY AS SHOWN ON SAID MAPS OF EMMA LEE COLONY;

THENCE SOUTH 89°51'28" WEST, ALONG THE SOUTH LINE OF SAID LOT 5, ALSO BEING THE SOUTH LINE OF SAID LOT 10, A DISTANCE OF 9.35 FEET, TO A POINT ON THE NEW WESTERLY RIGHT OF WAY LINE OF EMMA LEE LANE, SAID POINT BEING THE BEGINNING OF A NON TANGENT CURVE;

THENCE NORTHEASTERLY ALONG A NON TANGENT 179.00 FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE SOUTHEAST, A RADIAL BEARING TO SAID POINT BEARS NORTH 62°58'03" WEST, THROUGH A CENTRAL ANGLE OF 5°58'19", A DISTANCE OF 18.66 FEET, TO A POINT ON THE EAST LINE OF SAID LOT 5, ALSO BEING A POINT ON THE EAST LINE OF SAID LOT 10;

THENCE SOUTH 00°04'20" EAST, ALONG THE EAST LINE OF SAID LOT 5, A DISTANCE OF 16.12 FEET, TO THE **POINT OF BEGINNING**.

CONTAINING 78 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

EXHIBIT "A-1"

LOT 10
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.
APN 008-470-020

LOT 5
CEDAR GROVE ESTATES
L.S.P. 15-56, K.C.R.

60' WIDE EASEMENT FOR
THE PEOPLE'S DITCH

LOT 9
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.

$\Delta=5^{\circ}58'19''$ R=179.00' L=18.66'

78 SQ FT

POINT OF
BEGINNING

(RADIAL)
N56° 59' 44" W

(RADIAL)
N62° 58' 03" W

SOUTH LINE OF LOT 5 L.S.P. 15-56,
K.C.R. & SOUTH LINE OF LOT 10
MAPBOOK PAGES 27 & 90, K.C.R.

PARCEL A
P.M. 5-37, K.C.R.

LOT 11
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.
APN 008-470-021

EMMA LEE LANE

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	9.35'	S89° 51' 28" W
L2	16.12'	S0° 04' 20" E

LOT 12
BOOK 2, PAGE 40 OF PLATS, T.C.R.
MAPBOOK PAGES 27 & 90, K.C.R.



S 1/4 COR.
SEC.23-18/21

SE COR.
SEC.23-18/21

1963.00'

654.34'

N89° 51' 50" E 2617.34'

GRANGEVILLE BOULEVARD



0 10 20

SCALE: 1"=20'

CIVIL ENGINEERS
**ZUMWALT
HANSEN & ASSOCIATES**
LAND SURVEYORS

609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

APN 008-470-020
78 S.F. RIGHT-OF-WAY
ACQUISITION
for
THE CITY OF HANFORD

Job No. 0778712
Drawn By: MO
Checked By: RR
Indexed By:
Date: 7/16/2020

Sheet No.

1 of 1

Attachment: Agreement - 008-470-020 Soares (PW: Authorize the purchase of RW on Emma Lee Lane, Accept Grant Deed & Agreement (008-

City of Hanford Fiscal Year 2018-2019 Budget

Emma Lee Lane Reconstruction, Grangeville Boulevard to Conquistador Street

Project Background:

This project will involve the reconstruction of Emma Lee Lane, from Grangeville Boulevard to Conquistador Street. Improvements to include installation of curb, gutter, sidewalk, ADA ramps, storm drainage collection system and reconstruction of street.

Existing Conditions:

Emma Lee Lane is a residential street that lacks a proper drainage system and is in need of total reconstruction.

Project Justification:

This project will extend the useful life of the street by approximately 25-30 years.

Fiscal Implications:

Funding for this project will be allocated from gas tax reserves.

Project Budget Summary:

		5-Year Funding Allocation				
		2019	2020	2021	2022	2023
Expenditure	Program or Project	Design	Construction			
	Engineering / Inspection	15,000	8,000			
	Construction		350,000			
	Contingency		35,000			
	Department Overhead	3,000	2,000			
	Total Expenditure	\$18,000	\$395,000	\$0	\$0	\$0
Revenue	Funding					
	040 Gas Tax (2105)	18,000	395,000			
	Total Funding	\$18,000	\$395,000	\$0	\$0	\$0

Emma Lee Lane Crossing / Lift Station #37

Project Background:

Pursuant to an agreement between the City of Hanford and the People's Ditch Company, the City of Hanford is responsible for any and all road crossings over the ditch within the city limits.

Existing Conditions:

During a recent inspection, the People's Ditch Company notified the City that the galvanized culverts that transfer water under Emma Lee Lane were failing and in need of repair or replacement. Storm Lift Station #37 also discharges under this crossing and must be relocated to affect the repairs.

Project Justification:

To prevent a failure of the pipes and the possible subsequent road collapse, the culvert pipes must be repaired or replaced and the lift station outlet relocated.

Fiscal Implications:

Funding for this project will be allocated from storm drainage reserves.

Project Budget Summary:

		3-Year Funding Allocation				
		2019	2020	2021	2022	2023
Expenditure	Program or Project	Construction				
	Engineering / Inspection	7,500				
	Construction	225,000				
	Contingency	25,000				
	Department Overhead	2,500				
Total Expenditure		\$260,000	\$0	\$0	\$0	\$0
Revenue	Funding					
	358 Storm Drainage Capital	260,000				
Total Funding		\$260,000	\$0	\$0	\$0	\$0



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: K
-------------------------------	--------------------------

SUBJECT:

Public Works: Authorization to purchase street right-of-way located at the northwest corner of Emma Lee Lane and Grangeville Boulevard, in the amount of \$21,700 plus escrow fees, Approve acceptance of the attached Grant Deed and Authorization for the City Manager to execute and the City Clerk to attest and file said deed with the Kings County Recorder's Office, and accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement. (APN 008-460-005).

RECOMMENDATION:

That the City Council, by motion:

1. Authorize the purchase of street right-of-way located at the at the north west corner of Emma Lee Lane and Grangeville Boulevard, as shown on the attached map, in the amount of \$21,700 plus escrow fees.
2. Accept the attached Grant Deed and authorize the City Manager to execute and the City Clerk to attest and file said deed with the Kings County Recorder's Office.
3. Accept the attached Purchase and Sale Agreement and authorize City staff to execute said agreement.

BACKGROUND:

City staff is preparing construction plans and coordinating the acquisition of street right of way necessary for the road widening along Emma Lee Lane, from Grangeville Boulevard to Jana Way. The right of way is necessary for development of street improvements, including curb ramps, utility relocations, and the installation of sidewalks and curb and gutters.

FISCAL IMPACT:

The FY 21 Capital Improvement Program Budget provides \$635,000 for construction, including contingencies. A copy of the Budget page is attached for Council review.

ATTACHMENTS:

GRANT DEED 008-460-005 EDDY

Agreement - 008-460-005 Stan Eddy

Emma Lee Lane Reconstruction Budget

Emma Lee Lane Crossing & Lift Pump Budget

ELL ROW 1722 Emma Lee Ln. (005) 4-13-21

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF HANFORD
900 S. 10th Ave.
Hanford, CA 93230

SEND TAX STATEMENTS TO:

CITY OF HANFORD
315 N. Douty Street
Hanford, CA 93230

GRANT DEED

**Exempt from Recording Fees Pursuant to Gov.
Code Section 27281 and Documentary Transfer
Tax Pursuant to Revenue and Taxation Code
Section 11922**

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less liens & encumbrances
remaining thereon at time of sale.

Signature of declarant or agent determining tax, firm name

Assessor's Parcel No. 008-460-005 X City of Hanford County of Kings

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, STAN EDDY BY FINAL DISTRIBUTION OF THE ESTATE OF GILBERT ALDEN RECORDED JANUARY 28, 1983, hereby **GRANT(S)** to the City of Hanford, a municipal corporation, the following described real property in the County of Kings, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF HEREOF

Dated: Aug. 30, 2021


STAN EDDY

CERTIFICATION OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Grant Deed dated _____ from _____ to the City of Hanford, a municipal corporation, is hereby accepted by order of the Council of said City of Hanford on _____, 20__ and the Grantee consents to the recordation thereof.

DATED: _____

MARIO CIFUENTEZ, II, City Manager

EXHIBIT "A"

THAT PORTION OF LOT 15, OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 15, SAID NORTHEAST CORNER LIES AT THE CENTERLINE OF THE 40.00 FOOT WIDE ROADWAY, AS SHOWN ON SAID MAPS, SAID ROADWAY IS NOW KNOWN AS EMMA LEE LANE;

THENCE SOUTH 89°51'28" WEST, ALONG THE NORTH LINE OF SAID LOT 15, A DISTANCE OF 20.00 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE SOUTH 00°04'20" EAST, ALONG THE EXISTING WEST RIGHT OF WAY LINE OF EMMA LEE LANE, ALSO BEING A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 159.75 FEET, TO THE NORTHEAST CORNER OF THE RIGHT OF WAY DEDICATED TO THE CITY OF HANFORD PER OFFER OF DEDICATION RECORDED AUGUST 11, 2000 AS DOCUMENT NUMBER 0014280, OFFICIAL RECORDS OF KINGS COUNTY;

THENCE, CONTINUING ALONG SAID DEDICATED LINE, SOUTH 89°55'40" WEST A DISTANCE OF 10.00 FEET;

THENCE SOUTH 00°04'20" EAST, ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 130.00 FEET;

THENCE SOUTH 45°34'10" WEST A DISTANCE OF 5.59 FEET, TO A POINT LYING 34.00 FEET WEST OF THE CENTERLINE OF EMMA LEE LANE;

THENCE NORTH 00°04'20" WEST, ALONG A LINE 34.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 132.61 FEET, TO A POINT OF CURVATURE;

THENCE NORTHERLY ALONG A TANGENT 895.00 FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE EAST, THROUGH A CENTRAL ANGLE OF 3°53'09" A DISTANCE OF 60.70 FEET, TO A POINT OF REVERSE CURVATURE;

THENCE NORTHERLY ALONG A TANGENT 845.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE WEST, THROUGH A CENTRAL ANGLE OF 3°53'09" A DISTANCE OF 57.31 FEET, TO A POINT LYING 30.00 FEET WEST OF THE CENTERLINE OF EMMA LEE LANE;

THENCE NORTH 00°04'20" WEST, ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 43.13 FEET, TO A POINT ON THE NORTH LINE OF SAID LOT 15;

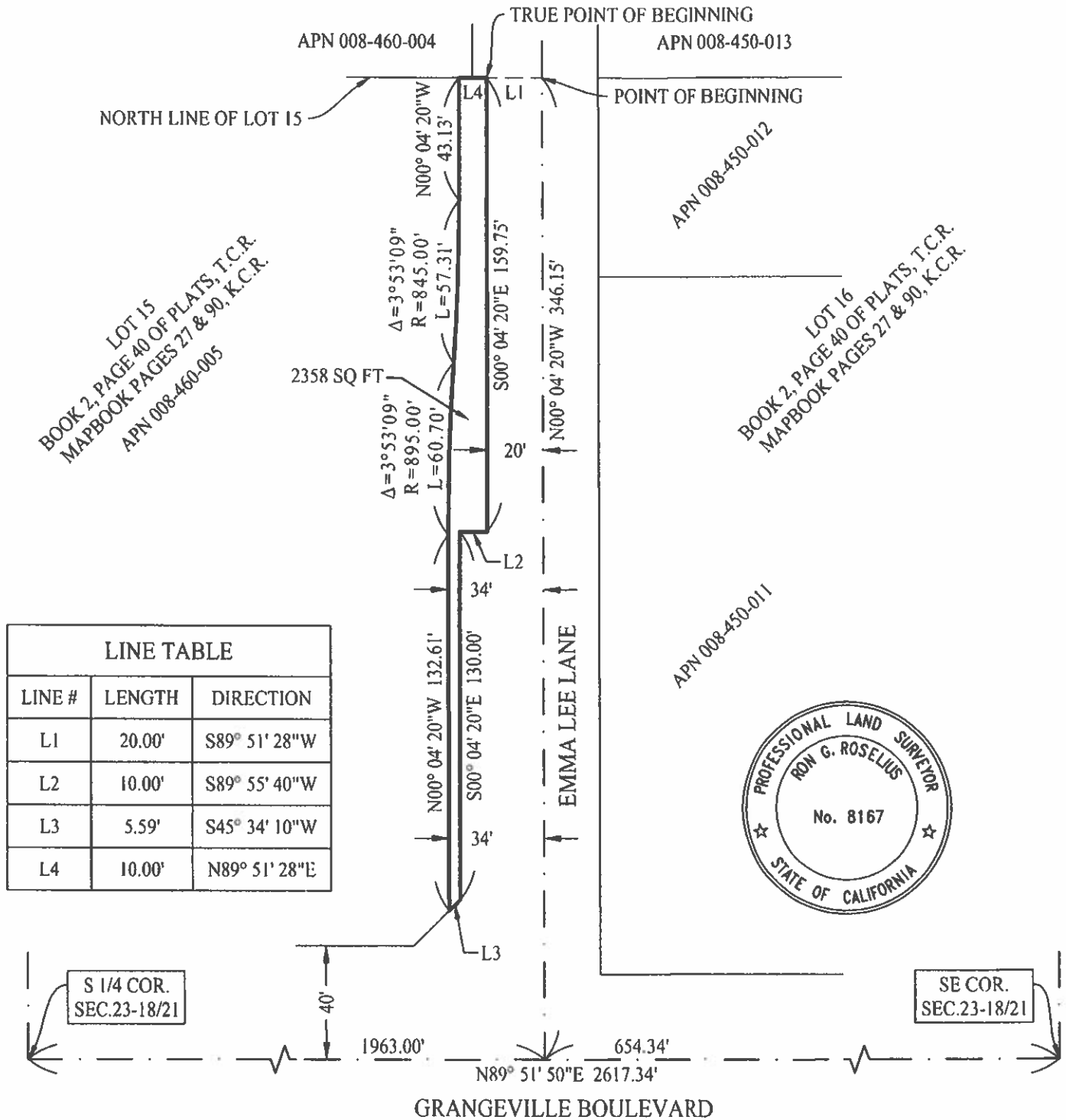
THENCE NORTH 89°51'28" EAST, ALONG THE NORTH LINE OF SAID LOT 15, A DISTANCE OF 10.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2358 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

EXHIBIT "A-1"



Attachment: GRANT DEED 008-460-005 EDDY (PW: Authorize the purchase of RW on Emma Lee Lane, Accept Grant Deed & Agreement (008-

CML ENGINEERS
ZUMWALT
HANSEN &
LAND SURVEYORS

609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

APN 008-460-005
2,358 S.F. RIGHT-OF-WAY
ACQUISITION
for
THE CITY OF HANFORD

Job No. 0778712
Drawn By: MO
Checked By: RR
Indexed By:
Date: 7/16/2020

Sheet No.
1 of 1

PARCEL NO.: 008-460-005

PROJECT: City of Hanford – Emma Lee Lane Reconstruction

OWNER: Stan Eddy

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into by and between
Stan Eddy by final Distribution of the Estate of Gilbert Alden Eddy recorded January 28, 1983
(hereinafter called "Grantor"), and

The City of Hanford, a Municipal Corporation,
(hereinafter called "City").

Instruments in the form of a Grant Deed ("Deed") covering the property particularly described therein ("Property"), will be executed concurrently with this Agreement and delivered to City representatives.

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

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement, except as stated in Paragraphs 2.E. and 2.F. below.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of \$21,700 as consideration in full for the Property, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid when title to the Property has vested in City free and clear of all liens, encumbrances, assessments, easements and leases recorded or unrecorded, except for recorded public utility easements and public right of way.

B.

B. RECORDATION OF INSTRUMENT - Accept the Deed and cause the same to be recorded in the office of the Kings County Recorder at such time as when clear title can be conveyed.

C. MISCELLANEOUS COSTS - Pay any escrow, title insurance, and recording fees incurred in this transaction. The City shall replace or relocate any irrigation sprinklers within the

acquired property to just outside of the property line and shall be restored to fully working condition, in-kind to current or better condition. Additionally, payment includes the purchase of an oak tree that shall be removed for the City project.

D. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which the Deeds record, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien as of the date of recordation of the Deeds.

E. CONSTRUCTION AND RESTORATION – The City shall, upon completion of construction, generally restore Grantor's remaining real property to a comparable or better condition than that which existed prior to City's project construction, to the extent reasonably practical. At no expense to the Grantor and at the time of construction, City will reconnect Grantor's existing driveway(s) to the adjacent public road at their present location and will relocate any impacted fences to the new right of way line. Upon completion of construction of said driveway(s), it/they will be considered as an encroachment under permit onto the adjacent public road, and is/are to be maintained, repaired and operated as such by Grantor in accordance with and subject to the laws, rules, and regulations of the public entity controlling said road.

Permission is hereby granted to City or its authorized agent to enter on Grantor's land to conform and reconnect Grantor's driveway(s) and relocate any fences as described herein. Grantor understands and agrees that after completion of the work described, said driveway(s) and fences will be considered as Grantor's sole property and Grantor will be responsible for their future maintenance and repair.

F. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Property.

3. The Grantor:

A. PAYMENT ON MORTGAGE OR DEED OF TRUST - Agrees that any or all monies payable under this Agreement up to and including the total amount of the unpaid principal and interest on the note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust, shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder. Grantor shall cooperate with the Escrow Officer in obtaining lien clearance documents from any and all creditors holding liens against the Property.

B. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said Property held by tenant of Grantor.

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

D. TITLE INDEMNITY AND WARRANTY - In consideration of the City waiving the requirements to clear any defects and imperfections in all matters of record title, the Grantor indemnifies and holds the City harmless from any and all claims that other parties may make or assert on the title to the Property. Grantor's obligation to indemnify the City shall not exceed the amount paid to the Grantor under this Agreement. Grantor hereby represents and warrants that he/she/they are the sole vested owners of the Property, holding all ownership and possessory rights, and are the authorized signatories to grant the rights referenced in this Agreement without conflict or claims from other parties.

E. HAZARDOUS SUBSTANCES - Represents and warrants, to the best of Grantor's knowledge, and after reasonable inquiry, the following:

During Grantor's ownership of the Property, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Property or Grantor's remaining adjacent property. Grantor further represents and warrants that Grantor has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Property, or Grantor's remaining adjacent property, which may have occurred prior to Grantor's ownership.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on or within the Property or Grantor's remaining adjacent property.

Grantor has not used the Property, or Grantor's remaining adjacent property, for any industrial operations that use hazardous substances. Grantor is not aware of any prior use of such property. Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Property or Grantor's remaining adjacent property. Grantors are not aware of any such prior installations. The purchase price of the Property being acquired reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or State law, City may elect to recover its cleanup costs from those who caused or contributed to the contamination.

F. TAX REPORTING AND WITHHOLDING - The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended by the Tax Reform Act of 1984, places special requirements for tax reporting and withholding on the parties to a real estate transaction where the transferor (Grantor) is a non-resident alien or non-domestic corporation or partnership, or is a domestic corporation or partnership controlled by a non-resident or non-resident corporation or partnership. In accordance with the provisions of Section 1445 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated thereunder, Grantor shall execute an affidavit under penalty of perjury setting forth Grantor's name, address, federal tax

identification number, and certifying whether Grantor is a "foreign person" in accordance with the provisions of the Internal Revenue Code. Further, tax withholding may be required in accordance with the California Revenue and Taxation Code Section 18662. It is specifically understood and agreed by Grantor that closing of this escrow is subject to, and contingent upon, deposit into escrow of a FIRPTA Affidavit of Non-Foreign Status and a California Form 593-C, Real Estate Withholding Certificate and associated required paperwork, completed and signed by Grantor, and Escrow Agent is hereby authorized and instructed to withhold from Grantor's proceeds amounts so required by these laws and to forward any amounts withheld to the appropriate taxing authority.

4. The Parties agree:

A. ESCROW - At City's option, to open an escrow in accordance with this Agreement at an escrow company of City's choice. Opening an escrow shall be at City's sole discretion and City may decide to process this transaction without the use of an escrow agent. However, if an escrow agent is utilized, this Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

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

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow, to apply to the County Tax Collector of said County for any refund of such taxes which may be due Grantor for the period after City's acquisition.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:
 - a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's property subject to this transaction as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement;
 - c) Disburse funds and deliver Deeds when conditions of this escrow have been fulfilled by City and Grantor.

d) Following recording of Deeds from Grantor, if requested by City, provide City with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$21,700 issued by Title Company of City's choice showing that title to the Property is vested in City, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:

- 1) Real Property Taxes for the fiscal year in which escrow closes;
- 2) Public utility easements and public rights of way;
- 3) Other items that may be approved in writing by City in advance of the close of escrow.

ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized.

B. MISCELLANEOUS REALTY ITEMS ACQUIRED - Payment in Clause 2.A. includes, but is not limited to, payment for 2,358 sq. ft., mailbox, drip line, shrubs, and an oak tree, which are considered to be part of the realty and are being acquired by City in this transaction.

C. JUDGMENT IN LIEU OF DEED - In the event Grantor does not deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain to pursue the acquisition of the Property, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

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

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

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

G. COUNTERPARTS - This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same document.

H. ELECTRONIC AND FACSIMILE SIGNATURES - In the event that the parties hereto utilize electronic or facsimile documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided following transmittal of the electronic or facsimile signature. Documents for recordation by the Clerk Recorder must contain original signatures.

I. NO THIRD-PARTY BENEFICIARIES INTENDED - Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

J. BINDING EFFECT - This Agreement shall inure to the benefit of and constitute a binding obligation upon the successors and assigns of the parties hereto.

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

GRANTOR:

Stan Eddy

By:  _____

Stan Eddy

Date: 07/15/21

GRANTOR'S ADDRESS:

1722 Emma Lee Lane
Hanford, CA 93230

CITY OF HANFORD

By: _____

Name:

Title:

Date: _____

MAILING ADDRESS OF CITY:

The City of Hanford
Public Works Department
900 S. 10th Avenue
Hanford, CA 93230

EXHIBIT "A"

THAT PORTION OF LOT 15, OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 15, SAID NORTHEAST CORNER LIES AT THE CENTERLINE OF THE 40.00 FOOT WIDE ROADWAY, AS SHOWN ON SAID MAPS, SAID ROADWAY IS NOW KNOWN AS EMMA LEE LANE;

THENCE SOUTH 89°51'28" WEST, ALONG THE NORTH LINE OF SAID LOT 15, A DISTANCE OF 20.00 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE SOUTH 00°04'20" EAST, ALONG THE EXISTING WEST RIGHT OF WAY LINE OF EMMA LEE LANE, ALSO BEING A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 159.75 FEET, TO THE NORTHEAST CORNER OF THE RIGHT OF WAY DEDICATED TO THE CITY OF HANFORD PER OFFER OF DEDICATION RECORDED AUGUST 11, 2000 AS DOCUMENT NUMBER 0014280, OFFICIAL RECORDS OF KINGS COUNTY;

THENCE, CONTINUING ALONG SAID DEDICATED LINE, SOUTH 89°55'40" WEST A DISTANCE OF 10.00 FEET;

THENCE SOUTH 00°04'20" EAST, ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 130.00 FEET;

THENCE SOUTH 45°34'10" WEST A DISTANCE OF 5.59 FEET, TO A POINT LYING 34.00 FEET WEST OF THE CENTERLINE OF EMMA LEE LANE;

THENCE NORTH 00°04'20" WEST, ALONG A LINE 34.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 132.61 FEET, TO A POINT OF CURVATURE;

THENCE NORTHERLY ALONG A TANGENT 895.00 FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE EAST, THROUGH A CENTRAL ANGLE OF 3°53'09" A DISTANCE OF 60.70 FEET, TO A POINT OF REVERSE CURVATURE;

THENCE NORTHERLY ALONG A TANGENT 845.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE WEST, THROUGH A CENTRAL ANGLE OF 3°53'09" A DISTANCE OF 57.31 FEET, TO A POINT LYING 30.00 FEET WEST OF THE CENTERLINE OF EMMA LEE LANE;

THENCE NORTH 00°04'20" WEST, ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 43.13 FEET, TO A POINT ON THE NORTH LINE OF SAID LOT 15;

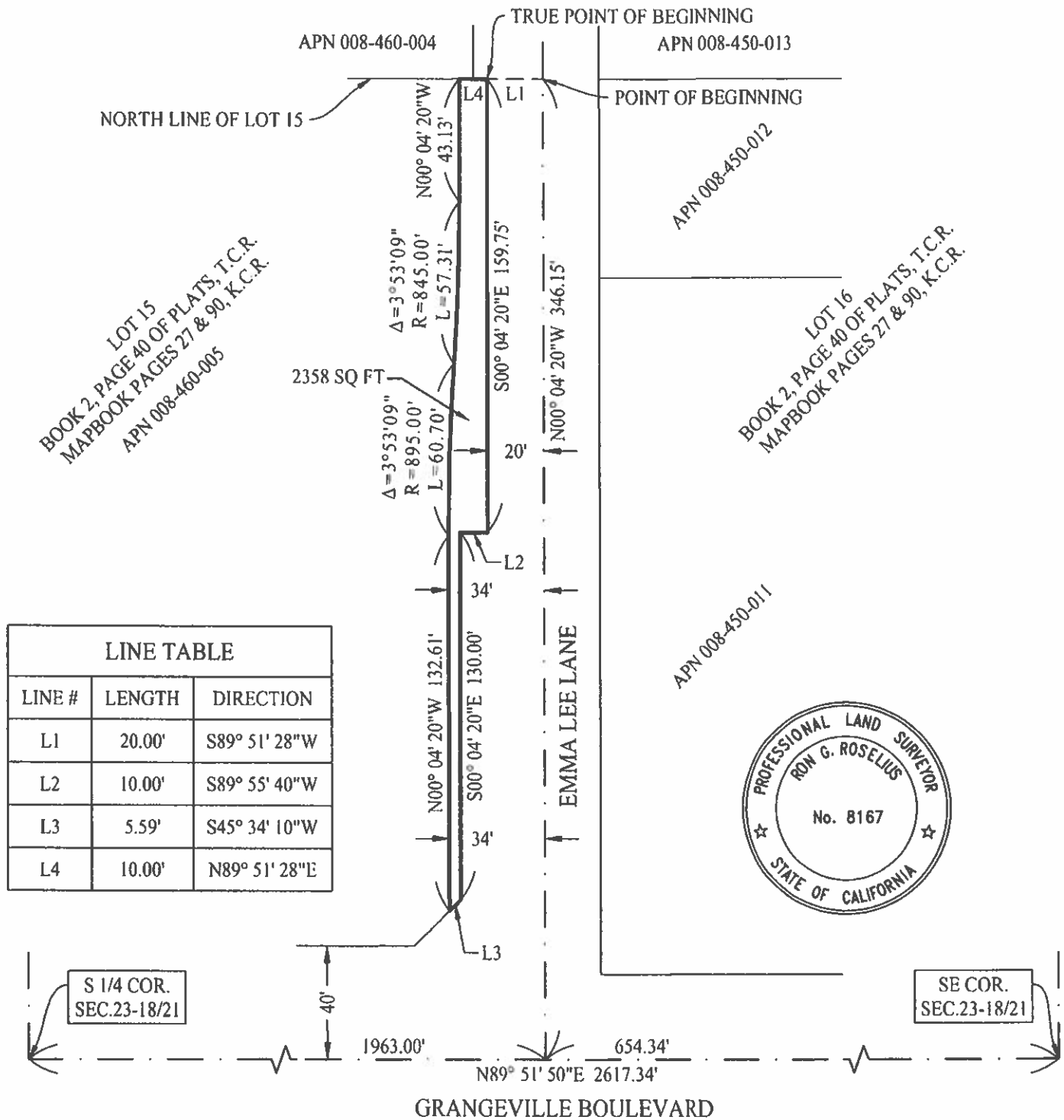
THENCE NORTH 89°51'28" EAST, ALONG THE NORTH LINE OF SAID LOT 15, A DISTANCE OF 10.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2358 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

EXHIBIT "A-1"



Attachment: Agreement - 008-460-005 Stan Eddy (PW: Authorize the purchase of RW on Emma Lee Lane, Accept Grant Deed & Agreement (008-

CML ENGINEERS
**ZUMWALT
HANSEN & ASSOCIATES**
LAND SURVEYORS

609 N. Irwin St.
Hanford, CA 93230
Office: (559) 582-1056
Fax: (559) 584-4143

APN 008-460-005
2,358 S.F. RIGHT-OF-WAY
ACQUISITION
for
THE CITY OF HANFORD

Job No. 0778712
Drawn By: MO
Checked By: RR
Indexed By:
Date: 7/16/2020

Sheet No.

1 of 1

City of Hanford Fiscal Year 2018-2019 Budget

Emma Lee Lane Reconstruction, Grangeville Boulevard to Conquistador Street

Project Background:

This project will involve the reconstruction of Emma Lee Lane, from Grangeville Boulevard to Conquistador Street. Improvements to include installation of curb, gutter, sidewalk, ADA ramps, storm drainage collection system and reconstruction of street.

Existing Conditions:

Emma Lee Lane is a residential street that lacks a proper drainage system and is in need of total reconstruction.

Project Justification:

This project will extend the useful life of the street by approximately 25-30 years.

Fiscal Implications:

Funding for this project will be allocated from gas tax reserves.

Project Budget Summary:

		5-Year Funding Allocation				
		2019	2020	2021	2022	2023
Expenditure	Program or Project	Design	Construction			
	Engineering / Inspection	15,000	8,000			
	Construction		350,000			
	Contingency		35,000			
	Department Overhead	3,000	2,000			
	Total Expenditure	\$18,000	\$395,000	\$0	\$0	\$0
Revenue	Funding					
	040 Gas Tax (2105)	18,000	395,000			
	Total Funding	\$18,000	\$395,000	\$0	\$0	\$0

Emma Lee Lane Crossing / Lift Station #37

Project Background:

Pursuant to an agreement between the City of Hanford and the People's Ditch Company, the City of Hanford is responsible for any and all road crossings over the ditch within the city limits.

Existing Conditions:

During a recent inspection, the People's Ditch Company notified the City that the galvanized culverts that transfer water under Emma Lee Lane were failing and in need of repair or replacement. Storm Lift Station #37 also discharges under this crossing and must be relocated to affect the repairs.

Project Justification:

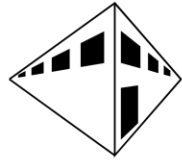
To prevent a failure of the pipes and the possible subsequent road collapse, the culvert pipes must be repaired or replaced and the lift station outlet relocated.

Fiscal Implications:

Funding for this project will be allocated from storm drainage reserves.

Project Budget Summary:

		3-Year Funding Allocation				
		2019	2020	2021	2022	2023
Expenditure	Program or Project	Construction				
	Engineering / Inspection	7,500				
	Construction	225,000				
	Contingency	25,000				
	Department Overhead	2,500				
Total Expenditure		\$260,000	\$0	\$0	\$0	\$0
Revenue	Funding					
	358 Storm Drainage Capital	260,000				
Total Funding		\$260,000	\$0	\$0	\$0	\$0



Simon & Hower, Inc.

REAL ESTATE APPRAISAL

Phone: (559) 582-9112

1306 N. Irwin Street
Hanford, CA 93230

Fax: (559) 582-9114

SUMMARY OF THE BASIS FOR THE AMOUNT ESTABLISHED AS FAIR MARKET VALUE

The following is a summary of the basis for the appraised value I concluded for the subject property. The appraisal was prepared to comply with Code of Civil Procedure Section 1255.010 and to assist the City of Hanford in acquiring property by negotiated agreement with Owners, so as to avoid litigation, relieve congestion in the courts, and assure consistent treatment for Owners as required by Government Code Section 7267. The appraisal was made in accordance with accepted appraisal principles, consistent with California valuation law. A statement of the appraisal process, which was the basis for the valuation conclusions, follows:

Date of Appraisal:	April 13, 2021
Date of Valuation Used (Effective Date):	September 4, 2020
Fair Market Value of the Acquisition:	\$17,700
Project Identification:	Emma Lee Lane ROW
Record Owner:	Stan Eddy
Assessor's Parcel Number (Larger Parcel):	008-460-005
Larger Parcel Size	82,764 square feet
Property Address:	1722 Emma Lee Lane Hanford, Ca 93230
Sales History:	The property has not sold in prior three years. It was marketed for sale asking \$625,000 or approximately \$8 per square foot two years ago. The listing was terminated and has not been actively marketed since that time.
Price paid:	NA
Interest being considered for acquisition:	Fee acquisition (see attached map)
Buildings or improvements	Single-family residence
Area of property to be acquired:	2,358 square feet
Temporary Construction Easement:	None
Improvements in the acquisition:	Mailbox, drip line, shrubs and pomegranate tree.
Severance Damage:	Subject to the extraordinary assumptions.
Topography:	Near street grade.
Shape:	Rectangular
Access:	Emma Lee Lane & Grangeville Boulevard.
Utilities:	Municipal
Offsite Improvements:	Partial along Emma Lee Lane. All offsites along Grangeville Boulevard.

Attachment: ELL ROW 1722 Emma Lee Ln. (005) 4-13-21 (PW: Authorize the purchase of RW on Emma Lee Lane, Accept Grant Deed &

Hypothetical Condition: For purposes of valuing the remainder, the acquisition is assumed to have been completed.

Extraordinary Assumption: I have assumed the City of Hanford will leave the remainder frontage in similar or better condition to what currently exists, including a driveway approach and reconnection to existing utilities.

Highest and Best Use Analysis

Highest and best use is “the reasonably probable use of a property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.”¹ Highest and best use analysis is used in the appraisal process to identify comparable properties and, where applicable, to determine whether the existing improvements should be retained, renovated, or demolished. The results of the highest and best use analysis are as follows:

Present Use:	Residence
Applicable Zoning:	C-N (Neighborhood Commercial)
Probability of a Zone Change:	Minimal
Applicable general plan designation:	C-N (Neighborhood Commercial)
Highest and Best Use as Vacant:	Commercial development
Highest and Best Use as Improved	Demolish residence and build commercial when feasible.

Acquisition: The acquisition runs along the eastern edge of the subject property and is a total of 2,358 square feet. The acquisition is long, narrow and encompasses underlying land and site improvements. No damage to the remainder result from the acquisition; therefore, only the underlying land value is established, in addition to the site improvements lost in the fee acquisition. Items within the fee include a mailbox, landscape and drip irrigation lines.



¹ The Dictionary of Real Estate, 6th Edition; Pg. 109

Improvements within the acquisition that cannot be replaced include a pomegranate tree, oak tree, and miscellaneous landscape. Marshall Valuation Service and the 2020 Assessor's Handbook were utilized to determine the value.

Improvements Lost in Fee Acquisition						
	Size	Unit	Cost New /Unit	Total Cost	% Depreciated	Value
Oak Tree	1	Tree	\$1,000.00	\$1,000	0%	\$1,000
Pomegranate tree	1	Tree	\$250.00	\$250	0%	\$250
Misc. Landscape			\$250.00	\$250	0%	\$250
Total						\$1,500

Improvements that can be reconstructed or relocated include drip irrigation lines and a mailbox. Entrepreneurial profit is added to the total as incentive. These items are included in the following chart:

Cost to Replace Improvements In the Fee Acquisition	
Mailbox relocation	\$500
Drip line relocation	\$200
Sub-total	\$700
Profit @ 15%	\$105
Total	\$805

Underlying Land Value

The sales comparison approach is one of the three accepted approaches value. The income capitalization approach and the cost approach were not considered to be applicable to this appraisal problem. The sales comparison approach is used to derive a value by comparing the property being appraised to similar properties that have recently sold. This is the preferred method of valuation when good data is available. The following sales were utilized to determine fair market value of the underlying land.

COMPARABLE LAND SALES					
	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Location	East side of 11th Avenue, north of Lacey Boulevard	NWC of Garner Avenue and Goleta Way	629 West 6th Street	NEC 11th Avenue and Fargo Avenue	2584 N 10th Avenue
City	Hanford	Hanford	Hanford	Hanford	Hanford
APN	010-510-005	012-250-012	012-070-003 & 026	007-270-004	007-110-053
Buyer	Aahir Group Management LLC	Salvateirra	Marquez Investment Group LLC	Love in an Elevator LLC	Parker et al
Seller	Ryan	Park	Irons	Blackheart Capital Inc.	EM-50 UAV Darco LLC
Date of Sale	June-2018	May-2018	September-2017	February-2017	August-2016
Source	Broker	Broker	Seller	Buyer	Broker
Sale Price	\$430,000	\$200,000	\$260,000	\$330,000	\$300,000
Price/S.F.	\$15.19	\$8.06	\$11.48	\$10.98	\$4.99
Size (Acres)	0.65	0.57	0.52	0.69	1.38
Size (S.F.)	28,314	24,829	22,651	30,056	60,113
Zoning	MX-C	MX-C	MX-D	N-C	N-C
Off-sites	C, G, & SW	None	Partial C, G & SW	C, G, & SW	C, G, & SW
Utilities	All Municipal	None	All Municipal	All Municipal	All Municipal
Orientation	Interior	Corner	Corner	Interior	Interior
Rating	Superior	Sl. Superior	Superior	Superior	Similar

Based on the preceding sales it is my opinion that the subject's underlying land value is \$6.50 per square foot.

82,764 S.F. X \$6.50/ S.F. =	\$537,966
------------------------------	-----------

Under eminent domain law, the same unit value is applied to the area to be acquired.

2,358 S.F. X \$6.50/ S.F. =	\$15,327
-----------------------------	----------

Valuation Conclusions: The fair market value of the acquisition is concluded as follows:

FAIR MARKET VALUE							
1	Value of Larger Parcel		82,764	S.F. X	\$6.50	per S.F. =	\$537,966
2	Value of the part taken						
	Fee acquisition		2,358	S.F. X	\$6.50	per S.F. =	-\$15,327
3	Value of the remainder before the taking						\$522,639
4	Value of the remainder after without benefits						
	Remainder parcel		80,406	S.F. X	\$6.50	per S.F. =	\$522,639
	Improvements lost in the acquisition						-\$1,500
	Total value in the after condition						\$521,139
5	Severance Damages						\$1,500
6	Value of the remainder after with benefits						
	No benefits						\$521,139
7	Net Damages						\$1,500
8	Fair Market Value						
	Value of the part taken						\$15,327
	Net Damages						\$1,500
	Costs to Cure						\$805
	Fair Market Value						\$17,632
	Rounded						\$17,700

CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I Jacob Hower have completed the continuing education program for Designated Members of the Appraisal Institute.



Jacob I. Hower, MAI, R/W-AC
 Certified General Real Estate Appraiser
 California License 3002762 (Expires 11/14/2022)



North view from Grangeville Blvd. Former listing sign at frontage.



Pomegranate tree



Landscape, drip line and mailbox



North end of the fee acquisition



KINGS COUNTY ASSESSOR'S MAP
EMMA LEE COLONY
PORTION OF E 1/2 OF SE 1/4 SEC. 23-18-21

Page 9 of 14

CONQUISTADOR MANOR
TR. No. 333



Fee Acquisition Legal Description

EXHIBIT "A"

THAT PORTION OF LOT 15, OF EMMA LEE COLONY, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 2, OF PLATS, AT PAGE 40, TULARE COUNTY RECORDS, A HAND COPY OF SAID MAP WAS RECORDED IN THE COUNTY OF KINGS IN THE MAP BOOK AT PAGE 27, AND A TRUE PHOTOGRAPHIC COPY OF SAID MAP RECORDED IN TULARE COUNTY WAS RECORDED IN THE COUNTY OF KINGS IN MAP BOOK AT PAGE 90, SAID PROPERTY LIES IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 18 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT APPROVED BY THE U. S. SURVEYOR GENERAL'S OFFICE ON MARCH 31, 1855, LYING IN THE CITY OF HANFORD, COUNTY OF KINGS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 15, SAID NORTHEAST CORNER LIES AT THE CENTERLINE OF THE 40.00 FOOT WIDE ROADWAY, AS SHOWN ON SAID MAPS, SAID ROADWAY IS NOW KNOWN AS EMMA LEE LANE;

THENCE SOUTH 89°51'28" WEST, ALONG THE NORTH LINE OF SAID LOT 15, A DISTANCE OF 20.00 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE SOUTH 00°04'20" EAST, ALONG THE EXISTING WEST RIGHT OF WAY LINE OF EMMA LEE LANE, ALSO BEING A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 159.75 FEET, TO THE NORTHEAST CORNER OF THE RIGHT OF WAY DEDICATED TO THE CITY OF HANFORD PER OFFER OF DEDICATION RECORDED AUGUST 11, 2000 AS DOCUMENT NUMBER 0014280, OFFICIAL RECORDS OF KINGS COUNTY;

THENCE, CONTINUING ALONG SAID DEDICATED LINE, SOUTH 89°55'40" WEST A DISTANCE OF 10.00 FEET;

THENCE SOUTH 00°04'20" EAST, ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 130.00 FEET;

THENCE SOUTH 45°34'10" WEST A DISTANCE OF 5.59 FEET, TO A POINT LYING 34.00 FEET WEST OF THE CENTERLINE OF EMMA LEE LANE;

THENCE NORTH 00°04'20" WEST, ALONG A LINE 34.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 132.61 FEET, TO A POINT OF CURVATURE;

THENCE NORTHERLY ALONG A TANGENT 895.00 FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE EAST, THROUGH A CENTRAL ANGLE OF 3°53'09" A DISTANCE OF 60.70 FEET, TO A POINT OF REVERSE CURVATURE;

THENCE NORTHERLY ALONG A TANGENT 845.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE WEST, THROUGH A CENTRAL ANGLE OF 3°53'09" A DISTANCE OF 57.31 FEET, TO A POINT LYING 30.00 FEET WEST OF THE CENTERLINE OF EMMA LEE LANE;

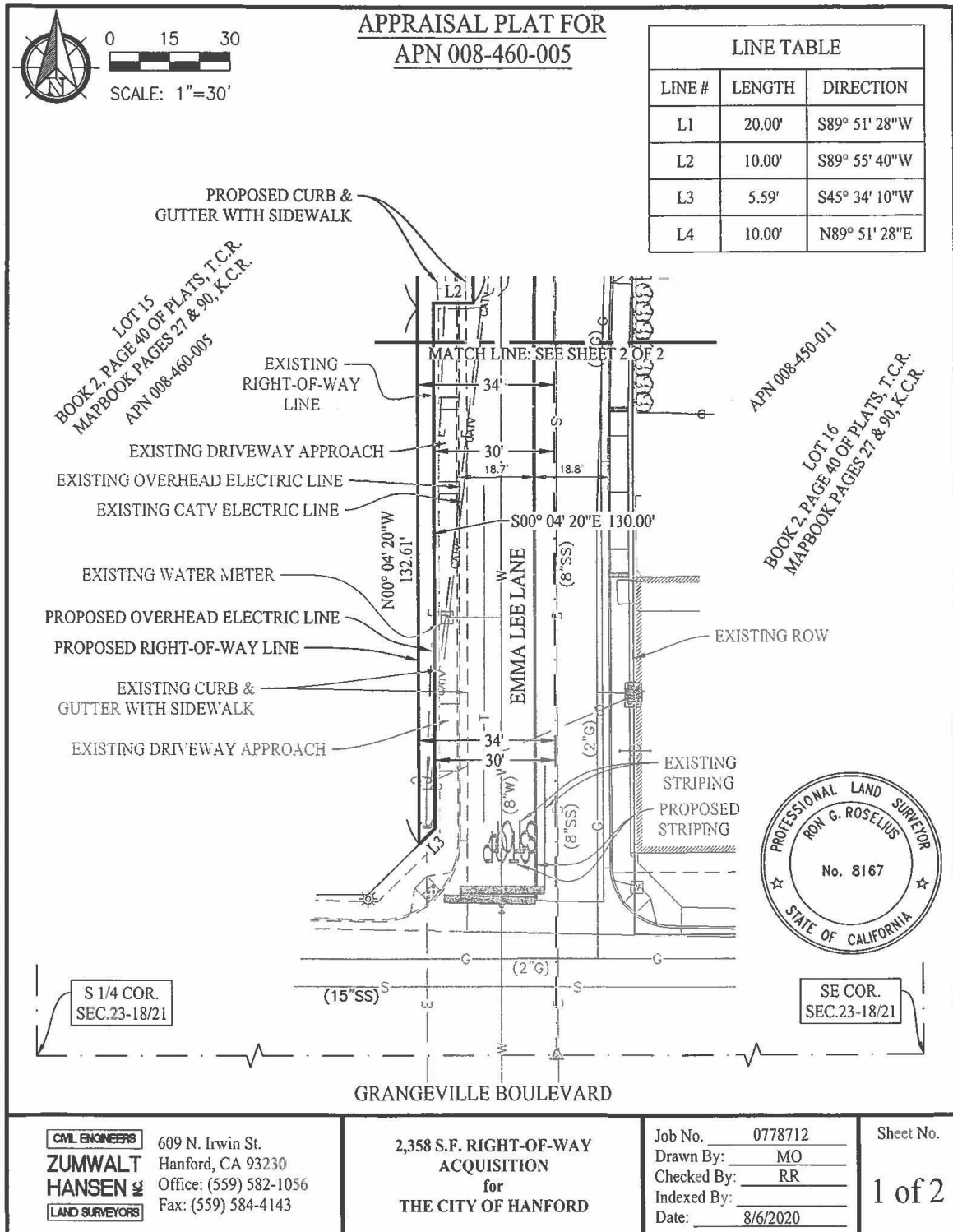
THENCE NORTH 00°04'20" WEST, ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE CENTERLINE OF EMMA LEE LANE, A DISTANCE OF 43.13 FEET, TO A POINT ON THE NORTH LINE OF SAID LOT 15;

THENCE NORTH 89°51'28" EAST, ALONG THE NORTH LINE OF SAID LOT 15, A DISTANCE OF 10.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2358 SQUARE FEET, MORE OR LESS.

ATTACHED HERETO IS A PLAT LABELED EXHIBIT "A-1" AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



End of Report



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: L
-------------------------------	--------------------------

SUBJECT:

Public Works: Award of an annual contract to The Experienced Gardener of Visalia, CA to perform spraying services for the City's drainage basins and easements for an amount not to exceed \$36,500.

RECOMMENDATION:

That the City Council, by motion, award a contract to The Experienced Gardener of Visalia, CA to perform spraying services for the City's drainage basins and easements for an amount not to exceed \$36,500.

BACKGROUND:

The Storm Drainage Division is responsible for the maintenance and operations of drainage basins, easements and rights of way dealing with the storm drainage functions. Approximately 5 years ago, the regulations dealing with storm water coupled with the regulations dealing with pesticide handling near bodies of water necessitated the City to utilize contracted professional spraying services in order to avoid having to specialty train staff and keep up with specialty licenses.

Currently, the storm drainage maintenance facilities include over 215 acres of basins and nearly 21 miles of fence lines and easements.

City staff contacted multiple spraying companies and the Experienced Gardener was the only company to submit a response that met the criteria established by the City. The Experienced Gardener is currently the contractor for the Stormwater Division, the City's solar fields and for various areas at the Wastewater Treatment Plant.

The work completed by The Experienced Gardner has shown staff that The Experienced Gardener is qualified to provide the services requested for by the City. The price submitted is competitive in the marketplace for the work required and is in line with previous contracts with The Experienced Gardener.

FISCAL IMPACT:

The FY21/22 Storm Drainage Operating Budget provides \$50,000 for vegetation control.

ATTACHMENTS:

Exp. Gardener estimate

THE EXPERIENCED GARDENER
PO Box 6460
Visalia, CA 93290
559 732-1667
559 732-1679 FAX

SERVICE ESTIMATE 2021-2022

CITY OF HANFORD
900 SOUTH 10TH AVE
HANFORD, CA 93230

PHONE: 559-381-6803
CELL:
EMAIL: jwbpatriot@yahoo.com

THANK YOU FOR CHOOSING THE EXPERIENCED GARDENER
FOLLOWING IS THE ESTIMATED COST FOR THE SERVICE YOU REQUESTED. PLEASE EMAIL US
ESTIMATING@EXPERIENCEDGARDENER.COM

SITE: Various

SERVICES	FREQUENCY	COST
Vegetation Control	Yearly/Winter	\$ 36,500.00

- This includes no cost follow ups (2-3) to ensure weed control
- This includes tops only * except for location #21 (#21 treat solid)
- Removed lot # 1 & # 19 from spray rotation
- The spray areas may be reduced from the presence of local vagrant/homeless encampment areas

Costs reflect a single treatment/application therefore if 2 or more is recommended to control the situation the total estimated price will be determined by the number of applications.

**Vegetation Control services need to be watered in 30-45 days, if no rain is due during that time manual watering of the site with a sprinkler or water truck may be necessary to ensure the material prevents weed germination. **

The Experienced Gardener is licensed and insured as required by the state of California.
All weed control service contracts include follow up treatments as required after the initial treatment. Follow up treatments are designed to keep a relatively weed free environment throughout the season. However, additional follow ups may be required and will be billed as needed.

ADDITIONAL TREATMENTS MAY BE REQUIRED DEPENDING ON THE EXISTING ACTIVITY, AND WILL BE BILLED AT AN ADDITIONAL COST.

I agree to allow the Experienced Gardener to start the suggested application.
I understand that I will be called before each service and will give a verbal authorization before the service is completed unless otherwise advised. All late payments will be subject to an interest charge of 1.5% per month.

Please sign: _____ Date: _____

Attachment: Exp. Gardener estimate (PW: Storm Drain Basin Spraying Project)



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021

AGENDA SECTION: M

SUBJECT:

Public Works: Award the annual contract for curb and gutter, sidewalk, driveways and ADA ramp repair work to Cen-Cal Construction of Bakersfield CA for a not to exceed budgeted amount of \$90,000.00.

RECOMMENDATION:

That the City Council, by motion, award the annual contract for curb and gutter, sidewalk, driveways and ADA ramp repair work to Cen-Cal Construction, of Bakersfield CA for a not to exceed budgeted amount of \$90,000.00.

BACKGROUND:

On July 7, 2021 a request for bids to provide curb, gutter, sidewalk and ADA improvements was provided to several local contractors and published on the Tulare-Kings, Central California Builders Exchange, Dodge Plan Room and Kern Builders Exchange.

On August 10, 2021 bids were opened from four (4) companies as shown in the table below.

Contractor	Sidewalk Cost SF	Curb and Gutter Cost LF	ADA SF Cost	Driveway SF Cost
Cen-Cal Const.	\$10.00	\$60.00	\$24.00	\$16.75
Sierra Range Const.	\$16.50	\$70.50	\$26.75	\$28.00
Todd Companies	\$37.50	\$204.00	\$41.50	\$58.20
Papich Const.	\$190.00	\$200.00	\$250.00	\$200.00

Bids were evaluated based upon previous year's work quantities. Based upon that evaluation, the low cumulative bidder was Cen-Cal Construction of Bakersfield CA. See attached Bid Tabulation.

FISCAL IMPACT:

Funds for the proposed contract are budgeted at \$90,000 for construction and contingency. Funds will come from the three attached CIP projects which are funded from the Gas Tax and Storm Drainage Reserve accounts.

ATTACHMENTS:

Bid Tabulation

2022 Annual Concrete Contract

Contractor	Replace Curb and Gutter LF	Replace Sidewalk SF	Replace Drivewat W/Rebar SF	Replace ADA Ramp SF
Cen-Cal Construction	\$60.00	\$10.00	\$16.75	\$24.00
Sierra Range Construction	\$70.50	\$16.50	\$28.00	\$26.75
Papich Construction	\$200.00	\$190.00	\$200.00	\$250.00
Todd Companies	\$204.00	\$37.50	\$58.20	\$41.50



CITY OF HANFORD

Statement of Authorized Representative

ANNUAL CONTRACT FOR
CURB,GUTTER,SIDEWALK,DRIVEWAYS AND ADA RAMP
CONCRETE REPAIRS PROJECT
Project:
Project No.
Bid Opening: 08/10/2021 at 2pm | Finance Department

DATE: 8/10/2021

This is to certify that I Aubrey Carri Authorized Representative
received all sealed bids per the attached Bid Log for the above said project and were
opened in my presence on 08/10/2021.

*The Authorized Representative has substantial knowledge to the bid opening process
and will provide credible information when and if necessary for processing of the bids at the bid
opening.*

Aubrey Carri
Print Name of Authorized Representative

Aubrey Carri
Signature

Accounting Technician
Title:

acarri@cityofhanfordca.com
Email Address

8/10/2021
Date

Attachment: 2022 Annual Concrete Contract (PW: Award annual concrete contract)

BID LOG



Project: ADA Ram Concrete Repairs Project

Bid Opening: 08/10/2021, 2pm | Finance Department

Attachment: 2022 Annual Concrete Contract (PW: Award annual concrete contract)

NOTICE TO CONTRACTORS

City of Hanford- Department of Public Works
 Invitation to Bid
 Project Budget: \$90,000.00

SEALED PROPOSALS will be received at the office of the Finance Director, 315 North Douty Street, Hanford, CA, 93230-3951, until 2:00 p.m. on Tuesday, August 10, 2021, at which time they will be publicly opened and read for performing work in accordance with Plans and Specifications, therefore, as follows:

**ANNUAL CONTRACT FOR CURB, GUTTER, SIDEWALK, DRIVEWAYS AND ADA
 RAMP CONCRETE REPAIRS PROJECT**

Bids are required for the entire work as described herein:

See attached Scope of Services

An executed copy of the contract will be issued to the successful bidder that shall constitute acceptance of the Bidder's Proposal

The City reserves the right to reject any or all proposals.

Plans, specifications, and proposal forms to be used for bidding can only be obtained at;

Public Works Office
 900 South 10th Avenue, Hanford
 California 93230-5234

Copies may also be examined at the following Builders Exchanges:

- * Central California Builders Exchange (Fresno)
- * Dodge Plan room
- * Tulare-Kings Builders Exchange
- * Kern Builders Exchange

Project questions shall be directed to: Russ Sterling, Streets Superintendent
 City of Hanford
 900 South 10th Avenue
 Hanford, CA 93230
RSterling@cityofhanfordca.com
 (559) 585-2565

Attachment: 2022 Annual Concrete Contract (PW: Award annual concrete contract)

CITY OF HANFORD

**ANNUAL CONTRACT FOR CURB, GUTTER, SIDEWALK, DRIVEWAYS AND ADA RAMP
CONCRETE REPAIRS PROJECT**

This contract is made and entered into this _____ day of _____ 2021, by and between the City of Hanford, a Municipal Corporation ("City"), and _____ ("Contractor")

The undersigned hereby agrees to the terms of the contract, which shall run from the date signed by City Official through June 30, 2022

1. Scope of Services

The Contractor hereby agrees to perform curb, gutter, sidewalk, driveway and ADA ramp repair services at various locations in the City of Hanford, in accordance with all provisions of this Agreement. The total amount of work anticipated to be completed for the fiscal year is approximately \$90,000. The City shall perform all demolition work and inspections. The Contractor shall construct the requested concrete work including compaction, forming, pouring, finishing, and providing all materials, labor and incidentals necessary to repair curb, gutter, sidewalk, driveway approaches and ADA ramps. All ADA repairs shall include detectable warning surfaces meeting ADA compliance. All work performed shall meet City Standards and Specifications. Concrete shall conform to Section VI, Subsection 1 "Portland Cement Concrete" of City of Hanford Standard Specifications. Concrete for curbs, gutters, sidewalks and curb ramps shall be a minimum five sack mix with 28-day compression strength of 2,500 psi minimum.

Demolition shall be performed by the City and shall include saw cutting, removing, clearing, grubbing and hauling of materials at a specific work area. Sprinklers or other appurtenances damaged during demolition shall be repaired by the City. Damages occurring after the demolition work is completed shall be the responsibility of the Contractor. The Contractor shall grade and compact the work area to the required compaction, per City Standards, prior to any concrete replacement, including importing of material if needed. The City shall provide compaction testing and shall report any deficiencies to the Contractor for corrections. The Contractor shall work with the City on scheduling of jobs based on the City work load. The amount of \$90,000 is a budget for repairs; no guarantee of the entire budget is implied. City staff will identify locations, meet with contractor and guarantee a minimum value of work to be set at \$3,000 based off of final unit cost of winning bid, per job. The Contractor shall have 10 working days to complete all work as agreed upon by the City and Contractor. All scheduling and agreed upon start dates will be communicated via email between the City and the contractor, thus beginning the 10-day completion period. Contractor shall remove all debris, including spoils and excess materials after the completion of work. If the Contractor fails to be available for work in a timely manner, or leaves jobs incomplete for more than 10 working days, the City reserves the right to void the contract and use an outside vendor for needed repairs.

Attachment: 2022 Annual Concrete Contract (PW: Award annual concrete contract)

2. Notice to Contractor Requirements

- A. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- B. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- C. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

3. Prevailing Wage Requirement

In accordance with the provisions of Section 1770 to 1780 of the Labor Code, the City of Hanford has ascertained that the general prevailing rate of per diem wages applicable to the work to be done is contained in the wage schedule of the General Prevailing Wage Determinations made by the State of California Director of Industrial Relations. A copy of said schedule is now on file in the office of the City Engineer and by reference incorporated herein as if set out in full.

The Contractor to whom the contract is awarded shall pay not less than the specified wages to all workmen employed in the execution of the contract.

The Contractor agrees to comply with Sections 1810-1817 of the Labor Code prohibiting employment for over eight (8) hours in any one day or forty (40) hours in one week unless compensated at the rate of 1½ times the basic rate of pay (LC 1815).

4. Insurance Requirements

The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1. Insurance Service Office Commercial General Liability coverage "occurrence" form CG 2010 (Ed. 11/85) for ongoing operations and CG 2037 for completed operations.
- 2. Insurance Services Office form Number CA 0001 (Ed. 10/01) covering Automobile Liability, Code 1 "any auto."
- 3. Workers' Compensation Insurance as required by the Labor code of the State of California and Employers Liability Insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Comprehensive General Liability: TWO MILLION AND NO/100 DOLLARS (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
2. Automobile Liability: ONE MILLION AND NO/100 DOLLARS (\$1,000,000) combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability-Automobile Liability Coverages.
 - a. The City, its officers, officials, employees and volunteers are to be covered as insured with respect to liability arising out of omissions and/or activities performed by, or on behalf of, the Contractor; products used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
 - d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

- a. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- b. Contractor shall cause each of its insurers to waive all rights of subrogation against the City and the City's elected and appointed officers, officials, employees and volunteers.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. The only acceptable form for approval is the CG 2010, or its equivalent, for ongoing operations; the CG 2037, or its equivalent, for completed operations relating to commercial general liability; and the CA 0001 for automobile liability with Code 1, "any auto." All forms and endorsements are to list the City and its elected and appointed officers, officials, employees and volunteers as additional insured's. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

5. City Indemnification

To the fullest extent allowable by law, Contractor agrees to indemnify, defend and hold harmless the City and its officials, officers, employees, agents and volunteers from and against all claims, demands, actions, injuries, liabilities, losses, costs or damages, direct or indirect, and any and all attorneys' fees and other expenses which City or its officials, officers, employees, agents or volunteers may sustain or incur as a consequence of or are in any way related to Contractor's or its owners, directors, officers, managers, employees, agents and subcontractor's willful or negligent acts or omissions in the performance of the services and Contractor's responsibilities and obligations to be performed under this agreement or its failure to perform or comply with any of its obligations or responsibilities contained in this agreement; excluding, however, such liability, claims, losses, damages or expenses arising from City's sole negligence or willful acts. This duty to indemnify, defend, and hold harmless shall survive the termination of this agreement. If Contractor maintains additional coverage or higher limits than those required herein, then City shall be entitled to additional coverage or higher limits maintained by Contractor.

6. **Hold harmless**

To the fullest extent allowable by law, contractor shall hold harmless, defend at its own expense, and indemnify Agency against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of contractor or its officers, agents or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from Agency's sole negligence or willful acts. If the contractor maintains additional coverage or higher limits than those required within the Insurance Requirements section, then entity shall be entitled to additional coverage or higher limits maintained by contractor.

7. **Time of Completion**

The City shall issue a request for repairs to the Contractor, and work shall be completed within 10 days of each request for repairs.

8. **Compliance with Laws**

Contractor shall use the proper standard of care in performing the services and shall comply with all applicable federal, state and local laws, codes, ordinances and regulations. In addition, if the request for proposal to provide professional services which are the subject of this contract cited any federal or state financial assistance involved in the project for which the services are provided, the Contractor shall perform all services in accordance with all applicable federal and state laws, rates and regulations.

9. **Licenses**

Contractor represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to lawfully and competently perform the services. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect, or obtain at all times during the term of this contract, any licenses, permits, insurance and approvals which are legally required of Contractor to lawfully and competently perform the services. Contractor shall maintain a City of Hanford business license.

10. **Assignment and Subcontracting**

The parties recognize that a substantial inducement to City for entering into this contract is the reputation, experience and competence of Contractor. Assignments of any or all rights, duties or obligations of the Contractor under this contract will be permitted only with the express consent of the City, which consent may be withheld in the sole and absolute discretion of City. Contractor shall not subcontract any portion of the services to be performed under this contract without the written consent of the City, which consent may be withheld in the sole and absolute discretion of City. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this contract shall: (1) create any contractual relationship between City and subcontractor; (2) create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor; or (3) relieve Contractor of any of its obligations and responsibilities under this contract.

11. Attorney's Fees

If an action at law or in equity is necessary to enforce or interpret the terms of this contract, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this contract or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in the County of Kings, State of California for any proceeding arising hereunder.

12. Sole and Only Contract

This contract supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this contract acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this contract, and no other agreement, statement or promise shall be valid or binding.

13. Invalidity

If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

14. Amendment

No change, amendment or modification of this contract shall be valid unless the same be in writing and signed by the parties hereto.

15. Governing Law

This contract shall be construed and governed pursuant to the laws of the State of California.

16. Waiver

Waiver of a breach or default under this contract shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this contract.

17. Authority to Enter Contract

Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the contract. Each party warrants that the individuals who have signed this contract have the legal power, right and authority to make this contract and to bind each respective party.

18. **Notice**

Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or email if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or three business days after being mailed by first class mail, charges and postage prepaid, properly addressed to the party to receive such notice at the address identified below.

City of Hanford
Attn: Russ Sterling, Streets Superintendent
900 S. 10th Ave.
Hanford CA 93230

19. **Cost of Services**

Contractor shall complete all work as identified in this agreement for the contract price of:

- | | | |
|-----------------------------|-----------------|------------------|
| 1) Replace Curb and Gutter | \$ <u>60.00</u> | per linear foot. |
| 2) Replace Sidewalk | \$ <u>10.00</u> | per square foot. |
| 3) Replace Driveway W/Rebar | \$ <u>16.75</u> | per square foot. |
| 4) Replace ADA Ramp | \$ <u>24.00</u> | per square foot. |

20. **Measurement and Payment**

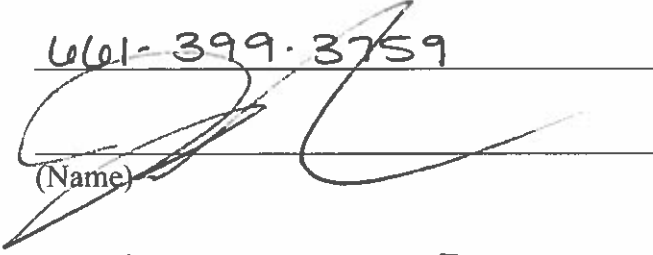
Quantities of curb and gutter shall be paid for at the contract price per linear foot. Quantities of sidewalk (excluding curb ramp areas), shall be paid for at the contract price per square foot. Quantities of driveway approach, including any required steel rebar, shall be paid for at the contract price per square foot. Quantities of handicap ramps, including ADA compliant detectable warning surfaces, shall be paid for at the contract price per square foot. The contract prices shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary for doing all work involved in constructing curbs, gutters, sidewalks, driveways, and ramps, excluding demolition, and no additional compensation will be made therefore.

**ANNUAL CONTRACT FOR CURB, GUTTER, SIDEWALK, DRIVEWAYS AND ADA RAMP
CONCRETE REPAIRS PROJECT**

CONTRACTOR: J. L. Plank Inc. dba Cen-Cal Construction

ADDRESS: 34762 Lencioni Ave Bakers Field, CA 93308

PHONE NO: 661-399-3759

SIGNATURE:  **DATE:** 8/9/2021

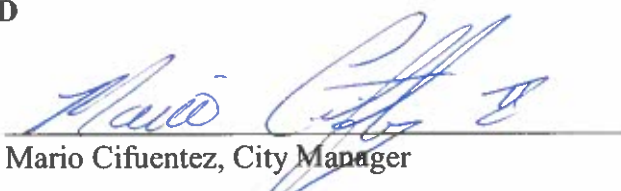
(Name)

Jason Plank, President

(Title)

NOTE: The City of Hanford reserves the right to reject any and all bids.

CITY OF HANFORD

ACCEPTED BY:  **DATE:** 8/11/2021

Mario Cifuentes, City Manager

Attachment: 2022 Annual Concrete Contract (PW: Award annual concrete contract)



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: N
-------------------------------	--------------------------

SUBJECT:

Finance: City of Hanford 2021-2022 Investment Policy Update

RECOMMENDATION:

Staff recommends that City Council adopt the updated 2021-2022 Investment Policy to stay current with legislative updates and ordinance requirements.

BACKGROUND:

The City's cash is one of its most valuable assets. The use of that cash and safekeeping is an important function of the City. Cash can also be a source of significant income if used wisely. As a result, the Council has several oversight responsibilities, namely:

- A. The adoption and annual review of the City's investment policy;
- B. The delegation of investment authority to the Finance Director/Treasurer;
- C. The review of quarterly investment reports which should be certified by the Finance Director as supporting at least 6 months of the City's cash flow needs when combined with the anticipated cash flow.

Investment Policy

The Policy is attached for Council's review. There are minor updates to note as summarized below:

- 1) Cover page updated to reflect **2021-2022**
- 2) **5.0 DELEGATION OF AUTHORITY**
 - Updated to include Finance Manager or Financial Analyst that work on the investments.
- 3) **8.0 AUTHORIZED AND SUITABLE INVESTMENTS**

-Updated both the chart and Table of Notes to reflect the 2021 legislative changes. Also linked the GOVERNMENT CODE SECTIONS to the Legislative information page from leginfo.legislature.ca.gov for ease of review.

4) COLLATERALIZATION

-Struck out negotiable certificates as they are investment vehicles and CAN NOT be collateralized. Added NCUA insurance coverage for credit unions vs. using “FDIC” as the generic term for the \$250,000 insurance.

5) GLOSSARY

-Deleted some of the words in the Glossary that are not actually in the body of the Policy

-Added the NCUA definition as it pertains to insuring credit union CDs

SUMMARY:

The most important point in managing the City’s cash is to remember the purpose of the cash is to provide the residents of Hanford with services; earning investment returns is a secondary goal. The proposed changes in the investment policy and the investment report is designed to follow the SLY acronym: Safety, Liquidity and Yield.

FISCAL IMPACT:

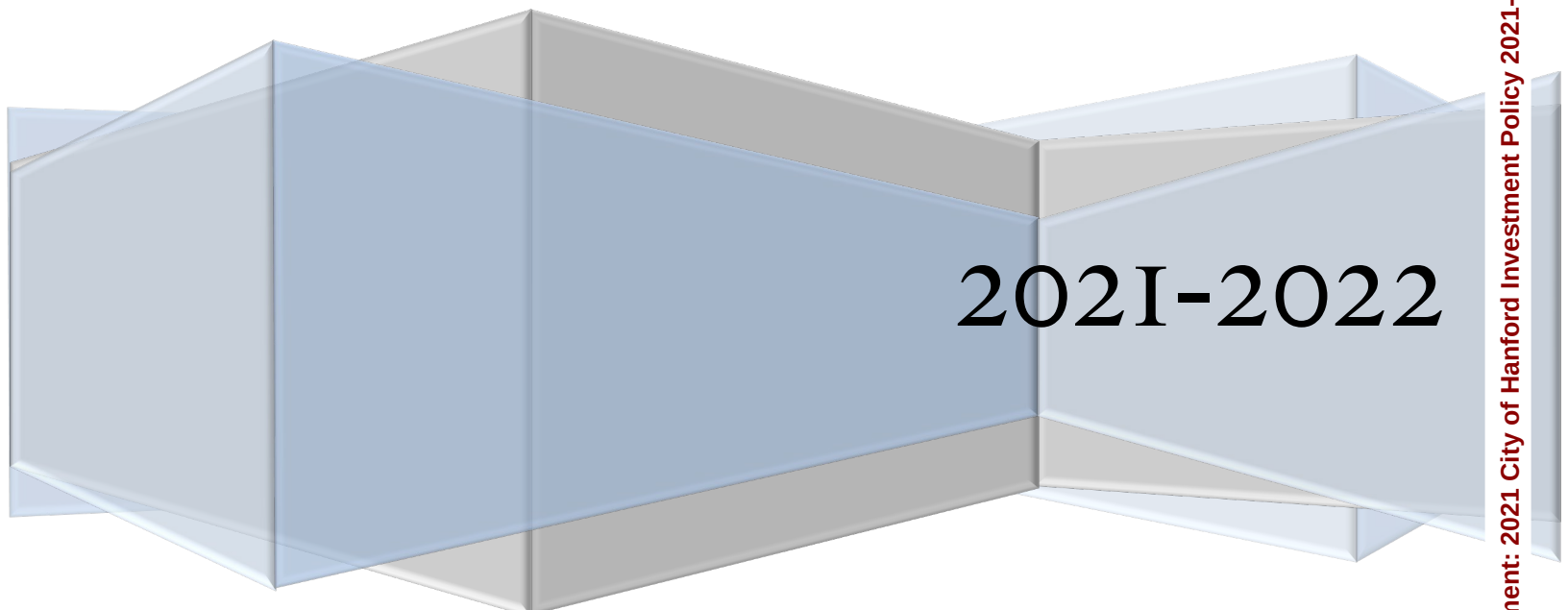
This policy updates keeps the City's Investment Policy current with the latest legislative updates.

ATTACHMENTS:

2021 City of Hanford Investment Policy 2021-2022 FINAL

CITY OF HANFORD

INVESTMENT POLICY



2021-2022



CITY OF
HANFORD

TABLE OF CONTENTS

Section	Topic	Page
1.0	Introduction	1
2.0	Scope	1
3.0	Prudence	2
4.0	Investment Objectives	2
5.0	Delegation of Authority	2
6.0	Ethics and Conflicts of Interest	2
7.0	Authorized Financial Dealers and Institutions	3
8.0	Authorized and Suitable Investments	3
9.0	Review	5
10.0	Investment Pools/Mutual Funds	5
11.0	Collateralization	5
12.0	Safekeeping and Custody	6
13.0	Diversification	6
14.0	Maximum Maturities	6
15.0	Internal Controls	6
16.0	Performance Standards	6
17.0	Reporting	6
18.0	Investment Policy Adoption	6
19.0	Glossary	7



**CITY OF
HANFORD**

City of Hanford, California Investment Policy

1.0 INTRODUCTION

The City of Hanford (City) has a fiduciary responsibility to maximize the productive use of its liquid assets entrusted to its care and to manage those public funds wisely and prudently.

The purpose of this document is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities. Related activities which comprise good cash management include accurate cash projections, the expeditious collection of revenue, the control of disbursements, cost-effective banking relations, and short-term borrowing program which coordinates working capital requirements and investment opportunity. It is the policy of the City to invest public funds in a manner that will provide high investment return with the maximum security while meeting the daily cash flow demands of the entity and conforming to all state and local statutes governing the investment of public funds.

2.0 SCOPE

It is intended that this policy cover all funds and investment activities under the direct authority of the City. This policy also covers any funds held by fiscal agents in connection with the issuance of any bonds by the City. Such funds shall be invested in accordance with the applicable trust indenture.

These funds are accounted for in the City's Audited Financial Statements or Comprehensive Annual Financial Report (CAFR) and include:

General Fund

Special Revenue Funds

Debt Service Funds

Capital Project Funds

Enterprise Funds

Internal Service Funds

Trust and Agency Funds

Funds Held by Fiscal Agents

Any new funds created by the City Council (unless specifically exempted)

3.0 PRUDENCE

The standard of prudence to be used by city officials responsible for the investment of public funds shall be the “prudent person” standard as set forth in California Code Section 53600.3 and shall be applied in the context of managing the overall city portfolio of funds. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual’s security risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

4.0 INVESTMENT OBJECTIVES

4.1 Safety. It is the primary duty and responsibility of the Treasurer to protect, preserve, and maintain cash and investments placed in his trust on behalf of the City. The safety or risk associated with an investment refers to the potential loss of principal, accrued interest or a combination of the two.

4.2 Liquidity. An adequate percentage of the portfolio should be maintained in liquid short-term securities which can be converted to cash if necessary to meet disbursement requirements. Since all cash requirements cannot be anticipated, investments in securities with active secondary or resale markets is highly recommended. Emphasis should be on marketable securities with low sensitivity to market risk.

4.3 Yield. Yield should become a consideration only after the basic requirements of safety and liquidity have been met. The investment portfolio shall be designed to attain a market average rate of return throughout budgetary and economic cycles, taking into account the City's risk constraints, the cash flow characteristics of the portfolio, and State and Local laws, ordinances or resolutions that restrict investments. Examples of yield benchmarks are U. S. Treasuries from bills to 5 year notes and the average Fed Funds Rate.

4.4 Public Trust. All participants in the investment process shall act as custodians of the public trust. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of public trust. It is the City's intent, at the time of purchase, to hold all investments until maturity. In a diversified portfolio it must be recognized that occasional measured losses are inevitable, and must be considered within the context of the overall portfolios investment return, provided that adequate diversification has been implemented.

5.0 DELEGATION OF AUTHORITY

California Government Code Section 53607 provides the authority of the legislative body of the local agency to invest the funds of the local agency or to delegate that authority to the treasurer of the local agency. The Treasurer is authorized by City ordinance to manage the investment needs of the City. The Treasurer will establish a system of controls to regulate the activities of staff authorized to invest, specifically the Finance Manager or Financial Analyst, and procedures in the absence of the Treasurer.

6.0 ETHICS AND CONFLICTS OF INTEREST

The City Treasurer and those employees that are involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Council any material financial interests in financial institutions that conduct business with their jurisdiction and shall further disclose any large personal financial investment positions that could be related to the performance of the City.

7.0 AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The City shall transact business with nationally or state chartered banks, federal or state savings and loan institutions, registered primary securities dealers and qualified regional dealers under SEC Rule 15c3-1 (net capital rule).

7.1 Broker Dealers must:

- A. be licensed by the States as a broker dealer, as defined in Section 25004 or the Corporations Code.
- B. be a member of the Financial Industry Regulatory Authority (FINRA).
- C. offer securities appropriate to the City's needs.
- D. have read the City's Investment Policy.

8.0 AUTHORIZED AND SUITABLE INVESTMENTS:

Investment of City funds is governed by the California Government Code Sections 53600, 53601, 53601.5, 53601.6, and 53635. Within the context of the limitations in Figure 1, the following investments are authorized, as further limited herein:

INVESTMENT TYPE	MAXIMUM REMAINING MATURITY	MAXIMUM SPECIFIED % OF PORTFOLIO	MINIMUM QUALITY REQUIREMENTS	GOVERNMENT CODE SECTIONS
U. S. Treasury Obligations	5 years	None	None	53601(b)
U.S. Agency Obligations	5 years	None	None	53601(f)
CA State Obligations or Sub-Divisions	5 years	None	None	53601(a) , 53601(d) , 53601(e)
Bankers' Acceptances	180 days	40% ^E	None	53601(g)
Commercial paper (under \$100,000,000 of investments)	270 days or less	25% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(C)
Negotiable Certificates of Deposit	5 years	30% ^J	FDIC/NCUA Insured	53601(i)
Non-negotiable Certificates of Deposit	5 years	None	FDIC/NCUA Insured	53635.2 , 53637 , 53638 & 53653
Repurchase Agreements**	1 year	None	Collateralized	53601(j)
Medium Term Notes ^N	5 years	30% of the agency's money ^G	"A" rating category or its equivalent or better by an NRSRO	53601(k)
Mutual Fund and Money Market Mutual Funds	N/A	20% ^O	Multiple ^{P,Q}	53601(l) , 53601.6(b)
Collateralized Bank Deposits ^R	5 years	None	Collateralized	53601(n)
County Pooled Investment Funds	N/A	None	None	27133
Joint Powers Investment Pool	N/A	None	Multiple ^S	53601(p)
Local Agency Investment Fund (LAIF)	N/A	None	None	16429.1
Supranationals ^U	5 years or less	30%	"AA" rating category or its equivalent or better	53601(q)

Source: CDIAC Local Agency Investment Guide (LAIG), Figure 1

Information as of January 1, 2021^A and applicable to all local agencies^B

**Master Repurchase Agreement must be signed with the bank or dealer (a PSA Master Agreement or equivalent).

TABLE OF NOTES FOR FIGURE 1

- A Sources: Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53630 et seq., 53635, 53635.8, and 57603.
- B Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.
- C Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year remaining maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.
- D Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.
- E No more than 30 percent of the agency's money may be in bankers' acceptances of any one commercial bank.
- F Includes agencies defined as a city, a district, or other local agency that do not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body.
- G Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper and medium-term notes of any single issuer.
- H Issuing corporation must be organized and operating within the U.S., have assets in excess of \$500 million, and debt other than commercial paper must be in a rating category of "A" or its equivalent or higher by a nationally recognized statistical rating organization, or the issuing corporation must be organized within the U.S. as a special purpose corporation, trust, or LLC, have program wide credit enhancements, and have commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical rating agency.
- I Includes agencies defined as a county, a city and county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set forth in Section 53601(h)(2)(C).
- J No more than 30 percent of the agency's money may be in negotiable certificates of deposit that are authorized under Section 53601(i).
- K Effective January 1, 2020, no more than 50 percent of the agency's money may be invested in deposits, including certificates of deposit, through a placement service as authorized under 53601.8 (excludes negotiable certificates of deposit authorized under Section 53601(i)). On January 1, 2026, the maximum percentage of the portfolio reverts back to 30 percent. Investments made pursuant to 53635.8 remain subject to a maximum of 30 percent of the portfolio.
- L Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.
- M Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.
- N "Medium-term notes" are defined in Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States."
- O No more than 10 percent invested in any one mutual fund. This limitation does not apply to money market mutual funds.
- P A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Sections 53601 and 53635.
- Q A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years' experience investing in money market instruments with assets under management in excess of \$500 million.
- R Investments in notes, bonds, or other obligations under Section 53601(n) require that collateral be placed into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, among other specific collateral requirements.
- S A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Section 53601, subdivisions (a) to (o).
- T Local entities can deposit between \$200 million and \$10 billion into the Voluntary Investment Program Fund, upon approval by their governing bodies. Deposits in the fund will be invested in the Pooled Money Investment Account.
- U Only those obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), and Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less.

Source: CDIA Local Agency Investment Guide (LAIG), Figure 1
Information as of January 1, 2021^A and applicable to all local agencies^B

9.0 REVIEW

The securities held by the City must be in compliance with 8.0 Authorized and Suitable Investments at the time of purchase. The Treasurer will review the portfolio at least quarterly to insure securities are still in compliance and determine if it is necessary to report to council any major or critical incidences of noncompliance.

10.0 INVESTMENT POOLS/MUTUAL FUNDS

The City further stipulates that mutual funds/money market mutual funds are restricted to funds that include only permitted investments under 8.0 Authorized and Suitable Investments.

Governmental sponsored pools and/or mutual funds are included in Section 8.0 Authorized and Suitable Investments; therefore, the City must do due diligence and a thorough investigation of the pool and/or fund prior to investing, and on a continual basis. There shall be a questionnaire; any additional pool shall provide the following:

- A. A description of eligible investment securities, and a written statement of investment policy and objectives.
- B. A description of interest calculations and how it is distributed, and how gains and losses are treated.
- C. A description of how the securities are safeguarded (including the settlement processes), and how often are the securities priced and the program audited.
- D. A description of who may invest in the program, how often, and what size deposits and withdrawals are allowed.
- E. A schedule for receiving statements and portfolio listings.
- F. A list of any reserves, retained earnings, etc. utilized by the pool.
- G. A fee schedule, when and how it is assessed.
- H. Pool eligibility for bond proceeds and/or pool policy on accepting such proceeds.

11.0 COLLATERALIZATION

Collateralization will be required on two types of investments: certificates of deposit and repurchase agreements. Collateral for non-negotiable certificates of deposit must comply with Government Code 53652. In addition, if the CD is not FDIC /NCUA insured or goes over the FDIC/NCUA \$250,000 limit, collateral is required equal to 110 percent of market value of principal and accrued interest. Collateral for repurchase agreements shall be 102 percent of market value of principal and accrued interest.

The City chooses to limit collateral to the following: US Treasury securities or Federal Agency securities. This will provide an addition level of security due to inevitable changes in market conditions. Collateral will always be held by an independent third party with whom the City has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained. The right of collateral substitution is granted, within the parameters and constraints of this Policy.

Section 53649 of the California Government Code specifies that the City Treasurer is responsible for entering into deposit contracts with each depository. Investments held with third parties and applicable collateral for the investment shall be properly collateralized in accordance with requirements of the California Government Code.

12.0 SAFEKEEPING AND CUSTODY

All securities, including collateral for repurchase agreements, entered into by the City shall be held by a third party custodian designated by the Treasurer and evidenced by safekeeping receipts.

13.0 DIVERSIFICATION

The City will diversify the investment portfolio by the type of investment, issuer, and maturity dates in order to mitigate risk in the investment portfolio. With the exception of U. S. Treasury securities and authorized pools such as LAIF, no more than 30% of the City's total investment portfolio will be invested in a single security type or with a single financial institution.

14.0 MAXIMUM MATURITIES

It is the City's policy to buy and hold investments until maturity. Maturities of investments will be selected based on cash flow requirements. Investments will have a maximum remaining maturity of only the limitations imposed by government statute or five (5) years from purchase, whichever is shorter. Reserve funds may be invested in securities exceeding 5 years based on the permissible investment maturities dictated by the legal documents.

15.0 INTERNAL CONTROLS

A system of internal controls shall be established to prevent losses of public funds arising from fraud, employee error, and misrepresentations of third parties, unanticipated changes in financial markets or imprudent actions by employees of the City. An independent review of internal control and investment practices, policies and procedures will be provided annually by the City's external auditor.

16.0 PERFORMANCE STANDARDS

The investment portfolio shall be invested with the objective of obtaining a market rate of return with considerations to budgetary and economic cycles, commensurate with investment risk constraints and cash flow needs.

17.0 REPORTING

The council has delegated investment authority to the City Treasurer for a one-year period. The Treasurer shall make a monthly report of investment transactions to the legislative body. Section 53607 of the California Government Code states the legislative body, subject to review; many renew the delegation of authority pursuant to this section each year.

18.0 INVESTMENT POLICY ADOPTION

The policy shall be reviewed annually by the Treasurer and City Attorney for any revisions. The policy will be submitted to the City Council for their review and approved each fiscal years.

19.0 GLOSSARY

GLOSSARY

AGENCIES: Federal agency securities and/or Government-sponsored enterprises.

BANKERS' ACCEPTANCE (BA): A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BENCHMARK: A comparative base for measuring the performance or risk tolerance of the investment portfolio. A benchmark should represent a close correlation to the level of risk and the average duration of the portfolio's investments.

BROKER: A broker brings buyers and sellers together for a commission.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMMERCIAL PAPER: Commercial paper is the trade name applied to unsecured promissory notes issued by finance and industrial companies to raise funds on a short term basis.

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR): The official annual report for the City of Glendora. It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions buying and selling for his own account.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL AGENCY: Federal agencies are special government organizations set up for a specific purpose. Some examples include: FAMCA, FFCB, FHLB, FHLMC, and FNMA.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$250,000 per entity.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

LOCAL AGENCY INVESTMENT FUND (LAIF): LAIF was established by the State to enable treasurers to place funds in a pool for investment. Each agency is limited to an investment of \$65 million per account.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase – reverse repurchase agreements that establish each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying

securities in the event of default by the seller borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

NATIONALLY RECOGNIZED STATISTICAL-RATING ORGANIZATION (NRSRO): A nationally recognized statistical rating corporation (NRSRO) is a credit rating agency that issues credit rating that the U.S. Securities and Exchange Commission (SEC) permits other financial firms to use for certain regulatory purposes.

NATIONAL CREDIT UNION ADMINISTRATION (NCUA): Created by the U.S. Congress in 1970, the National Credit Union Administration is an independent federal agency that insures deposits at federally insured credit unions, protects the members who own credit unions, and charters and regulates federal credit unions. Insured CDs up to a 250,000 limit.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC) – registered securities broker-dealers, banks, and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state – the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.

REPURCHASE AGREEMENT (RP OR REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security “buyer” in effect lends the “seller” money for the period of the agreement, and the terms of the agreement are structure to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, or increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION (SEC): Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC RULE 15C3-1: See Uniform Net Capital Rule.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY NOTES: Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the

U.S. Government and having initial maturities from two to 10 years

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: O
-------------------------------	--------------------------

SUBJECT:

Finance: Approval of a Professional Services Agreement with NHA Advisors LLC (San Rafael, CA) for Municipal Financial Advisory Services for a term up to five years

RECOMMENDATION:

Staff recommends that the City Council, by motion, approve a professional services agreement with NHA Advisors, LLC for Municipal Financial Advisory Services for a term of up to five years.

BACKGROUND:

There are potential money saving opportunities that the City may realize by refinancing debt, utilizing finance mechanisms for retirement costs, continued establishment of community facility districts and other funding related projects. Due to extensive workload and the need to focus on day to day activities staff believes it would be beneficial to have a current agreement in place with an Advisor for these types of opportunities. After a formal competitive proposal process staff recommends that City Council authorize an agreement with NHA Advisors, LLC from San Rafael, CA to assist the City in further analysis and development of potential opportunities.

The City has approximately \$32 million in outstanding debt for various enterprise and general fund obligations. In addition, as of June 30, 2020 there was over \$45 million in pension liabilities which includes unfunded accrued liability that the City pays for on an annual basis. Debt issuance and financing related projects are complex and require significant analysis and expertise to develop and complete. NHA Advisors, LLC has an accumulation of decades of experience and a strong team with city and local experience that will be at the City's disposal to develop potential projects. Their proposal highlighted their ability to assist in financial analysis for complex issues that may arise for the City. The firm has a narrower focus on assisting city clients (rather than counties, school districts, etc.) compared to other firms which may help the City in a focused municipal minded approach to projects.

On July 30, 2021, a Request for Proposals was released publicly and sent to firms within the

state for Financial Advisory Services due by August 20, 2021. In response, three proposals were received from the following consulting firms:

1. KNN Public Finance (Berkeley, CA)
2. Urban Futures, Inc. (Tustin, CA)
3. NHA Advisors, LLC (San Rafael, CA)

All of the firms were highly qualified, have the necessary experience and resources to meet the needs of the City. An evaluation committee composed of staff in Finance and Public Works scored the proposals, and after 'face to face' via video conferences with the top two proposers, the proposal by NHA Advisors, LLC has been determined to offer the most comprehensive, competitive and thoughtful approach towards addressing the City's potential opportunities.

FISCAL IMPACT:

There is no fiscal impact at this time. Any potential projects will be either be within approved budget or brought to Council for approval/consideration.

The cost for consulting services are based on hour rates ranging from \$100-\$325 dependent on the staff involved with the project. Typically a Principal or Assistant Vice President at rates \$325 and \$250 respectively would assist the City on projects. For financing projects that have some form of bond financing, fees would be contingent (paid at closing of a transaction from proceeds of transaction) and vary based on the type of financing authorized by City Council. Any savings for a financing project would be net (include) any fees associated with services provided.

ATTACHMENTS:

NHA Advisors Financial Advisory Services

AUGUST 20,
2021

**PROPOSAL TO PROVIDE
FINANCIAL ADVISORY SERVICES
FOR THE
CITY OF HANFORD**



SUBMITTED BY

NHA | **ADVISORS**
Financial & Policy Strategies.
Delivered.



TABLE OF CONTENTS

COVER LETTER

1. EXECUTIVE SUMMARY	1
2. QUALIFICATIONS AND EXPERIENCE	2
a. Current and Long-term Financial Advisory Engagements	3
b. Local Experience	3
c. Bond Financing Experience.....	4
d. Staff Qualifications	11
3. SCOPE OF SERVICES	12
a. NHA's Approach to the City's Finances	15
4. REFERENCES.....	20
5. CONFLICT OF INTEREST, DEBARMENT OR SUSPENSION	20
6. LITIGATION	21
7. CONTRACT AGREEMENT	21
8. COMPENSATION	21
a. Hourly Fee Schedule	21
b. Financing Fee Schedule	22

APPENDIX A: NHA'S CURRENT AND LONG-TERM FINANCIAL ADVISORY ENGAGEMENTS

APPENDIX B: EXAMPLE CREDIT PRESENTATIONS

APPENDIX C: CORTE MADERA 2021 POBs STRESS TESTING PRESENTATION

APPENDIX D: NEWARK 2021 PENSION REPORT

APPENDIX E: CORCORAN CALPERS COST MANAGEMENT STRATEGIES PRESENTATION

APPENDIX F: NHA SENIOR STAFF RESUMES

APPENDIX G: NHA SCOPE OF SERVICES

APPENDIX H: REQUIRED DISCLOSURES



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

August 20, 2021

Attn: Chris Tavarez, Finance Director
City of Hanford
Finance Department
315 N. Douty St.
Hanford, CA 93230

RE: NHA Advisors Financial Advisory Services

Dear Mr. Tavarez:

NHA Advisors, LLC ("NHA") is pleased to submit our proposal to provide financial consulting and municipal advisory services to the City of Hanford (the "City") in response to the City's RFP for Financial Advisory Services. In this proposal, it is our intention to succinctly state the core attributes that NHA will add to the City's current and future financing projects. Beyond NHA's breadth and depth of experiences and expertise that will measurably enhance the City's fulfillment of its objectives, NHA brings a method to every assignment in service to every client. This is rare in the financial consulting and municipal advisory business. NHA believes in, and practices, a client-centered (i.e., fiduciary-first vs. deal-driven) approach.

NHA's value proposition to the City is direct and simple -- we will strive to be your trusted advisor by bringing our fiduciary ethos to every municipal bond offering **AND** educational and advisory engagement we work on. Period. This means we dedicate ourselves solely to the City and not the overlapping agencies (i.e., county, school districts, etc.). This also means that we are **NOT** transaction-driven (we are process-driven). NHA's process is always to conduct the deepest due diligence, make sure decision-makers understand **ALL** the options, and translate complex financing structures in an objective way to allow for a thorough, client-specific decision-making process. For the City, we believe that this approach starts with a comprehensive view and understanding of your long-term financial position, objectives and constraints. Then, we would listen closely to gain an even more detailed understanding with respect to specific situations and opportunities by conducting a thorough investigation of all facts and options to develop a comprehensive plan of finance from which the City can direct its municipal advisor to execute.

NHA appreciates the City's very professional managerial approach to managing its finances and has experience working closely with other central California cities that also think creatively to execute / implement innovative projects and programs. We are proud to support and serve small to mid-sized cities like Selma, Corcoran, Farmersville, Gonzales, Visalia, Galt, Winters, Auburn, Grass Valley, as well as larger cities such as Riverside, Oxnard, Berkeley, Torrance, Chula Vista, whose elected officials and staff think big and are continuously striving to make positive changes in their communities. We like to think that, through our fiduciary ethos, our decades of experience and our best-in-class level of service, NHA assists our clients to make dreams turn into reality while always being mindful that preservation of a city's financial foundation is required to ensure that city stakeholders are provided with the high level of services and facilities that they require and deserve.

As we will demonstrate in the body of this proposal, NHA possesses the wide range of expertise and depth of experiences that a city such as Hanford requires from its trusted municipal advisor. We have executed upon all types of tax- or revenue-backed bond structures such as voter-supported bonds (GO or sales tax bonds), utility (power, water, sewer, solid waste) revenue bonds, lease revenue bonds, land secured (CFD or AD) bonds, pension bonds, and RDA/SA bonds. According to data published by the California State Treasurer's office, **we are the #1 ranked municipal advisor to California Cities in terms of completed financing transactions from 2016 to 2021** for California cities north of Kern County.

But, as noted above, achieving our objective of becoming the City's trusted advisor is a much higher bar to meet, in our opinion, than just executing bond transactions when called upon to do so. As we will illustrate

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

in this proposal, NHA works continuously to bring a range of services and ideas that are useful to our clients. Many of these ideas have no relationship to a bond transaction. As will be shown and discussed, NHA formed 8 practice groups to address areas that our clients had told us mattered to them. NHA has made it our business to become expert in areas such a climate change impacts (i.e. drought, wildfire risks, rising sea levels), pensions, P3/economic development negotiations, and continuing disclosure to provide meaningful ideas and advice to our clients when those issues arise and we are called upon to contribute.

Additionally, we believe that being the City's trusted financial consultant and municipal advisor requires something more. We believe that when called upon to execute upon a consulting or financing project for our clients, it is imperative that NHA, as your consultant/advisor, "leans in" on all aspects of said project. As is evident in our approach and robust scope of tasks/services to serving our clients via the initial fact gathering, analysis, options creation and client discussions ("Task 1" services) prior to being directed to execute upon the preferred plan of finance method ("Task 2" services), NHA assumes an active project management role. As such, we become our clients' agent throughout the process and, instead of just passively providing coordination of the process, in all respects we energetically advocate and prosecute the interests and objectives of our client. We believe that NHA's essential role is to be the "quarterback" of a project and to be responsible and accountable to our client for realization of their objectives.

Finally, if a bond transaction does occur, we would note two examples where NHA distinguishes itself compared to our competitors: **First, NHA excels in the credit rating process.** NHA takes a hands-on approach to putting together a comprehensive rating presentation and prepares our clients to deliver their "story" through an interactive process leading up to the actual delivery to the rating agencies. As an example, we invite you to review the credit presentation we put together for the City of Auburn and City of Exeter (**See Appendix B**). **Second, NHA excels in underwriter management during the bond sale process.** NHA employs prior underwriters as part of its professional staff. As such, NHA understands the underwriting process and how best to secure the optimal rates and terms for our clients. Maximizing the credit rating and aggressively managing the underwriting team will translate into significant financial benefit for the City on any potential transaction.

Thank you for inviting NHA to submit a statement of our credentials to the City. In addition to the proposal, NHA has attached Appendices A-H, including a client list, sample credit rating and pension presentations, senior staff resumes, a full scope of services, and disclosures. We stand ready to answer any questions and look forward to discussing our proposal to serve the City in greater detail during the interview process. Thank you for your consideration.

Sincerely,

Eric Scriven
Principal

4040 Civic Center Drive, Suite 200
San Rafael, CA 94903
Email: Eric@NHAadvisors.com
Tel: (415) 785-2025 x2003
Cell: (707) 312-2000
Fax: (415) 506-3401

Mike Meyer
Vice President

4040 Civic Center Drive, Suite 200
San Rafael, CA 94903
Email: Mike@NHAadvisors.com
Tel: (415) 785-2025 x2004
Cell: (650) 766-7081
Fax: (415) 506-3401

Christian Sprunger
Assistant Vice President

4040 Civic Center Drive, Suite 200
San Rafael, CA 94903
Email: Christian@NHAadvisors.com
Tel: (415) 785-2025 x2007
Cell: (707) 608-9868
Fax: (415) 506-3401



1. EXECUTIVE SUMMARY

NHA Advisors, LLC is a privately-owned Independent Registered Municipal Advisor that provides comprehensive financial and consulting services to local government agencies throughout California, with an emphasis on **cities**. NHA has been advising cities since 2000 (originally as Northcross Hill & Ach). NHA works with over **80** California public agencies, including over **65** cities, providing financing solutions for capital projects. Our non-financing practice works with over 30 public agencies to develop funding solutions, policies, and alternatives to obligations such as increasing pension liabilities.

We work with small to large public agencies and understand the different organizations and the time required to develop funding strategies and financing plans. NHA, through its **"extension of staff"** DNA, integrates with city staff to assist and manage each project.

NHA Advisors is proud to offer the full range of municipal advisory services. Unlike many competing municipal advisory firms, our depth matches our breadth. Our services not only provide financing solutions but also the strategic advice necessary to develop appropriate funding solutions for city projects. **NHA is unique from other municipal advisors in our approach to each project. We truly believe that developing a funding solution should not be driven by the need to provide a financing (how typical advisors get paid). Our objective initial approach is distinct from others who bundle their work into a contingent fee arrangement incentivizing the financial solution to be a bond issuance.**

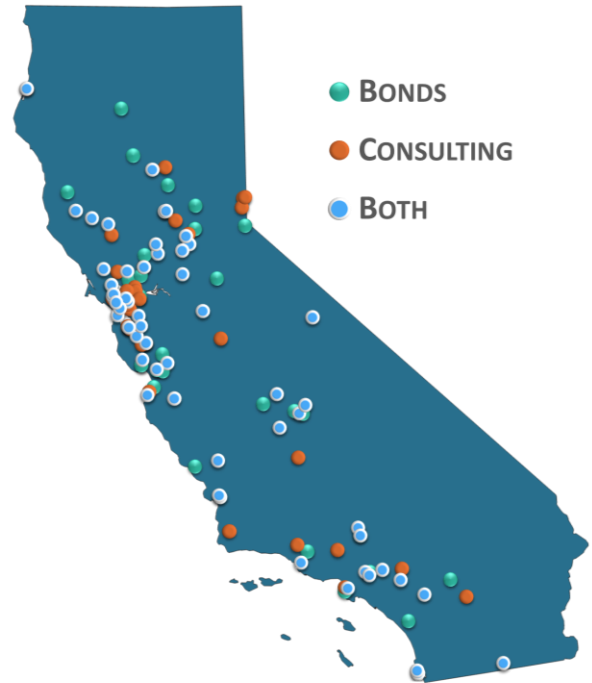
Since 2014, NHA has completed over 230 financing transactions for California cities and public agencies. NHA has managed nearly every type of public financing structure. This includes traditional financings such as utility revenue, general obligation, tax allocation, lease revenue, land secured, pension/UAL restructuring bonds and short-term notes. We understand the complexities unique to transactions as small as \$100K to over \$500M.

Providing municipal advisory services to California cities is our core focus as demonstrated by our internal growth (3x) since 2014.

Key Points:

- **NHA's Dedicated Service to California Cities** – NHA is dedicated to providing municipal advisory services to California cities. Since 2020, NHA is the top-ranking

NHA Clients Served*



*Dots represent client engagements from 2012 - Present

NHA Bond Financing Experience 2014 – July 2021

Type of Financing	Number of Transactions
General Fund (Lease Revenue Bonds & COPs)	62
Utility Enterprise (Water and Wastewater)	50
Successor Agency (Tax Allocation Bonds)	46
Voter Approved (General Obligation and Sales Tax)	26
Short Term Financing (Tax and Revenue Anticipation Notes)	20
Land Secured (CFDs and Assessment Districts)	19
Pension Restructuring	16
Total	239

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

municipal advisor, measured in terms of deals completed and unique transactions, for California cities north of Kern County and for California cities statewide, respectively.

- **Current and Historical Experience in Central California** – NHA has served as a municipal advisor for the cities of Exeter, Farmersville, Selma, Corcoran, Gonzales, and Visalia. Through these experiences, NHA has developed a strong understanding of the local financial environment and how to successfully work with such cities to achieve their unique financial goals.
- **Potential Refunding Opportunities** – NHA identified three City debt obligations that could potentially be refinanced, under current market conditions, to produce cashflow savings to the City. The debt obligations include the 2014 Bank of America Capital Lease, the 2012 Wastewater Revenue Refunding Bonds, and the 2002 California Infrastructure & Economic Development Bank Loan. A summary of our refinancing analysis is found at the end of Section 3 (“Scope of Services”).
- **Fiscal Sustainability** – NHA investigated the City’s pension costs, specifically the City’s CalPERS Unfunded Accrued Liability (“UAL”). The City’s UAL has grown by about 35% over the last 7 years, but we estimate that the City’s UAL will decrease after CalPERS’ FY 2021 gains of 21.3%. NHA has laid out three UAL restructuring options for preliminary discussion purposes, with the understanding that dozens of other options can be evaluated and tailored to the City’s goals and financial constraints. A detailed analysis, as well as a chart addressing the risks and benefits associated with a UAL Restructuring, can be found at the end of Section 3 (“Scope of Services”).

NHA’s Short-term and Long-term Goals:

- **Short-term goals** – NHA’s short-term goals are always an extension of our client’s goals. Our “NHA Way” philosophy is to serve our client in every way that can be helpful to advance the goals that our clients set—financially, operationally, and politically.
- **Long-term goals** – NHA’s long-term goal is to become our client’s Trusted Advisor. We strive to become the firm that a client comes to again and again when needing municipal advisory expertise.

2. QUALIFICATIONS AND EXPERIENCE

NHA is headquartered in San Rafael and all principals have more than 30 years of public finance experience. NHA has nine registered municipal advisors managing each of the different practice areas as described herein. Mr. Eric Scriven, Principal, will be assigned to the City, along with Vice President, Mike Meyer, and Assistant Vice President, Christian Sprunger (contact information provided in the table below and in **Section 2d**). Eric Scriven will also be assigned as the City’s day-to-day contact. While the assigned team consists of 3 NHA members, the remaining 6 NHA professionals will be available to assist in City projects as necessary. Mr. Scriven is authorized to execute agreements on behalf of NHA.

NHA Advisors, LLC	
Assigned Team	Eric Scriven, <i>Principal</i> Eric@NHAadvisors.com (415) 785-2025 x 2003 Mike Meyer, <i>Vice President</i> Mike@nhaadvisors.com (415) 785-2025 x 2004 Christian Sprunger, <i>Assistant VP</i> Christian@NHAadvisors.com (415) 785-2025 x2007
Headquarters	4040 Civic Center Drive, Suite 200 San Rafael, CA 94903 Telephone: (415) 785-2025
Website	www.NHAadvisors.com



a. Current and Long-term Financial Advisory Engagements

In **Appendix A**, you will find a list of NHA's current and long-term financial advisory engagements, which includes client information, a description of NHA's role in the engagement, and the length of NHA's engagement with the client. You will notice that NHA's clients are a mix of new and old. The long-term clients are a testament to NHA's continued excellence and loyalty, while the new clients are representative of NHA's strong reputation and innovative financial solutions.

b. Local Experience

City of Farmersville (2018 – present)

- While the City is not a long-term client, NHA's relationship with this client is what NHA aspires to be with all our clients – a “go-to” resource for information, advice, and execution.
- In 2018, NHA produced a 10 page Pension Summary Report that distilled 8 years' worth of CalPERS actuarial reports into a digestible format for electeds and other stakeholders.
- In 2019-20, NHA advised the City, on a consulting basis, on its \$24 million new wastewater treatment project. City had secured USDA and SRF funding but hired NHA to assist with the project management and analytical work that was needed to bring the very complex and intertwined financing plan to a closing.
- In addition, NHA has advised the City on financing options for wastewater capital needs, provided research and analytical work in support of City's negotiations with its solid waste hauler contractor, and assisted with detailed coverage analysis as a follow up with USDA and SRF to ensure that City remains in compliance with the established covenants.

City of Selma (2008 – Present)

- NHA consulted with the City after the Great Recession to develop a budget and reserve policy to rebuild the City's fiscal solvency. We “weaned” the City away from annual TRANs issuance for working capital, we structurally balanced budgeting, and we achieved 15% policy level reserves over a 5-year period (the City had a negative general fund balance).
- NHA executed a pre-RDA dissolution transaction in 2010 that pushed as much of the City's outstanding general fund debt onto the RDA. Additionally, due to a letter of credit expiration, NHA was able to integrate that general fund loan into the RDA funding portion of the transaction, therefore avoiding a potentially financially catastrophic acceleration of the debt.
- NHA introduced the City to a lobbyist that successfully secured \$4 million in State grant monies for a police headquarters building. To fund the other half of the project, NHA worked with a polling company to craft a general obligation ballot measure that was approved by City voters. NHA then acted in the role as municipal advisor to go to the capital markets to raise \$4 million at very low interest rates.
- Since 2008, NHA has continuously served the City in an advisory capacity with respect to potential residential and commercial CFD formations to enhance the City's economic development activities while always ensuring that those projects would be fiscally neutral or positive to the City's general fund.

City of Corcoran (1990 – present)

- Eric Scriven has worked with and advised the City on fiscal sustainability issues and capital financing projects for over 30 years.
- Recent projects for the City have been refinancing and restructuring the City's water utility debt to ensure that the City Council's objectives with respect to customer utility rate management fit within the community's requirements, while also providing for sufficient CIP funding and maintenance of robust reserves.
- In 2014, NHA worked closely with the City to develop a general fund “Fiscal Fitness” forecasting model to assist City Council and senior management in providing transparent communication to employee unions

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

and the community in regard to the City's dire financial position. NHA met with bargaining units and gave public presentations to communicate these findings. The City ultimately was able to utilize this work to bring a sales tax revenue measure to the voters in 2018 which passed (where others had previously failed).

- NHA is currently working with the City to provide education with respect to cost management strategies that may be utilized on their CalPERS unfunded accrued actuarial liability.

City of Gonzales—Monterey County (2006 – Present)

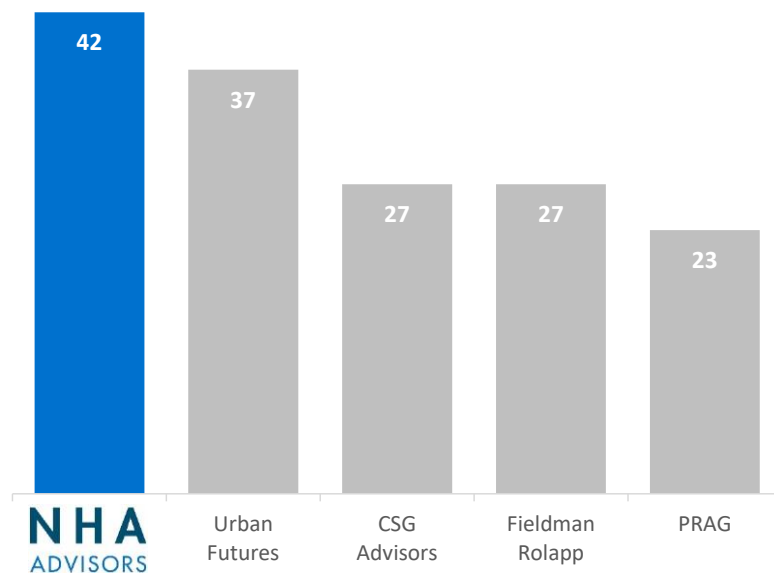
- Eric Scriven, while at previous firms and with NHA, worked with the City to creatively jumpstart implementation of their economic and housing development goals. Additionally, key public facilities (i.e., police headquarters) were funded.
- Prior to an RDA dissolution in March 2011, Eric Scriven restructured certain City loans and higher cost RDA debt into new bonds fully funded by tax increment revenues. These bonds were sold and closed in the same day just prior to the deadline for doing so.
- As an advisor to the City, NHA suggested the City form an EIFD to enhance the City's Agriculture Industrial Park's ability to have a funding source for retention and attraction of new jobs.
- Since 2018, NHA has advised the City on its large, solar microgrid, which will provide more reliable and cheaper electricity to the Agriculture Industrial Park users. NHA was part of the interview panel to select the City's development partner in this project and will assist the City in funding the distribution assets per the requirements of the P3 agreement that has been negotiated.
- NHA is currently working on a plan of finance for wastewater treatment expansion. The financing plan explores SRF funding and capital market funding. Additionally, NHA is assisting the City on funding a new community center which will use state grant funding, community fund raising, and a general fund lease bond backed by a recent sales tax measure revenue.

c. Bond Financing Experience

As stated in the executive summary, NHA's core focus is providing municipal advisory services to California cities. The adjacent chart, showing NHA as the leading municipal advisor in unique California city transactions since 2020, is direct evidence of our commitment to California cities.

To further demonstrate our municipal advisory experience, we have included the following three case studies highlighting NHA's experience in the City's local area. Additionally, we have included NHA's experience with various types of bonds.

For more detail on NHA's current clients and engagements, please see **Appendix A**.

MUNICIPAL ADVISOR RANKINGS FOR CALIFORNIA CITIES
Unique Transactions (January 2020 - Present)¹


(1) Source: California State Treasurer; unique sold City transactions as of July 2021.

**Case Study: Selma Police Station Project/General Obligation Bond Authorization**

One of the largest public facility projects in the City's history requiring support of the community through an approval of a general obligation bond tax (Measure P) which provided the funds, in combination with a grant from the State, to support debt necessary to construct the City's new police headquarters facility, emergency dispatch center, and multi-function event space. NHA Advisors, as project manager, secured the services of an election polling and ballot measure specialist to work with the city to ascertain, create and implement a successful ballot measure election. NHA provided the financial analysis that supported this effort. The ballot passed its 2/3 threshold by 1 vote. NHA was then tasked to manage the financing process, which included putting the credit presentation together, reviewing all legal and disclosure documentation and overseeing the bond sale and closing process. NHA has provided municipal advisory services to the City of Selma since the firm's inception. During this time, the City has called upon NHA for advice or to execute consulting and financing projects that have helped enhanced the City's fiscal position.

**Case Study: Farmersville Wastewater Treatment Plant Upgrades (Multi-Funding Sources)**

NHA worked with the City to secure financing from multiple alternative sources for their wastewater treatment plant upgrades. Local median income and poverty rates in this heavily agricultural community meant that financing the \$23.6 million plant improvements through a traditional bond offering would necessitate drastic rate increases. Instead, the financing plan aimed to acquire below-market rate loans through Clean Water SRF and USDA to minimize these required rate increases. The City's demographic profile met SRF's "Disadvantaged Community" definition, and City hoped to take advantage of SRF grants and SRF loan forgiveness programs in addition to a loan.



The final funding package was a combination of City reserves, USDA loan, SRF loan, SRF principal forgiveness loan, and SRF disadvantaged community grant. These five sources of project funding were successfully secured in time to enable the City to sign a contract with the winning bidder prior to the project's bid expiration deadline.

Case Study: Corcoran Fiscal Sustainability Report/Support for Sales Tax Measure

NHA worked intensively with the City of Corcoran's finance staff and the City Manager to develop a comprehensive "Fiscal Sustainability Report," which helped lay the groundwork for attaining ballot measure support from residents and council members for a 1% sales tax increase to help bolster the City's struggling operations. As part of the first phase of this project, NHA collaborated with City staff to do a deep dive on the City's historical financial trends and develop a comprehensive, user-friendly spreadsheet model to assess current and pro forma trends. This model is a tool that has been used by City staff as part of their ongoing fiscal sustainability review, general budgeting, and forecasting projects. After a thorough analytical review of the City's finances, including a review of the City's pension expenses and reserve policies, NHA translated the results into a short, digestible presentation that summarized the results and ultimately helped lay the groundwork for a successful sales tax measure.

**Housing Experience**

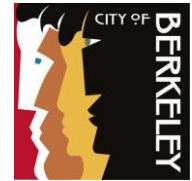
Many communities across the State are committed to providing workforce and affordable housing and there are a variety of strategies that can be used to accomplish those objectives. NHA has worked on a myriad of housing-related financings over the years, ranging from special taxes for community facilities districts to general obligation bonds to redevelopment agency and tax allocation bond-backed housing solutions. Our experience spans over 20

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

years, from the late 1990's to as recently as last year. Below, we provide some detail on a recent taxable GO Bond for a housing solution that we worked with the City of Berkeley to issue.

Case Study: Berkeley Affordable Housing General Obligation Bonds

NHA Advisors has managed the City of Berkeley's debt since 1996 including seven authorizations since 1992 (\$402,200,000). GO Bond work has included pre-election tax rate analysis, financing plan development and community education materials for the City's distribution to stakeholders. The City of Berkeley developed an affordable housing financing program in 2017 and 2018 (Measure O received voter support in November 2018 passing with overwhelming support (>77%)) for \$135,000,000 for mitigation of the local housing affordability and homeless crisis.



The first series of bonds was sold in April 2020 for \$38,000,000 and received the first-ever competitive bond sale validation by Kestrel Verifiers for sustainability and a smaller refinancing of GO bonds issued for library improvements was validated and sold with the Kestrel Verifiers green bond approval. In both cases, the winning underwriters determined that there was value in incorporating the sustainable and green designations.

NHA managed the financing program from inception through the initial bond issuance. This included focusing on the city objectives level, identifying policy considerations and finally executing on the financing (traditional financial advisory work).

NHA's deep understanding of the city's overall debt portfolio and tax base allowed the development of an efficient and cost-effective financing plan that included multiple series of bonds as projects are identified and entitled. The first series of bonds (\$38M) is primarily funding the Berkeley Way project which is the city's signature housing project (<https://bfhp.org/news/berkeley-way/>) featuring temporary



housing for adult homeless men, permanent housing for homeless men and women, transitional housing for homeless male veterans, commercial kitchen and dining facility, and offices for support staff and partner agencies. Given the private use of the proceeds, the decision was made to structure the 2020 GO Bonds as a taxable financing to achieve optimal use of bond proceeds.

NHA worked with the credit rating agency analysts to incorporate both the new issuance and two GO bond refinancing (saving time and fees) and also worked with Kestrel Verifiers to pre-qualify two of the city's bonds for sustainability and green designations (<https://www.bondbuyer.com/news/kestrel-to-offer-green-social-bond-verification-on-competitive-muni-sales>) providing increased demand that both Wells Fargo and Morgan Stanley (low bids).

Additionally, the impact of COVID-19 on the financial markets posed a challenge to the bond sale since the bonds were originally scheduled to price the week of March 16. Unprecedented market volatility that week caused concern leading up to the bond sale date and NHA began conducting telephone surveys of the competitive underwriting desks who traditionally bid on the City's debt. Based on feedback from those surveys, we postponed the sale date one week. After further evaluation of the market, we postponed another week. We decided to hold the bond sale date to April 1 due to comparable transactions we saw coming to market in the days before and based on conversations with competitive underwriting desks. The bonds received four bids despite market volatility that day and the low bid had an all-in TIC 20 basis points lower than our projections to City Council the month before.

The key benefit to City staff was NHA's proactive management approach that allowed staff to focus on the procedural requirements of the project while trusting NHA to manage the transactional and technical aspects of

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

the bond issuance. NHA's deep institutional knowledge of the City of Berkeley also provides staff with confidence that each bond transaction is implemented with consideration for all other City tax obligations and parity debt.

Utility Experience

The NHA team has deep utility financing experience having provided funding solutions for California public utilities in the midst of Proposition 218 litigation, ballot measure rate challenges, droughts, earthquakes and fires. We have worked for water retailers, water wholesalers and State Water Project contractors. We have delivered funding for a major P3 utility project. We serve both wastewater and water utilities ranging in size from 2,500 accounts to over 100,000 accounts. The best indicator of a municipal advisor's utility experience is not the par value of the bond issues the advisory firm has worked on, but rather the depth and diversity of the firm's experience.

Since 2016, NHA has served as municipal advisor for 46 wastewater/water financing transactions, involving 29 distinct California special districts and cities. The 46 transactions consist of 20 wastewater financing transactions, totaling \$501.7 million, and 26 water financing transactions, totaling \$364.0 million.

General Fund Lease Experience

Since 2014, NHA has assisted California public agencies on 62 lease revenue bonds and certificates of participation issuances. Our work in this area has assisted clients in financing key infrastructure projects, including City Halls, police stations, libraries, and fire stations. Just this year, we have worked on lease revenue bond transactions for the cities of Berkeley, El Centro, Lancaster, Mendota, and Torrance. A growing aspect of our General Fund lease clientele revolves around the use of equipment leases for heavy vehicle purchases. So far in 2021, we have worked with the cities of Oxnard, Watsonville, and Yuba City to lease fire vehicles, garbage trucks, sewer vac con trucks, and other heavy equipment through equipment leases.

Tax Allocation Bonds (TABs) Experience

Since 2016, NHA has served as municipal advisor for 18 Tax Allocation Bond refunding transactions, totaling \$270.0 million in par. These transactions were completed for successor agencies in Chico, Clearlake, Corcoran, Cotati, El Centro, El Cerrito, Gonzales, Hayward, Lakeport, Napa, National City, Rocklin, San Carlos, Scotts Valley, Torrance, Ukiah, Willits, Winters, and Yuba City. Additionally, NHA currently is working with the City of Sonoma on a TAB refinancing project. Our experience includes tax-exempt and taxable TABs of all sizes (par ranging from \$2.5M to \$575M), and wide-ranging credit characteristics.

Community Facilities District (CFD) Experience

NHA personnel have formed more than 50 CFDs (including 18 master planned communities), completed more than 100 CFD financings, and served as special tax administrator for nearly 30 CFDs.

We have completed over \$240 million of financing for master planned communities, developing comprehensive plans throughout the build-out process. Features of our financing plans include school mitigation, impact fee credits, use of inflators, partial prepayment by merchant builders, and City participation in major offsite projects. We have also completed over \$265 million of financing for commercial and mixed-use developments covering commercial, industrial, office, retail, residential, recreational, and institutional/utility applications.

Staff at NHA are experienced in negotiating with developers (and their consultants), bond owners, state authorities, land owners, and potential buyers to achieve the best outcomes (i.e. fiscally positive or neutral to City's general fund and not onerous to future homeowners/voters)



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

Pension Consulting and Financing Experience

NHA has worked with more than 55 California public agencies, nearly all of whom are cities, on consulting projects related to CalPERS cost management strategies. The table below highlights some of the agencies we have recently worked with and the variety of work scope we have provided. From technical quantitative analysis on historical trends or projected costs, to clearly translated options to address rising costs (i.e., Section 115, UAL pay-downs, bonds, etc.), to presenting to elected officials, staff, and union representatives at public and informal meetings, NHA's ability to translate complex information and be agile in meeting our clients' needs is one of our strongest attributes.

NHA Pension Group Recent Experience					
	CalPERS Education / Budget Workshops	NHA Pension Report (8-Page Report Distilling Historical Actuarial Report Trends)	Cost Management Strategy Evaluation Process / Workshops (Section 115 Trust, ADPs)	POB Workshops / Evaluation Process (Pros/Cons, Options and Risks)	POB (UAL Restructuring)
Alameda, City of					
Arcata, City of					
Auburn, City					
Calaveras Cnty. Water Dist.					
Carmel-by-the-Sea, City of					
Chico, City of					
Chula Vista, City of					
Corcoran, City of					
Corte Madera, Town of					
El Cerrito, City of					
El Monte, City of					
Farmersville, City of					
Fort Bragg, City of					
Gilroy, City of					
Grass Valley, City of					
Grover Beach, City of					
Lakeport, City of					
Lancaster, City of					
Lompoc, City of					
Martinez, City of					
Monterey, City of					
National City, City of					
Newark, City of					
North County Fire Prot. Dist.					
Novato Sanitary District					
Oroville, City of					
Oxnard, City of					
Palos Verdes Library District					
Paso Robles, City of					
Rialto, City of					
Riverbank, City of					
Riverside, City of					
San Carlos, City of					
Stanislaus Consolidated FPD					
Torrance, City of					
Ukiah, City of					
West Covina, City of					
Winters, City of					

PENSION OBLIGATION BOND (POB)/UAL RESTRUCTURING EXPERIENCE

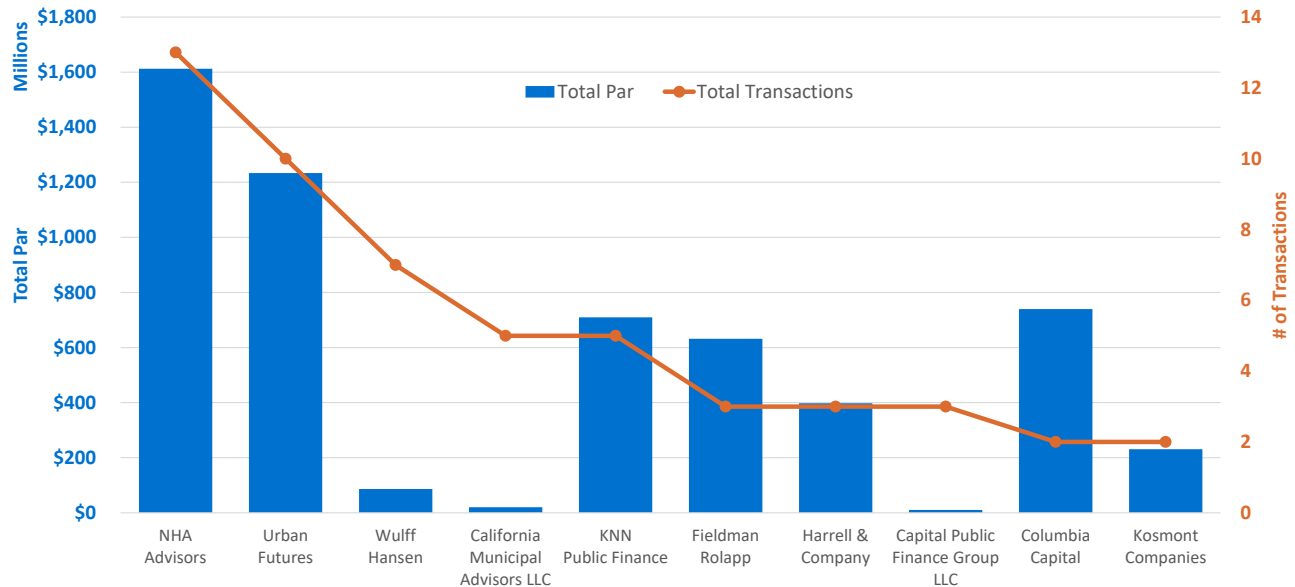
NHA is the top municipal advisor in California to public agencies for pension UAL restructurings since January 2020, according to CDIAC. This includes pension bonds for the cities of Auburn, Corte Madera, Riverside, Chula Vista, Grass Valley, El Monte, North County Fire District, and Palos Verdes Library District; lease-structure UAL



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

refinancing transactions for Ukiah, Torrance, and West Covina; and a utility-revenue UAL refinancing for the Novato Sanitary District. NHA is also currently working with Rialto, National City, Martinez, Oroville, Fort Bragg, Lakeport, and Stanislaus Consolidated Fire Protection District on UAL restructurings set to close Fall 2021. The table below summarizes this recent experience and details the amount of UAL that was funded through the restructurings. The table below also summarizes how NHA and each of these agencies have addressed the core risks of any POB: reinvestment and market timing risks.

California UAL Restructuring Issuances Closed (Jan. 2020 - July 2021)



NHA's UAL Restructuring Experience (March 2020-May 2021)					
Year	Agency	Par	UAL Funded	Structure	Strategy to Address Reinvestment Risk
Mar-20	Grass Valley	\$18,311,000	80%	POB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks"
Jun-20	Riverside	\$432,165,000	70%	POB	Pension Funding Policy, Partial Pay Off; Heavily Stress Tested by 3rd party Actuary
Jun-20	El Monte PERS	\$118,725,000	89%	POB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks"; Optimized to Tax Override Revenue, 3rd Party
Jun-20	El Monte PARS	\$21,000,000	80%	LRB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks";
Jun-20	North County Fire District	\$20,305,000	80%	POB	Pension Funding Policy, Partial Pay Off, 20 Year Repayment Shape that Can Absorb Future "UAL Shocks"
Jul-20	West Covina	\$204,095,000	100%	LRB	Pension Funding Policy, 2% Escalating Repayment Shape that Can Absorb Future "UAL Shocks"
Oct-20	Novato Sanitary District	\$6,467,000	100%	Sewer Rev	18 Year Repayment Shape; Pension Reserves to Address Any Near Term Shocks
Oct-20	Torrance	\$349,515,000	67%	LRB	Partial Pay Off, Reserve Building to Buffer Future Shocks; Heavily Stress Tested by 3rd party Actuary
Dec-20	Ukiah	\$49,875,000	83%	LRB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks", Section 115 Trust to Lock in Savings in Near Term
Feb-21	Chula Vista	\$350,025,000	100%	POB	Robust Pension Funding Policy that Fills up 6 Different Reserves, Repayment Shape that Can Absorb Future "UAL Shocks"; Heavily Stress
Mar-21	Palos Verdes Library District	\$5,924,000	100%	POB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks"
May-21	Corte Madera	\$19,000,000	85%	POB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks"; GovInvest and NHA Stress Tested
May-21	Auburn	\$15,515,000	80%	POB	Pension Funding Policy, Partial Pay Off, Repayment Shape that Can Absorb Future "UAL Shocks"

TOTAL 13 Issues totaling \$1.6 billion

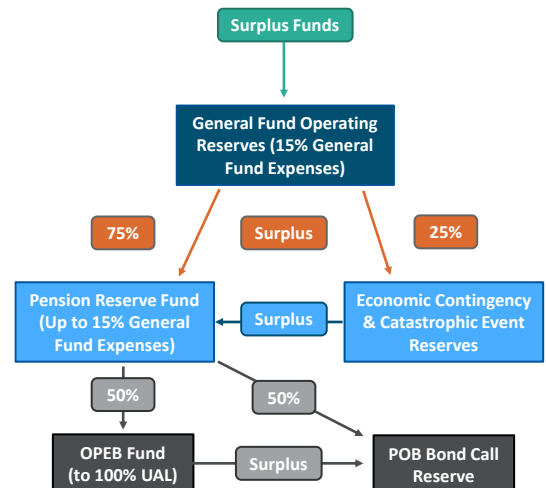
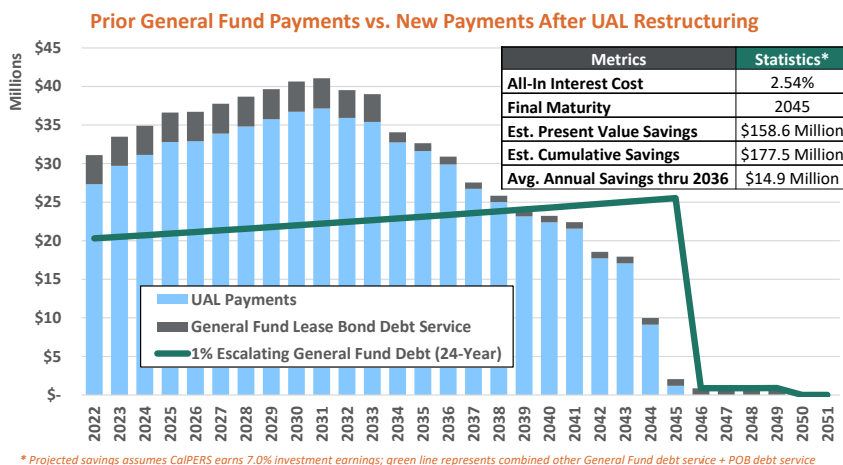


PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

Case Study: City of Chula Vista \$350M 2021 Pension Obligation Bond Secures All-in 2.54% Taxable 24-year Rate (Estimated \$178M Savings)

NHA was hired by the City of Chula Vista through a competitive RFP process in the summer of 2020 to manage the bond issuance. Staff had already laid the preliminary foundation for the UAL concept over the previous 8 months, but brought NHA in to assist in several core areas, as noted below:

- **Continued Education** – NHA helped create a website for the City to address key questions/concerns being asked by stakeholders: <https://www.chulavistaca.gov/departments/finance/pension-obligation-bonds>
- **Options Evaluation** – NHA analyzed over a dozen options for staff to review, including various sizes, repayment shapes and sensitivity analyses using different interest rate levels. Ultimately, a 24-year option that escalated at 1% annually (including other General Fund debt) was determined to be the most optimal structure – maximizing savings while also creating enough capacity to absorb any future “shocks” by CalPERS.
- **Robust Stress Testing** – NHA teamed with a 3rd party actuary to conduct robust stress testing analysis. The stress testing included looking at the impact of another “2008-like” recession, sustained underperformance by CalPERS, and an immediate stock market crash worse than 2008.
- **Policy Development** – NHA worked with staff to create a robust pension funding policy. This was a critical objective of the City Council to provide a roadmap to leveraging future POB savings to bolster 6 distinct reserves. A summary of this policy is shown in the graphic on next page on the bottom right.
- **Credit Rating Process Management** – NHA put together a comprehensive credit rating presentation for the City, which led to a “AA” rating and stable outlook. The depth of stress testing and level of detail incorporated into the pension funding policy was noted by S&P as being one of the best they have seen in the nation.
- **Underwriter Management** – NHA played a very active role in managing the underwriting process, having daily calls with the underwriter to ask the right questions and help position the City to obtain the most aggressive interest rates possible. ***Chula Vista achieved a 2.54% all in interest rate for a 24-year maturity, the lowest rate obtained for such a term length, to our knowledge.***



While NHA is the leader for UAL restructurings, only about 25% of our Pension Group clients have executed a POB. For many, properly educating stakeholders, sensitivity analysis and scenario projections to assist with budgeting, and a full evaluation of all potential cost management strategies is the focus. We've included two appendices that showcase recent materials we have developed for the cities of Corcoran and Newark as an example of our robust educational materials. The presentation for Corcoran (see **Appendix E**) is intended for a public workshop to discuss historical CalPERS costs, projections, and a comparison of cost management strategies, including pros/cons and risks. For Newark (see **Appendix D**), we developed a 10-page pension summary report (this type of report is available to all our clients) that distills information from the last 8 years of actuarial reports into an easy to digest report for City Council members and staff. This type of material is often a good "primer" for

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

stakeholders before having more robust discussions in a public forum. We also produced a similar report for the City of Farmersville two years ago, which was posted on their website so that residents could also begin to understand the CalPERS challenge.

d. Staff Qualifications

NHA's full team consists of three principals (each with over 30 years of experience in public finance), three vice presidents, and a quantitative support staff. Our entire municipal advisor team maintains their Series 50 in good standing with the MSRB and SEC. There is no pending or threatened litigation or sanctions levied against any of NHA's staff.

The adjacent table identifies the proposed lead advisory NHA team assigned to the City, along with some key qualifications and contact information. Below, we

expand on each lead advisor's qualifications. **In addition, we provide complete resumes for the lead advisory team and other senior staff in Appendix F.**

NHA's Assigned Municipal Advisory Team

Name	Eric Scriven*	Mike Meyer	Christian Sprunger
Title	Principal	Vice President	Assistant VP
Role	Lead Advisor	Co-Lead Advisor	Co-Lead Advisor
Licenses	Series 50, Series 54	Series 50	Series 50
In Public Finance Since	1990	2003	2016
Specialty at NHA	City finance, pensions, utility, land secured finance	Pensions (POBs and UAL Restructuring); City Finance	City finance, utility finance, cashflow modeling
Education	BS & MBA UC Berkeley	BS UCSD	MS Indiana University
Office	415.785.2025 x2003	x2004	x2007

*Assigned Day-to-Day Contact

Description of Staff Expertise and Qualifications

Eric Scriven, Principal, will function as the lead advisor and day-to-day contact for the City. Mr. Scriven's career in the municipal finance industry has spanned over 30 years. His expertise is in all facets of local government operations and finance including utility, redevelopment, land-secured, and project financing. Prior to joining NHA, Mr. Scriven was an underwriter with three major California investment banking firms. This prior experience provides NHA with a deep understanding of the buy-side process. More recently, Mr. Scriven has been active in utility financings and pension obligation bonds for California cities. Mr. Scriven holds an MBA, from Haas School of Business, and a B.S. in Urban Land Economics and Finance, both from University of California, Berkeley. He holds a Series 50 and 54 License from the SEC.

Mike Meyer, Vice President, will function as an additional lead advisor for the City. Mr. Meyer has worked in public finance for 18 years, with over half of his time spent as an underwriter. Mr. Meyer manages NHA's Pension and Fiscal Sustainability Group and has analyzed pensions and POB structuring solutions since 2006. He has worked on each of the firm's pension consulting and POB engagements over the last five years, totaling \$1.7 billion in par. Mike is also an experienced generalist, having completed over 200 bond financings using all types of structures, including utility revenue, lease revenue, sales tax and transportation revenue, TABs and land secured. Mr. Meyer holds a B.S. in Management Science, from the University of California, San Diego. He holds a Series 50 License from the SEC.

Christian Sprunger, Assistant Vice President, will also function as an additional lead advisor for the City. Mr. Sprunger has worked in public finance since 2016, during which time he has worked on over 100 financings for California municipal issuers, totaling over \$2.2 billion in par. While an experienced generalist, Mr. Sprunger has honed his skill with general fund financial forecasting and fiscal fitness analysis and enterprise fund cashflows and

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

coverage modeling. Mr. Sprunger will take an active role in managing the project for the City - including undertaking the necessary due diligence, to analyzing the credit and preparing a credit rating presentation, to financial modeling and closing out the transaction.

As noted earlier in the proposal, the 6 NHA professionals not assigned to the lead team will be available as needed for support. The table below provides a summary of each of the 6 supporting professionals.

NHA's Additional Municipal Advisory Resources – Available as Needed

Name	Craig Hill	Mark Northcross	Leslie Bloom	Rob Schmidt	Roy Kim	Matt DeFilippis
Title	Managing Principal	Principal	Vice President	Vice President	Associate	Analyst
Licenses	Series 50	Series 50	Series 50	Series 50	Series 50	Series 50
In Public Finance Since	1989	1981	2007	2004	2018	2021
Specialty at NHA	City finance, land-secured (CFD, AD) finance; development finance	City Finance, public policy, utility financing, climate change infrastructure	City finance, land secured finance, quantitative analysis, credit analysis	City finance, land secured finance, continuing disclosure, quantitative analysis, credit analysis	City finance, pensions, credit analysis and presentations	City finance, research, credit analysis, presentations
Education	BS UC Davis	BA UC Irvine	BS University of Arizona	BS UCLA	MS Johns Hopkins	BA UC Berkeley
Office 415.785.2025	x2001	x2002	x2009	x2001	x2008	x2011

3. SCOPE OF SERVICES

NHA continuously refines its expertise and scope of services. Our practice includes project-specific consulting work as well as traditional public financing services.

NHA Routinely Provides the City's Required Municipal Advisory Services

- ✓ The financial advisor will be expected to review the City's current financing structure and debt capacity
- ✓ Assist with evaluating the options for financing various projects under consideration by the City
- ✓ Provide advice and support, as needed, to assist the City in making decisions
- ✓ Recommend a financing plan to meet the City's construction timeline and projected cash flow needs
- ✓ Assist with preparation for and interaction with rating agencies
- ✓ Evaluate and present alternative and creative financing structures when dictated by the nature of projects being financed
- ✓ Assist in the selection of other members of a financing team as required
- ✓ Coordinate the efforts of City staff, bond counsel, City attorney and any other legal counsel with respect to the preparation and approval of financing documents by the City Council

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

- ✓ Recommend specific financial covenants, terms and provisions (including rate covenants), additional bonds tests, maturity schedules, timing of sale, call provisions and related matters
- ✓ Prepare or assist in the preparation of the official statement and review and provide appropriate revisions and recommendations to legal and other documents
- ✓ Attend meetings with City staff, consultants and the City Council as requested and make presentations to explain debt related issues
- ✓ Prepare and coordinate presentations to rating services and bond insurers
- ✓ Recommend a method of sale and provide direction with respect to securities market conditions and timing of sale
- ✓ Should the City elect to offer its securities through public sale, coordinate the notice and bid process and calculate the true interest cost of each bid received to assist City in its decision making
- ✓ Should the City elect to offer its securities through negotiated sale, assist the City in the selection of an underwriter and negotiate underwriting spread, interest rates and other terms on behalf of the City
- ✓ Assist in planning investment of proceeds from issuance of debt
- ✓ Be available to provide additional analysis and advice as requested and to provide appropriate training to City staff

Below, we elaborate on NHA's approach to a few of the required items in the City's scope of services. Furthermore, in Appendix G, we have provided greater detail into NHA's comprehensive scope of services, which we are proud to provide to each client.

Long-Range Financing Strategy

In keeping with the "NHA Way" ethos, our objective is to absolutely address the City's short-, mid- and long-range strategic objectives. As this effort pertains to a financing strategy, our process would be to determine the City's objectives through a process of interviewing staff, understanding the City's CIP needs (in detail, dollars, timing), risk tolerance, constraints, discussion of the City's debt profile, etc.

Bottom line: NHA always seeks to understand, with crystal clear clarity, executive staff and city council core objectives. Everything we do—advisory first, then execute upon Council/Staff directives next—is predicated upon that understanding of short-, medium- and long-term strategic goals.

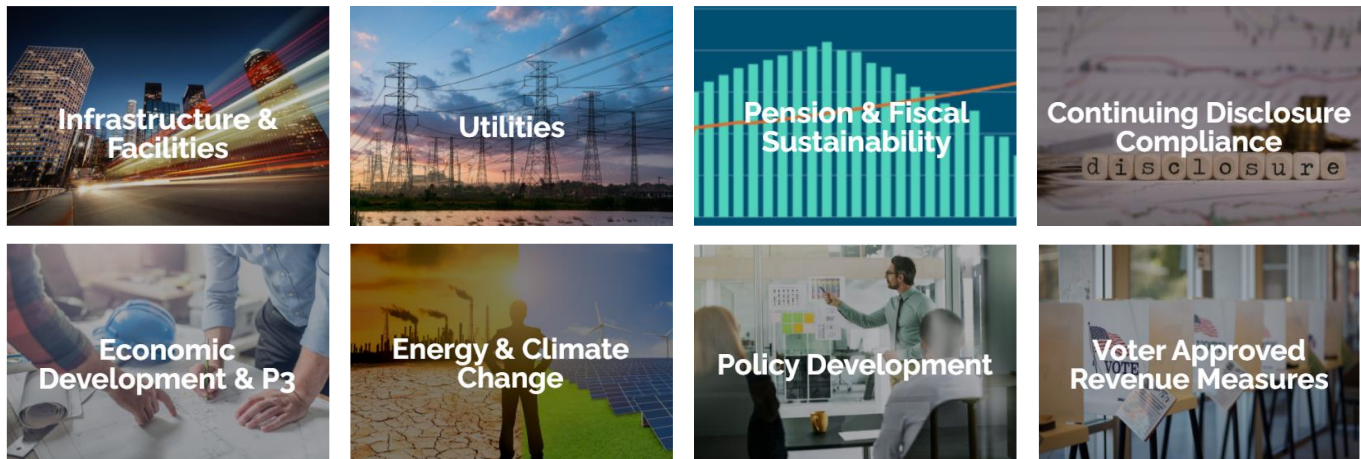
Consulting Practice Groups

As discussed herein, in addition to bond financings, many clients rely on us for strategic financial planning, policy advice, cross-collaboration with other consultants and general financial staff support. **Since 2016, NHA staff has completed over 300 unique consulting projects**, many of which were not strictly connected to a financing. While this level of service may not be commonly provided by municipal advisors, our "**extension of staff**" service has become a core part of our services and a critical benefit to many of our clients. CalPERS pension and fiscal sustainability consulting services have been a rapidly growing element of our consulting practice, helping to address the concerns of our clients given rapidly growing pension costs and the continuing needs to fund deferred maintenance and critical services.

NHA formed 8 practice groups to address areas that our clients had told us mattered to them. NHA has made it our business to become expert in areas such as climate change impacts (i.e., wildfire risks, rising sea levels),

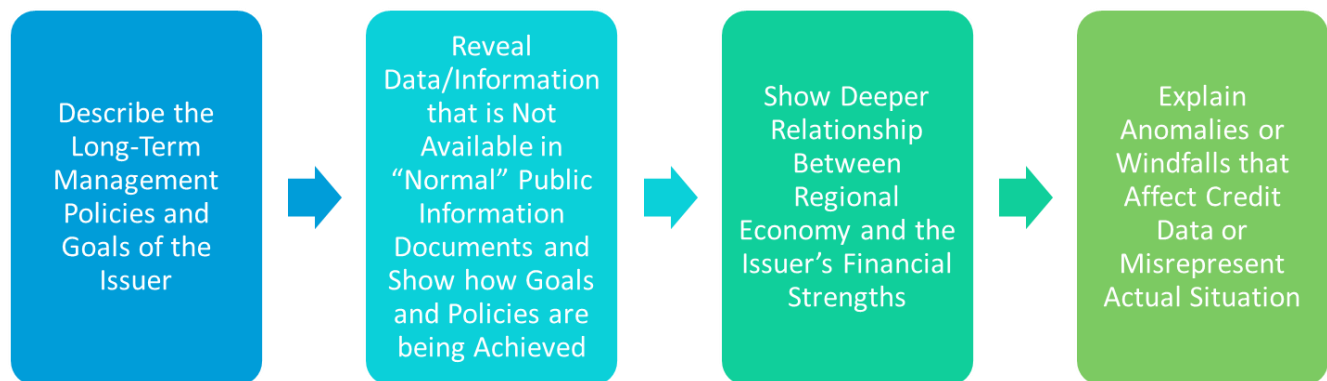
**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

pensions, P3/economic development negotiations, and continuing disclosure to provide meaningful ideas and advice to our clients when those issues arise, and we are called upon to contribute.

**Credit Rating Approach and Strategy**

NHA takes an active role in the credit rating process, leading the due diligence review and crafting the credit presentation. NHA understands that a portion of the rating criteria is often outside of the City's control, such as economic indicators and demographics. However, a large element of the rating is controllable, and NHA has a strong record of executing a multi-pronged approach to ensure our clients obtain the highest rating possible. As the graphic below indicates, NHA equips our clients and enables them to tell their story. Our goal in the credit rating process is to ensure that the rating analysts are educated and supported with critical and key information to defend and advocate the City's position and make positive rating recommendations to their committees.

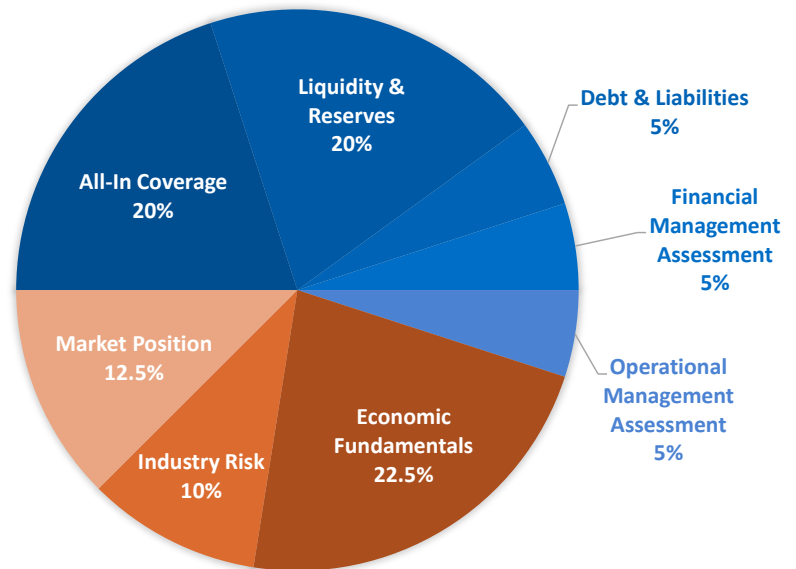
As examples of our work with credit presentations, please see **Appendix B** for presentations that NHA prepared for the City of Auburn's 2021 Pension Obligation Bonds and the City of Exeter's 2019 Water Revenue Refunding Bonds.

NHA Strategic Goals for Credit Rating Presentations



As an example, consider our approach to a utility bond credit rating. We dive deeply into the credit and perform the due diligence and involved work needed to see the process through from start to finish. We think it is important that the municipal advisor, as the City's fiduciary, perform almost all the work on the credit rating process and unlike many competing municipal advisory firms, we do not farm this part of the financing out to an underwriter. Our strategy is to focus on the items that the City has the most control over – these are represented by the blue slices in the pie chart below. While the other rating criteria, like strong economic fundamentals are nice to have, the reality is that these criteria are often a function of where the City is located and most public entities have very little control over them. While our presentations discuss all aspects of the rating criteria, we zero in on things like coverage, liquidity and reserves, debt and liabilities, financial management assessment, and operational assessment. Combined these have over 50% of the weighting on the credit rating.

UTILITY BOND RATING CRITERIA WEIGHTING



Combined these have over 50% of the weighting on the credit rating.

We want to ensure that our clients are fully prepared to discuss the credit with the rating agencies. Early in the process, we assist with implementation of policies, including drafting debt management and disclosure policies. In addition, we can provide insight into what rating agencies view as “best practices” in terms of financial management and operational management to assist our clients with positioning themselves to achieve an optimal rating. Finally, we do a detailed slide-by-slide walkthrough prior to all rating calls with our client, ensuring that they know the key takeaways and message on each slide.

Underwriter RFP Process

Like the credit rating process, NHA takes an active role in the underwriter RFP process. This includes writing the RFP, sending it all or to a hand-selected set of underwriters (there are reasons for both approaches), reviewing and evaluating underwriter proposals, and communicating recommendations to the client. Once NHA receives and reviews the underwriter proposals, we rank the proposals based on an internally developed scoring model that takes objectivity and subjectivity into account. When communicating recommendations to the City, we articulate the reasons behind our decision and allow space for City staff comments and questions. NHA usually takes the lead in this process, but we will adapt if City staff have other preferred approaches to this selection process.

a. NHA's Approach to the City's Finances

Existing Debt Profile & Potential Refunding Opportunities

The City's outstanding long-term debt includes three publicly issued bonds (2015 Wastewater Refunding Revenue Bonds; 2013 Water Revenue Refunding Bonds; 2012 Wastewater Revenue Refunding Bonds), two capital leases (2014 Bank of America Capital Lease; 2011 Bank of America Capital Lease), and one note (2002 California Infrastructure & Economic Development Bank Loan). After reviewing each of these debt obligations, NHA believes

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

that a few of the obligations can potentially be refinanced in the current market to produce economic benefit to the City. Preliminary analysis for these is discussed in greater detail below.

2014 Bank of America Capital Lease (“2014 Lease”): The 2014 Lease currently has \$6,190,842 in par outstanding, an interest rate of 3.540%, and a final maturity year of 2029. The lease has been callable on rental payment dates since 10/26/2014, therefore refinancing the lease could be done on a tax-exempt basis. NHA notes that refinancing the lease via a private placement (versus a public offering) could be a preferred method of sale, due to the short bond term (final maturity in 2029) and the reduced impact on City staff. In our experience, when the outstanding bonds have less than 20 years until final maturity, there is significant demand from regional and national banks for the bonds. While private placements often have higher interest cost, they typically cost less upfront to issue and can be issued through a much less labor-intensive process (e.g. no credit rating and no bond prospectus needed).

We estimate annual cashflow savings from refunding the 2014 Lease would be approximately \$25,000-30,000 per bond year, through 2029. In total, the refinancing would generate cashflow savings of approximately \$200,000, which equates to net present value savings of \$190,000 (3.0% of refunded par).

2013 Water Revenue Refunding Bonds (“2013 Bonds”): The 2013 Bonds currently have \$6,780,000 in par outstanding, an interest rate ranging between 3.500% and 5.000%, and a 2028 final maturity. A refinancing of these 2013 bonds is not expected to provide sufficient savings to the City to justify a refinancing. This is due to the short-term remaining on the 2013 Bonds and the October 1, 2023, first optional call date. However, if the City wished to explore a refinancing of this loan for other, non-economic purposes (e.g., restructuring/extension of final maturity or bond covenant re-write), NHA can evaluate this further.

2012 Wastewater Revenue Refunding Bonds (“2012 Bonds”) & 2002 California Infrastructure & Economic Development Bank Loan (“2002 Loan”): The 2012 Bonds currently have \$8,345,000 in par outstanding, an interest rate ranging between 2.375% and 4.000%, and a final maturity year of 2032. The bonds have a first optional call date of October 1, 2022, implying that a refunding of the 2012 bonds would need to be issued on a taxable basis.

The 2002 Loan currently has \$4,707,419 in par outstanding, an interest rate of 3.500%, and a final maturity year of 2031. The loan is callable at any time with no prepayment penalty. We believe a refunding of the loan could be issued on a tax-exempt basis, though that determination would be made by bond counsel upon review of the use of the 2002 Loan proceeds.

A multi-series refunding of the 2012 Bonds and 2002 Loan may achieve some economies of scale – one taxable series refunding the 2012 Bonds and the other tax-exempt series refunding the 2002 Loan. From our analysis, we estimate that refunding the 2012 Bonds and 2002 Loan through a multi-series refunding could generate combined cashflow savings of approximately \$44,000 per bond year, which equates to approximately \$485,000 in savings over the life of the bonds, or over \$435,000 in present value terms (just over 3% of refunded par). These savings are only slightly above a common 3% NPV savings threshold and are presented net of costs associated with issuing the bonds.

We note that refunding the 2002 Loan would remove the cost associated with the annual fee, currently paid in the amount of 0.3% of outstanding principal, resulting in additional savings to the City.



While the 2002 Loan is callable now, the October 2022 first optional call date on the 2012 Bonds introduces a nuance to the refunding. Once the money is deposited into an escrow at closing of the refinancing, the City’s obligation related to the 2012 bonds is released. However, the 2012 Bonds will remain outstanding until their first optional call date in October 2022. As a result, the amount required to defease the 2012 Bonds at closing is greater than just the outstanding 2012 Bonds principal, due to the need to pre-fund interest payments through October 2022. This

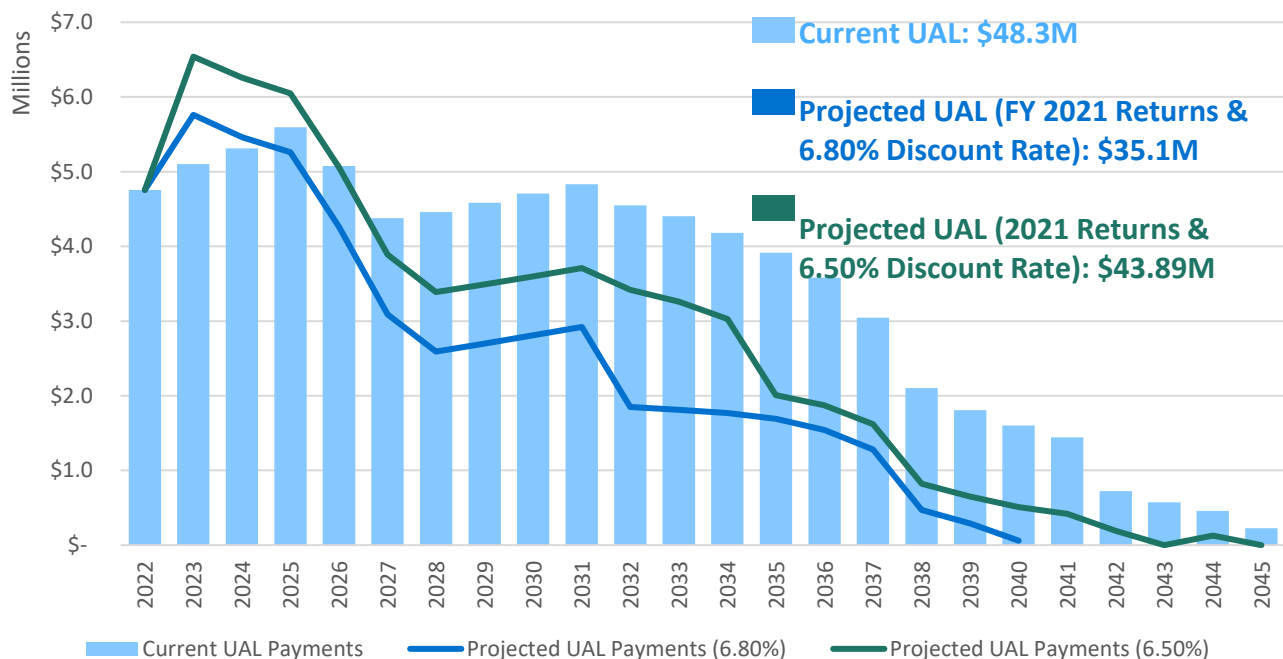
**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

introduces the concept of “negative arbitrage” (paying more for a borrowed sum of money than you are earning on that same money) and interest will be paid on both the 2012 Bonds and the 2021 Bonds until 2021. The dollar amount of this negative arbitrage is estimated at over \$161,000. To mitigate the impact of this, we assume the escrow would be invested in the “AAA” federal securities at closing on the 2021 Bonds, however current earnings rates for “AAA” federal securities are very low and not expected to materially benefit the City. All savings figures presented above have already factored in the impact of the negative arbitrage.

An alternative for the City to minimize this negative arbitrage would be to wait to refund the 2012 Bonds until early July 2022. If the refunding closes within 90 days of the October 1, 2022, first call date on the 2012 Bonds, it is likely that the refunding bonds can be issued on a tax-exempt basis. This would result in lower interest rates on the refunding bonds and less negative arbitrage (due to shorter, 90-day escrow). If current market interest rates stay at their historically low levels, this option could significantly increase the savings on a refunding. The risk of this “wait” approach is that market interest rates go up significantly over the next 10-11 months.

Managing Rising Pension Costs

Current Pension Debt Profile: The City’s UAL has grown by about 35% over the last 7 years due to CalPERS underperformance and assumption changes. However, after the FY 2021 21.3% gains, the City’s UAL should be significantly reduced, though some of this benefit will be soaked up through a further discount rate reduction. At a minimum, CalPERS will drop the discount rate to 6.80%. Assuming a 6.80% discount rate and incorporating the 21.3% returns, we expect the City’s UAL to drop from \$48.3 million to \$35 million, with the new repayment shape shown in the royal blue line below. However, there is also a chance that CalPERS uses this strong year of returns to reduce the discount rate to something lower, like 6.50%, or even lower, which would only drop the UAL to about \$44 million (green line below).

Hanford Current v. Projected CalPERS UAL Payments

Preliminary UAL Restructuring Options: NHA presents three basic UAL restructuring options for the purposes of this proposal. It is our intention to illustrate how we think about these complex issues/problems and how we develop ideas/options for our clients to consider.

- **Option 1:** 19-Year Maturity; level payments



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

- **Option 2:** 15-Year Maturity with 1.5% escalating payments
- **Option 3:** 10-Year Maturity; level payments

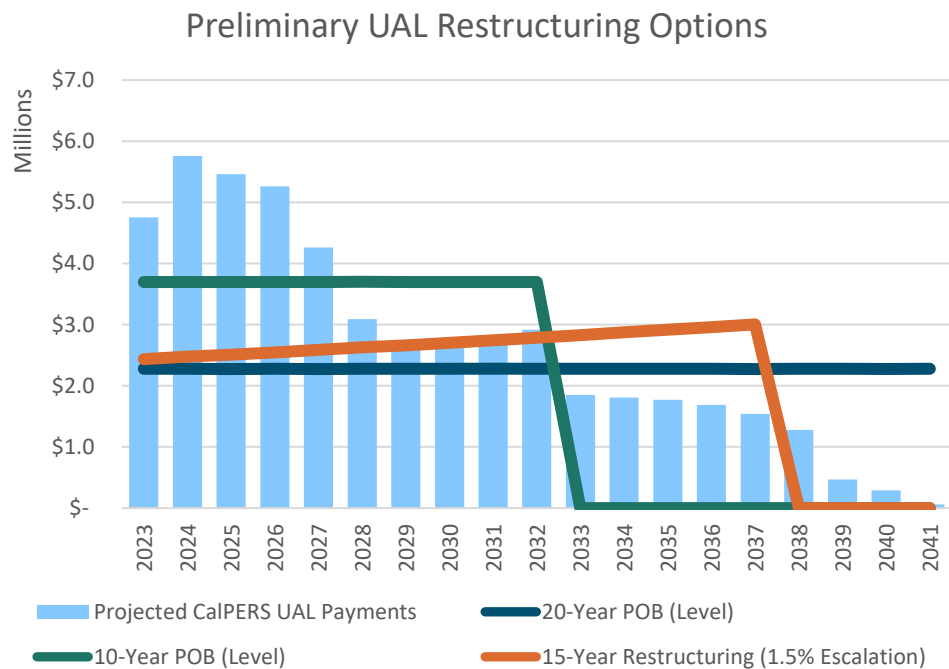
For all options, NHA assumes the following:

- 68% of CURRENT UAL paid off; but projected to be 100% once new assumptions changes and 21.3% gains are incorporated
- Estimated interest rates based on recent comparable transactions
- Bonds are callable (prepayment provision)

The chart to the right depicts these options in graphical form. The light blue bars represent the City's projected UAL payments related to the lower \$34 million UAL projected with CalPERS, while each of the colored lines represent the City's new payments if it were to execute a pension bond to restructure its UAL.

The chart below provides the estimated bond and savings metrics for each of these scenarios. As shown, present value savings ranges from \$5.6 million to \$6.7 million,

with interest rates on the POB ranging from 2.32% (10 year) up to 3.03% (20 year). While there is interest rate differential between the shorter and the longer term, these interest rates are at historically low levels, and close to 1% lower than the POBs that were issued in the Spring of 2020. From NHA's perspective, the key difference in these options is the savings over the next 10 to 15 years, where the City is feeling the most cash flow pressure from pension costs. The longer 20 year term maximizes these near term savings, to the tune of \$11.6 million, or \$830,000 per year. The 15 year provides \$5.8 million of near term savings, or \$417K per year, and the shortest 10 year option provides about \$6.5 million of estimated savings, or \$466,000 annually.





PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

Metrics	20-Year POB (Level)	15-Year Restructuring (1.5% Escalation)	10-Year POB (Level)
\$ UAL Funded (6/30/22)	\$32,730,000	\$32,730,000	\$32,730,000
% UAL Funded (Current Asset Valuations)	68%	68%	68%
Funded Ratio (Current Asset Valuations)	88%	88%	88%
% UAL Funded (Projected After FY 2021 Returns)	100%	100%	100%
Funded Ratio (Projected After FY 2021 Returns)	100%	100%	100%
Maturity	20 Years	15 Years	10 Years
Average Life	10.6 Years	8.6 Years	5.5 Years
All-In Interest Rate	3.03%	2.76%	2.32%
Present Value Savings (%)	16.99%	17.93%	20.37%
Present Value Savings (\$)	\$5,561,085	\$5,869,988	\$6,666,959
Cumulative Savings	\$2,333,015	\$4,936,648	\$8,626,172
Savings (2023-2036)	\$11,616,540	\$5,841,139	\$6,526,172
Avg. Annual Savings (2023-2036)	\$829,753	\$417,224	\$466,155

It is important to note that while a longer term does have a slightly higher interest rate, it does produce a significantly lower annual payment level which in turn would give the City quite a bit more resiliency to absorb future economic shocks, such as new UAL that could get layered on in the future. This type of resiliency to future shocks would be a key piece of the process that NHA would recommend (see “stress testing” below) and that we have incorporated into all our other UAL restructuring projects. Lastly, it should be noted that these POBs would be callable (pre-payable) in 10 years, so the City would also have the flexibility of paying them off early no matter what the initial term is set at.

Refining the Options: Based on the City’s objectives, NHA can tailor UAL restructuring options accordingly. We can assist the City in examining multiple sizes, terms, and repayment shapes based on the City’s financial needs and constraints. In addition to structuring considerations, NHA also believes it is essential to consider “stress-test” options, which quantify risks for stakeholders to ensure there is sufficient structural resiliency to absorb future potential UAL shocks.

For an example of this type of “stress testing” process, please refer to **Appendix C**, which summarizes the results of the stress testing we did for the Town of Corte Madera POB, where we modeled out the impact of below average CalPERS performance both with a POB, and without a POB. Scenarios included below average performance (i.e., 5.5% returns and stress situations such as a stock market crash similar to 2008). This was a very helpful part of the process to make sure these risks were transparently quantified for their electeds and was also helpful to optimize the desired structuring option for their POB and determine the ultimate term for the debt.

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

POBs – Benefits and Risks: Below is a table of benefits and risks involved with issuing POBs.

Benefits	Risks
▶ Enhanced Fiscal Sustainability Budget Predictability through Lower and Smoother Repayment Shape ▶ Interest Rate / Budgetary Savings ▶ Increased Funding Ratios of Retirement Plan ▶ Flexibility to Tailor Duration (Term) and Shape of Repayment to City's Needs ▶ Enhance Service Levels, Capital Project Funding and/or Reserve Levels using projected savings and increased cash flow	▶ Re-investment/Market Timing Risk: Present value (PV) savings is ultimately dependent on future CalPERS returns, which are unknown at time of issuance ▶ City is better off if PERS earns more (on average) than the interest rate on the POB ▶ Future UAL Can Still Appear – Whether a bond is issued or not, the City's UAL can grow (or reappear) in the future based on below average CalPERS investment returns; this new UAL could be higher under a POB scenario since near term losses would be magnified with more assets invested by CalPERS

4. REFERENCES

NHA's references can provide the City with frank, detailed evaluation of our approach and processes towards projects. We encourage you to reach out to these references for more information about how NHA approaches our projects with a goal of providing an unparalleled level of municipal advisory services in keeping with the "NHA Way" ethos.

Name Title	Project Location	Description of Service Provided	Date of Services	Contact Information
Isaac Moreno Asst. City Manager / Finance Director	City of Selma	Consulting and Municipal Advisory	2008 - Present	IsaacM@cityofselma.com
Kindon Meik Former City Manager	City of Corcoran	Consulting and Municipal Advisory	1990 - Present	KMeik@cityofcalabasas.com
Soledad Ruiz-Nunez Finance Director				Soledad.ruiz-nunez@cityofcorcoran.com
Rene Mendez City Manager	City of Gonzales	Consulting and Municipal Advisory	2006 - Present	rmendez@ci.gonzales.ca.us
Steve Huntley Director of Finance & Administration	City of Farmersville	Consulting; USDA and SRF Loans for Wastewater Treatment Plant	2019 - Present	SHuntley@cityoffarmersville-ca.gov

5. CONFLICT OF INTEREST, DEBARMENT OR SUSPENSION

- NHA has **no** past or current business and personal relationships with any current Hanford elected official, appointed official, City employee, or family member of any current Hanford elected official, appointed official, or City employee. Further, NHA, being focused upon cities as our core mission / business, does not serve any other public entities (County of Kings, Hanford Schools, etc.) that one or more of our competitors have that may from time to time have differing goals (or direct conflicts) from the City.



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

- NHA has **no** financial, business or other relationship with the City of Hanford that may have an impact upon the outcome of a project.
- NHA has **no** current clients who may have a financial interest in the outcome of this contract.
- NHA is **not** debarred or suspended from practice in the State of California.

6. LITIGATION

NHA, nor any of the 9 professionals while at previous firms, has **never** been involved with any litigation in connection with prior projects in its (or their) history.

7. CONTRACT AGREEMENT

NHA has **no** issues with executing an agreement with the City of Hanford.

8. COMPENSATION

NHA commits to delivering the highest standard of municipal advisory work product. We understand and are mindful that our proposed fees must reflect the value we deliver. Our goal is not to be the low-cost leader of financial advisory services. Our fee levels are indicative of the amount of professional resources applied to the City's project. **We recognize the importance that fee containment has for clients and are willing to negotiate our fees with the City.**

NHA believes that fee levels are a function of the scope and effort provided by different firms. Many advisors will limit their work to managing the process, coordinating calls, and delegating to other financing team members. We take a comprehensive and active approach, whereby we ensure that all aspects of the financing process are completed to the highest standard, which directly impacts the credit and best interest rates for the City. Managing the credit rating documents allows NHA and the City to deliver a comprehensive and insightful information package to the rating agencies. This benefits the City, financing, and stakeholders through a higher rating result and lower interest rates. Again, we encourage you to confirm this statement with the references provided. As a fiduciary, we put our clients' interests before ours.

We approach each project objectively and with the primary purpose of delivering agnostic options and alternatives. We believe that it is important to have no "vested interest" in advocating for a bond solution to guarantee a financing fee for the consultant. We often observe some of our competitors charging a fee based upon the size of the bond transaction, which we see as a "vested interest" and direct conflict. At NHA, we avoid such conflict by keeping the initial work independent of the implementation of a financing solution. We believe the initial phase of work should be focused on providing alternatives that may or may not include a bond financing. Since this investigative process can greatly vary in time, we recommend it be segregated from the financing scope and subject to hourly efforts. The City controls the time and the process to avoid unforeseen costs.

a. Hourly Fee Schedule

NHA works with many public agencies on a traditional consulting arrangement to assist in the development of financing plans, funding strategies, and educational outreach. For any work requested on these services, NHA proposes to work on a non-contingent hourly basis as defined below.



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

NHA Staff Resource	Billing Rate
Principal	\$325
Director/Senior Vice President	\$300
Vice President	\$275
Assistant Vice President/Senior Associate	\$250
Associate	\$225
Senior Analyst	\$200
Analyst	\$175
Administrative Support	\$100

b. Financing Fee Schedule

For projects requiring some form of bond financing, NHA charges a contingent fee (paid at closing of the transaction from proceeds of the financing) as follows:

Base Municipal Advisory Services

The transaction is expected to utilize one of the following methods of sale: (1) private placement with a private party or bank (requiring no public offering disclosure document), (2) negotiated public offering with a pre-selected underwriter, or (3) competitive public offering engaging an underwriter through a competitive sale. Based on the method of sale, NHA proposes a fee for services as follows.

Type of Financing	Short-Term Cash Flow Financing	Long-Term Bond Financing (Revenue Bonds; Lease Financings; Tax Increment Bonds; General Obligation Bonds; Mello-Roos Bonds)
Private Placement	\$20,000	\$29,500 to \$39,500
Public Offering – Negotiated Sale	\$22,500	\$42,500 to \$54,500
Public Offering – Competitive Sale	\$25,000	\$45,000 to \$57,500

Additional Services

Credit Rating Process (as Needed) – For services related to a credit rating process, NHA proposes a fee for services as follows.

Credit Rating Process	Fee
Short-Term Cash Flow Financing	\$5,000
Long-Term Financing	\$10,000

Continuing Disclosure Review and Remediation (as Needed) – For services related to a review and remediation of the 5-year continuing disclosure history of the City, NHA proposes a contingent fee of \$3,000 to be paid out of the bond proceeds.

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

In-Person Meetings (Upon Request) – NHA proposes to be reimbursed \$1,500 for each in-person meeting. NHA proposes to participate on conference calls and virtual meetings at no additional cost to the City.

Request for Proposals (Upon Request) – If the City has not engaged consultants to provide certain services required as part of financing process, at the City's direction, NHA proposes to undertake the solicitation of one or more of these parties for the fees outlined in the following rate table.

Request for Proposal Process	Fee
Broker-Dealer (Underwriter/Placement Agent)	\$5,000
Bond/Disclosure Counsel	\$2,500
Special Tax Consultant	\$2,000
Fiscal Consultant	\$1,500
Trustee	\$1,000

Expenses (Out-of-Pocket)

All expenses will be billed directly at cost to the City. Expenses will be limited to those necessary for completion of the project and will not be incurred without prior written consent of the City.



APPENDIX A: NHA'S CURRENT AND LONG-TERM FINANCIAL ADVISORY ENGAGEMENTS



PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC

NHA's Current & Long-Term Engagements (August 2021)

Client Name	Current Project(s) (Calendar Year 2021)	NHA Client Since
American Canyon, City of	Bonds (Special Tax/CFD)	2018
Auburn, City of	Consulting (Continuing Disclosure); Bonds (Pension Obligation Bonds)	New Client
Berkeley, City of	Consulting (General, Continuing Disclosure); Bonds (GO, Lease Revenue Bonds)	1996
Campbell, City of	Consulting (General, Continuing Disclosure)	2015
Carmel, City of	Consulting (Pension, Continuing Disclosure)	2012
Central Basin MWD	Bonds (Water Revenue)	New Client
Chico, City of	Consulting (Pension, Continuing Disclosure)	2015
Clearlake, City of	Consulting (Continuing Disclosure)	2017
Corte Madera, City of	Consulting (Pension); Bonds (Pension, Lease Revenue Bonds)	1996
Cotati, City of	Consulting (Continuing Disclosure)	2001
East Niles CSD	Consulting (Financing Plan); Bonds (Water Revenue)	New Client
El Centro, City of	Consulting (Capital Projects); Bonds (Lease Revenue Bonds, 2 series)	2018
El Cerrito, City of	Consulting (Pension, Continuing Disclosure); Bonds (TRANS)	2014
El Monte, City of	Consulting (General, Utility, Continuing Disclosure)	2019
El Toro Water District	Consulting (Financing Plan); Bonds (Water Revenue)	New Client
Farmersville, City of	Consulting (General, Utility, Continuing Disclosure)	2018
Gilroy, City of	Consulting (General, Continuing Disclosure); Bond (Sewer Revenue)	2001
Gonzales, City of	Consulting (General, EIFD Consulting)	2014
Grass Valley, City of	Consulting (Continuing Disclosure)	2019
Hidden Hills, City of	Consulting (Infrastructure)	New Client
Industry, City of	Consulting (General)	2012
Lake County	Bond (Wastewater Revenue)	New Client
Lakeport, City of	Consulting (Pension, General, Continuing Disclosure); Bond (Pension)	2008
Lancaster, City of	Bond (Lease Revenue, Power Revenue)	2016
Mammoth Lakes FPD	Consulting (Pension); Bond (Pension)	New Client
Martinez, City of	Bond (General Obligation, Pension)	2013
Mendota, City of	Consulting (Fiscal Feasibility); Bond (Sewer Revenue; Lease Revenue)	New Client
National City, City of	Consulting (General Fund; Continuing Disclosure); Bond (Pension)	2017
Newark, City of	Consulting (Pension, Continuing Disclosure)	1998
Novato, City of	Consulting (Continuing Disclosure)	2009
Ojai, Town of	Consulting (General Fund)	New Client
Oroville, City of	Consulting (Pension); Bonds (Pension)	New Client
Oxnard, City of	Consulting (Continuing Disclosure, General, Development); Bonds (Water Revenue, Equipment Lease)	2018
Palmdale Water District	Consulting (Continuing Disclosure); Bonds (Water Revenue)	2009
Paradise, Town of	Consulting (General)	New Client
Paso Robles, City of	Consulting (General, Development, Continuing Disclosure)	1996
Rancho Cordova, City of	Consulting (General); Bonds (Special Tax)	2017
Reedley, City of	Bonds (Pension)	New Client
Rialto, City of	Consulting (Pension); Bonds (Pension)	New Client
San Francisco, City and County	Bonds (COPs)	2019
Saratoga, City of	Consulting (Roadways)	New Client
Sausalito, City of	Consulting (Continuing Disclosure, Pension)	2015
Selma, City of	Consulting (General, Continuing Disclosure, CIP)	2010
Solano Irrigation District	Consulting (Continuing Disclosure); Bonds (Water Revenue)	New Client
Sonoma, City of	Consulting (Continuing Disclosure); Bonds (Tax Allocation)	2010
Suisun/Solano Water Authority	Consulting (Continuing Disclosure); Bonds (Water Revenue)	2016
Tahoe Douglas Visitors Authority	Consulting (General, Arbitrage Rebate, Continuing Disclosure)	2018
Three Rivers Levee Improvement Auth.	Consulting (Land Secured and Development)	New Client
Ukiah, City of	Consulting (General, Continuing Disclosure)	2014
West County Wastewater District	Consulting (General); Bonds (Wastewater)	2020
Willits, City of	Consulting (Continuing Disclosure)	2020
Yuba City, City of	Consulting (General; Equipment Lease)	2000
Yuba County Water Agency	Consulting (Continuing Disclosure, Power, General)	2016

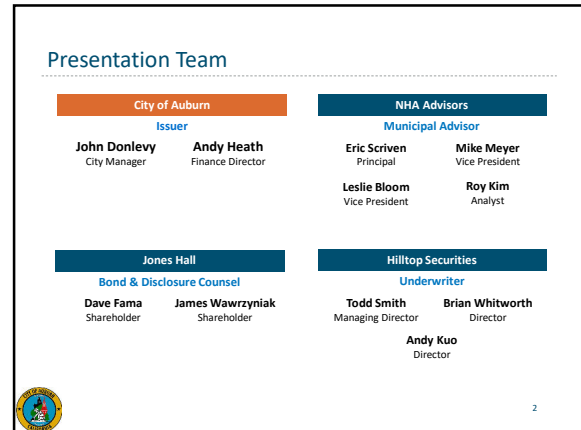


APPENDIX B: EXAMPLE CREDIT PRESENTATIONS

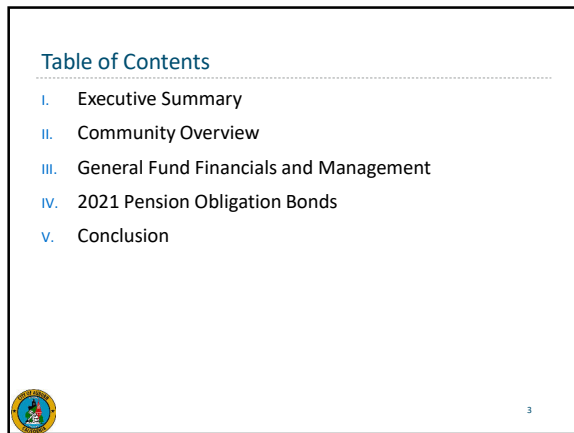
8/20/2021



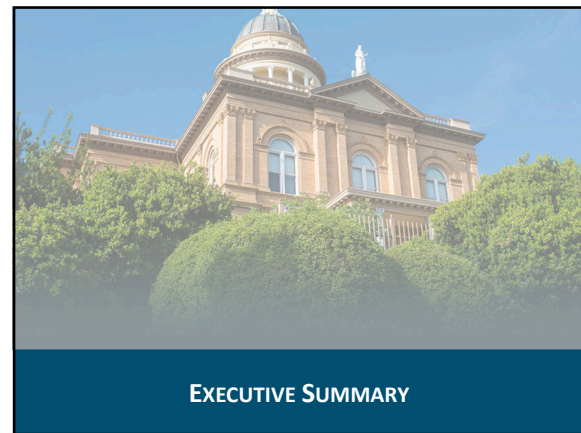
1



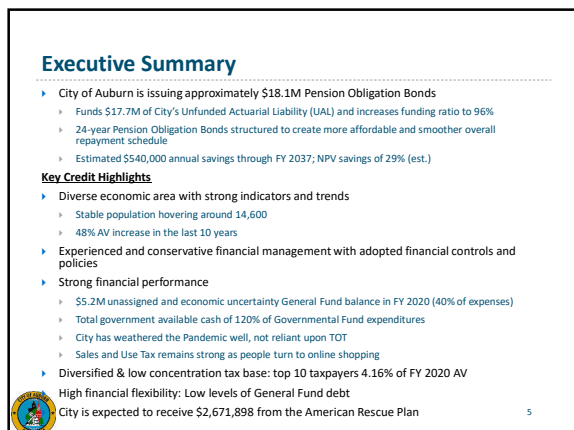
2



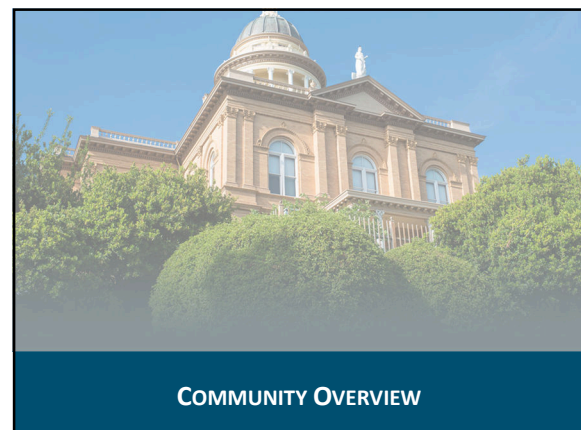
3



4



5

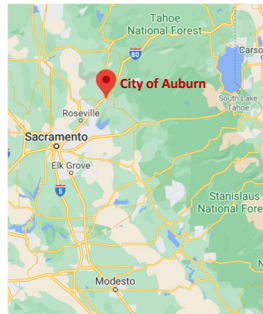


6

8/20/2021

Community Overview

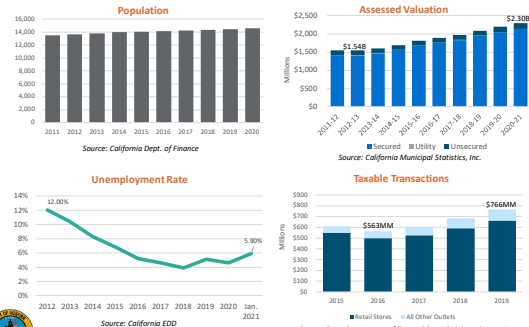
- Population (2020): 14,595
- Incorporated in 1888 and has Council-Manager form of government
- County seat of Placer County
- Located northeast of Sacramento and southwest of Lake Tahoe at the intersection of I-80 and Highway 49
- Encompasses approximately 7.5 square miles



7

7

City Statistics and Trends

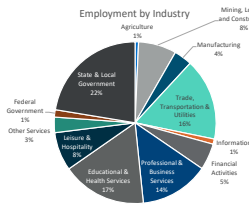


8

8

Diversified Economic Base in MSA

- The City is located in the Sacramento-Roseville-Folsom MSA
- Sacramento-Roseville-Folsom MSA has a diversified economic base, anchored by State and Local Government, Educational and Health Services, and Trade Transportation & Utilities
- Over 50% of MSA's employment is from top 3 industries



MSA Labor Force (Feb 2021)	
Labor Force	974,700
Top Three Industries	
(1) State and Local Government	218,400
(2) Educational and Health Services	165,100
(3) Trade Transportation & Utilities	159,800

Fair market rent in Sacramento-Roseville-Folsom MSA for 2-bedroom unit in 2021 is \$1,495 *

*Source: US Department of HUD



9

9

Diverse Local Employment Base

- Placer County Office of Education is the top employer in the City
- K-12, County offices, retail stores, senior care, and professional services make up the other top employers
- Total City labor force approximately 6,695

Employer Name	# of Employees	% of City Employment
Placer County Office of Education	419	6.25%
Auburn Union School District	196	2.93
Pride Industries	155	2.31
Help-A-Home Senior Care	150	2.24
Placer County (Domes Offices)	134	2.00
Flyers Energy	124	1.85
Save Mart	110	1.64
Placer Union School District	97	1.45
City of Auburn	85	1.27
Auburn Journal	58	0.87

Source: City of Auburn Comprehensive Annual Financial Report for FYE June 30, 2020



Employer Spotlight

Founded in 1966, PRIDE's mission is to create employment for people with disabilities, veterans, former foster youth, and trafficking survivors. Through personalized employment coaching, training, and job placement, we help individuals facing employment barriers realize their true potential and contribute to their communities. PRIDE proves the value of our inclusive workforce model through our operational success across multiple industries every day.



10

10

Diversified Taxpayer Base

- Top 10 property taxpayers account for 4.2% of total FY 2020-21 Secured AV
- Top 20 account for 6.1% of total 2020-21 AV

Property Owner	Land Use	Secured Roll Value	% of Total Secured AV
Auburn Creekside LLC / Auburn Creekside Buildings LLC	Office Building	\$20,403,057	0.96%
Remeson Hotels Inc.	Hotel	13,589,640	0.64%
UAIC Development Corporation	Office Building	10,185,724	0.48%
Regal Cinemas Inc.	Movie Theater	7,610,494	0.36%
RMP Properties LLC	Commercial	7,200,000	0.34%
MPI Core Partnership/Terrace LLC	Apartments	6,368,808	0.30%
Foothill Terrace Apartments Inc.	Apartments	6,349,447	0.30%
Auburn Town Square LLC	Commercial	6,078,634	0.28%
Auburn Nevada Street Property LLC	Auto Repair	5,568,451	0.26%
Lunga Drug Stores Inc.	Commercial	5,090,237	0.24%
Total		\$88,453,492	4.16%
Total FY 2021 Secured AV		\$2,134,036,274	

Source: California Municipal Statistics, Inc.



Remeson Hotels Inc. / Holiday Inn



Regal Cinemas

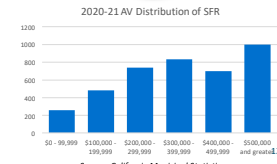
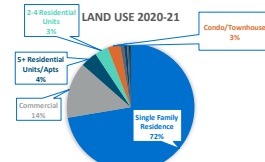


11

11

Land Use and Parcel Values

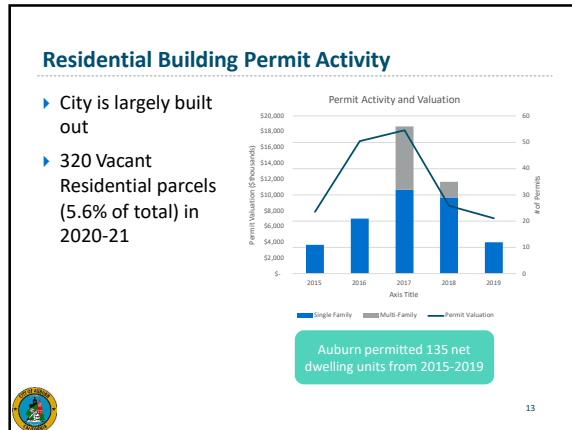
- Assessed value comprised 72% single family residential, 14% commercial
- 4,015 total Single-Family Residential units
- \$385,000 average SFR 2020-21 AV



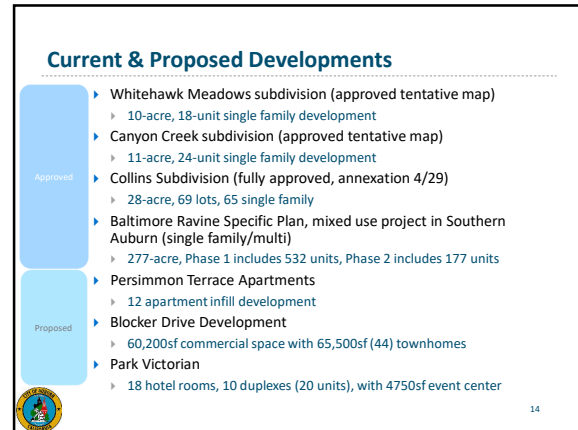
12

12

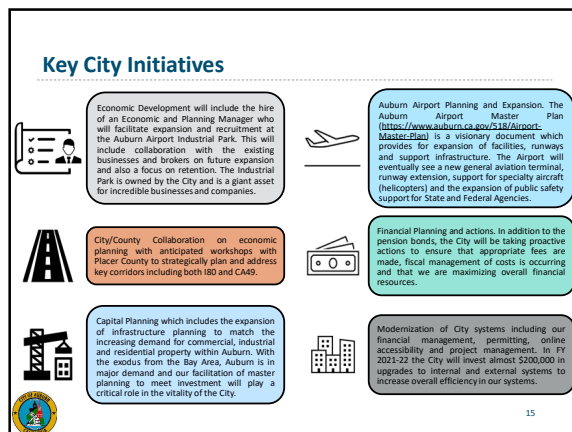
8/20/2021



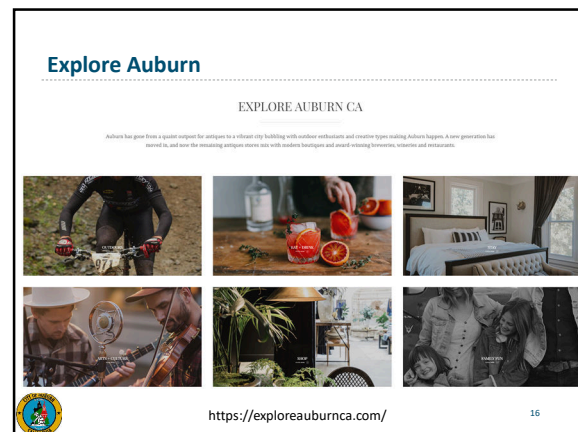
13



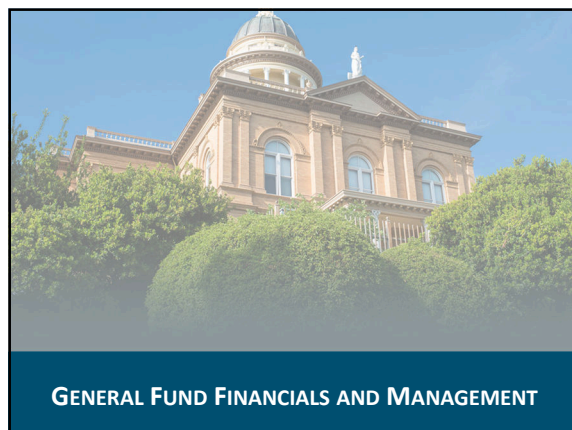
14



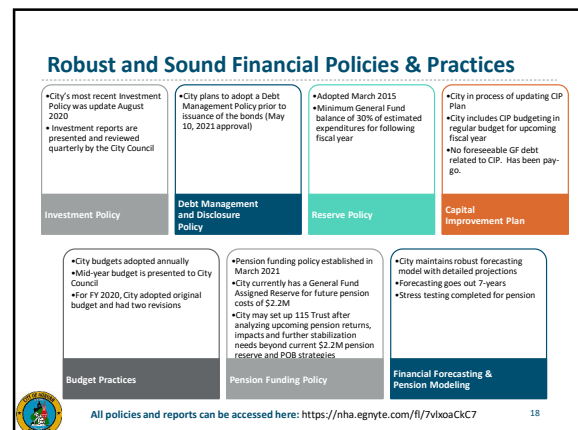
15



16



17

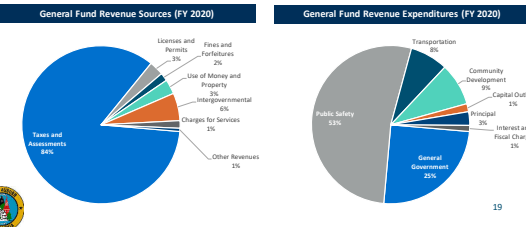


18

8/20/2021

General Fund: Composition of Revenues and Expenditures

- Audited FY 2020 revenues: \$13.4M
- Audited FY 2020 expenditures: \$13.0M
- 84% of General Fund revenues comprised of Taxes and Assessments
- 53% of General Fund expenditures going towards Public Safety



19

General Fund: Operating Statement

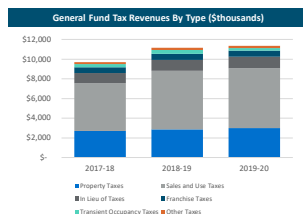
- Operating surpluses in 4 of last 5 fiscal years
 - Total revenues up 3.8% & total expenditures up 3.3% in 2020 from prior year
- FYE 2019 \$1M Transfer Out related to street overlay capital contribution
- FYE 2020 Transfer Out contains \$500,000 related to street overlay capital contribution
- City's FY 2021 Mid-Year Budget projects General Fund operating surplus

	FYE 2016	FYE 2017	FYE 2018	FYE 2019	FYE 2020
REVENUES					
Taxes and Assessments	\$10,027,755	\$9,596,462	\$9,678,889	\$11,145,989	\$11,508,888
Licenses and Permits	302,071	327,238	305,253	465,251	393,951
Fines and Penalties	55,479	68,899	135,891	206,888	228,328
Use of Money and Property	247,134	361,389	345,368	380,122	391,437
Intergovernmental	443,875	729,550	695,465	921,238	763,441
Charges for Services	186,196	943,347	222,895	947,398	295,193
Other Revenues	88,207	87,225	48,122	83,127	90,528
Total Revenues	\$11,301,517	\$11,467,210	\$10,791,883	\$13,289,931	\$13,480,826
EXPENDITURES					
General Government	1,551,559	1,895,580	2,378,851	2,872,802	3,237,823
Public Safety	5,509,954	6,398,187	5,906,375	6,473,863	6,868,646
Transportation	1,384,417	1,084,716	1,393,148	1,137,143	1,001,102
Community Development	412,580	352,267	395,354	1,041,108	1,129,999
Capital Outlay	301,878	750,131	511,313	400,194	211,262
Debt Service	-	-	-	-	-
Principal	347,245	418,470	285,000	520,000	360,000
Interest and Fiscal Charges	300,638	259,470	294,390	371,248	340,002
Total Expenditures	\$10,223,480	\$11,560,680	\$10,259,619	\$13,245,163	\$13,821,722
REVENUES OVER (UNDER) EXPENDITURES	\$1,078,037	(99,470)	\$532,264	\$44,768	(340,896)
OTHER FINANCING SOURCES (USES)					
Proceeds from Capital Leases/Debt	99,876	211,234	-	-	95,004
Transfers In	199,294	187,334	192,418	201,889	272,476
Transfer Out	(12,450)	(579,763)	-	(8,888,889)	(889,252)
Total Other Financing Sources (Uses)	186,720	(177,295)	192,418	(8,697,000)	(591,832)
Net Change in Fund Balances	1,464,575	(1,174,569)	724,682	(8,652,232)	(932,728)
Fund Balance - Beginning	4,805,345	5,979,914	5,876,204	5,000,940	5,254,966
Fund Balance - Year-End Adjustment	4,453,707	5,775,150	5,876,204	5,000,940	5,254,966
Fund Balance - Beginning, Adjusted	\$1,351,638	\$2,204,764	\$1,462,520	\$1,450,000	\$1,450,000
Fund Balance - End of Year	\$1,351,638	\$2,204,764	\$1,462,520	\$1,450,000	\$1,450,000

20

General Funds: Tax Revenues by Source

- FYE 2020 total tax revenue: \$11.4M
- Sales and Use Taxes account for 45% of total General Fund revenues
 - Property Taxes account for 22%
 - In-Lieu of Taxes account for 9%
- Growth in Key Tax Areas (2017/18 to 2019/20)
 - Sales and Use Tax growth: 26%
 - Property Tax growth: 10%
 - In-Lieu of Tax growth: 12%



21

General Fund: Balance Sheet

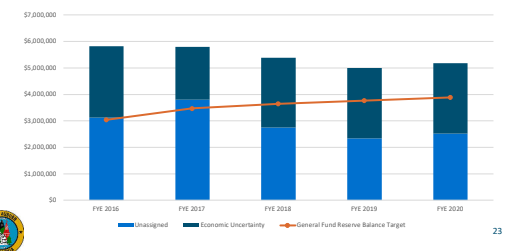
- \$6 million cash & investments balance provides ample liquidity to the General Fund
- Total government available cash and investments of \$24.8 million (120% of 2020 Govt Fund Exp.)
- FYE 2020 unassigned & economic uncertainty combined fund balance \$5.2 million
- Represents 40% of FYE 2020 operating expenditures

	FYE 2016	FYE 2017	FYE 2018	FYE 2019	FYE 2020
ASSETS					
Cash and Investments	\$ 3,176,237	\$ 3,879,744	\$ 4,703,829	\$ 4,126,672	\$ 6,048,489
Receivables	115,171	278,798	141,982	193,418	300,991
Accounts	-	-	-	8,261	8,448
Interest	2,129,949	1,102,596	1,348,536	1,794,867	1,560,385
Taxes	230,728	46,340	77,888	-	-
Intergovernmental	862,073	424,883	342,369	758,432	218,229
Due from Other Funds	338,033	466,533	265,528	360,955	260,538
Due from Other Agencies	117,619	118,854	119,979	92,368	105,424
Prepaid Items and Supplies	-	-	-	-	-
Restricted Cash and Investments	-	-	-	-	-
Loans Receivable	-	-	-	-	-
Total Assets	7,260,400	6,516,648	7,005,123	7,205,069	8,923,504
LIABILITIES AND FUND BALANCES					
Liabilities:					
Accounts Payable and Accrued Liabilities	1,217,358	519,750	1,230,775	1,857,685	2,017,516
Unassigned Revenue	-	-	-	27	43,077
Accrued Interest	54,154	118,854	119,979	92,368	105,424
Deposits Payable	10,000	-	-	-	-
Due to Other Funds	-	-	-	-	-
Total Liabilities	1,281,512	638,604	1,350,754	1,950,150	2,166,017
Fund Balances:					
Nonspendable	103,084	81,838	266,528	260,955	260,538
Economic Uncertainty	2,700,000	2,000,000	2,435,012	2,618,656	2,661,186
Unassigned	1,123,188	1,795,456	2,748,800	2,334,551	2,515,763
Total Fund Balances	\$3,926,372	\$4,677,304	\$5,450,340	\$5,214,162	\$5,437,487
Total Liabilities and Fund Balances	\$7,207,884	\$6,516,648	\$7,005,123	\$7,205,069	\$8,923,504

22

General Fund: Unassigned & Economic Uncertainty Fund Balance

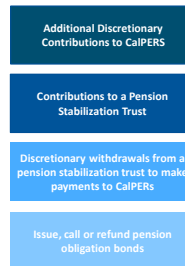
- \$5.2M combined unassigned & economic uncertainty fund balance for FYE 2020 represents 40% of total GF expenses
- Exceeds the Reserve Policy of 30%
- Unassigned & economic uncertainty reserves have averaged 46% of General Fund expenditures over the past five fiscal years



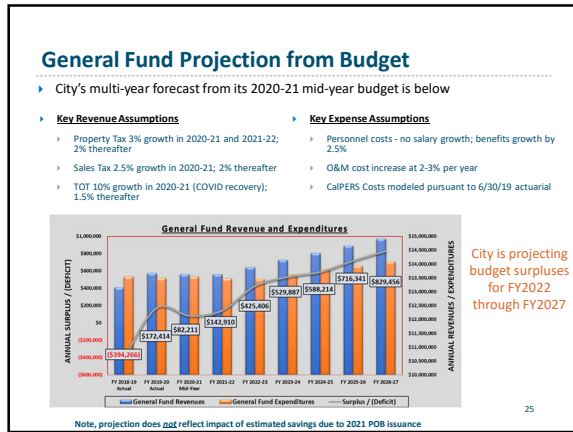
23

New Pension Funding Policy Approved March 2021

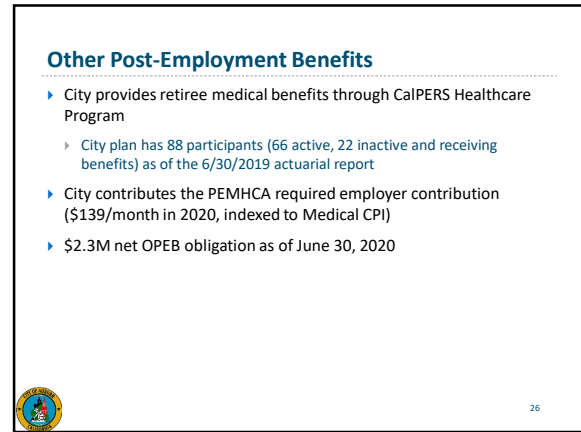
- New Pension Funding Policy revised and adopted in March 2021
- Establishes guidance on pension funding tools to mitigate pension costs
- Consideration of 115 Trust after strategically analyzing upcoming pension returns, impacts and further stabilization needs



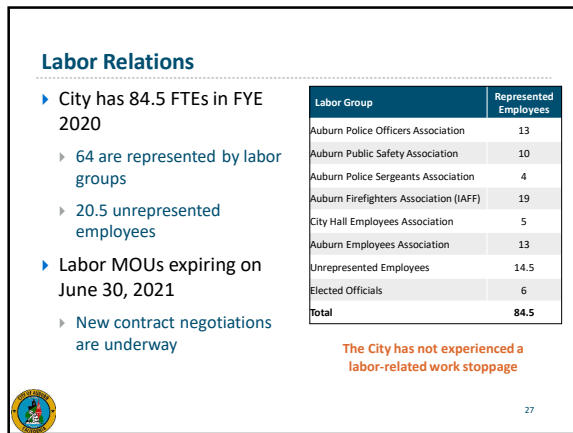
24



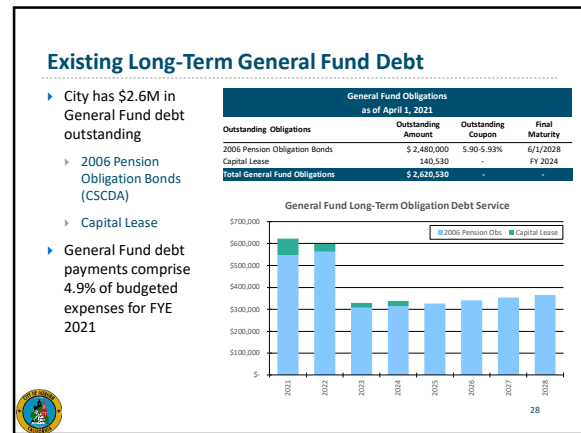
25



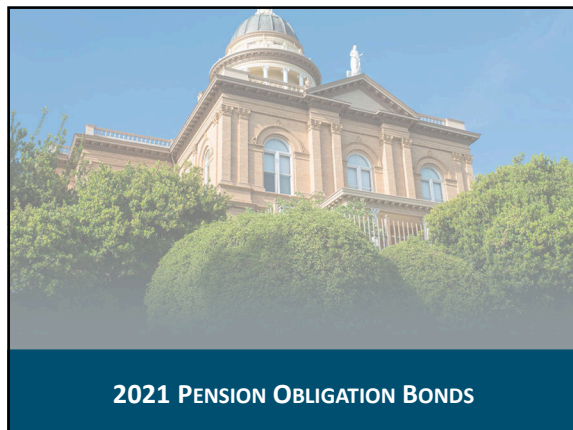
26



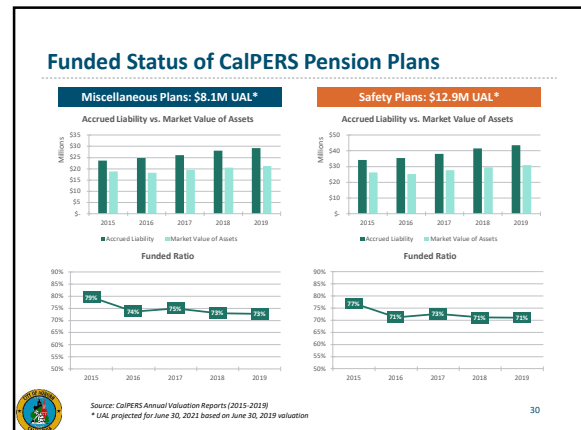
27



28

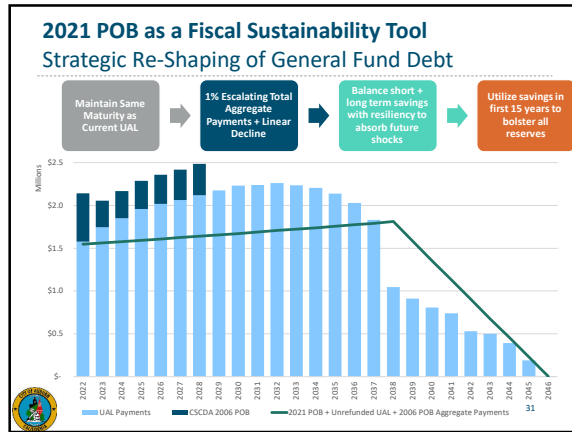


29



30

8/20/2021

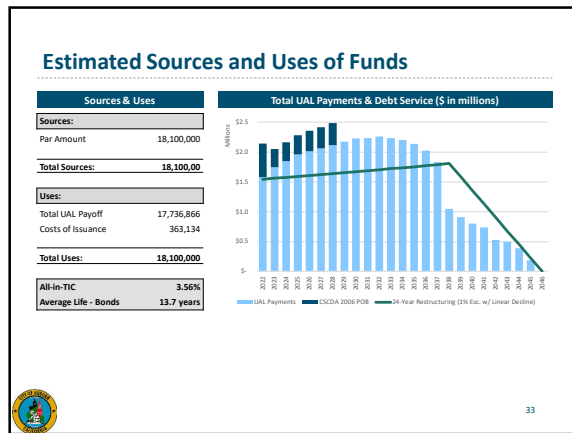


31

2021 POB – Security Features

Purpose	(1) Pay off 85% of City's current CalPERS UAL for Classic Miscellaneous and Safety Plans – bring both plans to approximate 96% funding ratio (2) Pay Costs of Issuance
Security	(1) Issued under 2020 Indenture (2) Absolute and unconditional obligation of the City (3) Secured by validated pledge of "all available funds"
Debt Service Reserve Fund	N/A
Par Amount	\$18,100,000
Payment Dates	6/1 and 12/1 principal and interest; 6/1 principal First interest payment date 12/1/2021

32



33

Projected Annual Savings

FY	Current UAL		2006 CSCDA		24-Year Restructuring (1% Esc. w/ Linear Decline)		Total New	Savings	P4 Savings
	Payments	POB	Payments	POB	Payments	POB			
2022	1,576,480	563,344	2,141,824	236,772	745,416	1,545,532	596,292	576,291	
2023	1,746,320	307,252	2,053,572	261,948	993,175	1,562,375	491,198	458,971	
2024	1,851,255	314,799	2,166,054	277,688	985,030	1,577,517	508,517	531,678	
2025	1,959,496	326,160	2,285,656	293,924	970,284	1,590,368	695,288	607,275	
2026	2,018,044	341,039	2,359,083	302,707	963,191	1,606,936	752,147	635,140	
2027	2,064,540	354,138	2,418,678	309,681	960,073	1,623,892	794,787	648,878	
2028	2,119,575	365,459	2,485,034	317,936	955,156	1,638,590	846,443	668,122	
2029	2,176,134		2,176,134	326,420	1,329,360	1,655,780	520,354	397,103	
2030	2,229,105		2,229,105	334,366	1,336,900	1,671,266	557,839	411,584	
2031	2,237,707		2,237,707	335,656	1,352,769	1,688,425	549,282	391,824	
2032	2,261,489		2,261,489	339,223	1,366,606	1,705,829	555,660	383,222	
2033	2,234,402		2,234,402	335,160	1,388,333	1,723,493	510,909	340,668	
2034	2,204,164		2,204,164	330,625	1,407,549	1,738,174	465,990	300,407	
2035	2,138,926		2,138,926	320,839	1,433,648	1,754,487	384,439	239,611	
2036	2,028,788		2,028,788	304,318	1,471,668	1,775,986	252,802	152,337	
2037	1,832,118		1,832,118	274,818	1,516,533	1,791,351	40,767	23,751	
2038	1,047,398		1,047,398	157,110	1,652,814	1,809,924	(762,526)	(429,508)	
2039	912,692		912,692	136,904	1,447,723	1,584,627	(671,935)	(365,923)	
2040	805,117		805,117	120,768	1,233,119	1,353,887	(548,770)	(288,344)	
2041	738,522		738,522	110,778	1,019,533	1,130,311	(391,789)	(199,438)	
2042	528,262		528,262	79,239	825,312	904,551	(376,289)	(185,192)	
2043	498,465		498,465	74,770	602,075	676,945	(178,380)	(84,877)	
2044	391,141		391,141	58,671	396,131	454,802	(63,661)	(29,286)	
2045	188,548		188,548	28,282	197,106	225,388	(36,840)	(16,386)	
2046	6,260		6,260	939	319	5,321	5,321	2,288	
Total	17,736,868	2,572,190	40,369,138	5,665,542	26,549,539	34,751,171	5,277,867	5,169,607	

Notes: Figures shown are preliminary estimates. Assumes CalPERS earns 7.0% returns annually.

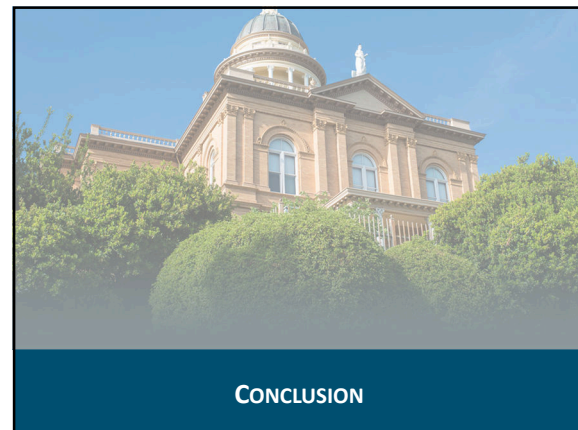

34

34

Stress Testing Analysis

Scenario	\$ NPV Savings	Return %
Base Case, 7.0%	\$5.2 million	7.0%
6.5% Discount Rate, 6.5% Actual Return	\$4.0 million	6.5%
5.5% Actual Return	\$1.8 million	5.5%
Great Recession Returns (2008-2012 repeat), followed by 7.0%	Negative \$312K	CAGR +0.66% first 5 years: 2008 -4.9% 2009 -23.4% 2010 +11.6% 2011+20.9% 2012 +1.0%
First Year Market Returns That Eliminate Expected Savings (followed by 7.0%)	Zero	Negative 22%

35



36

8/20/2021

Conclusion

Proactive Management, Comprehensive Policies & Prudent Practices

Very strong budgetary performance, flexibility and liquidity. City maintains 40% (of budget) in unassigned and economic contingency reserves; 120% cash position Citywide. Multi-year, granular General Fund projections allow management to make strategic, real time decisions to maintain and enhance City's fiscal position.

Very Strong Economy, and Demographic Profile

City weathered Covid-19 with minimal impacts; Operating surpluses in 2019, 2020 and projected surplus for FY 2021. Primary revenue stream of property tax is highly diversified, primarily residential, and has shown steady growth (48%) over last 10 years.

Multipronged and Policy Driven Approach to Addressing Pension Costs

POB will create more affordable pension liability repayment pattern, with savings used to create **additional liquidity, budget flexibility and enhance resiliency against future PERS underperformance.** Combined with \$2.1M pension reserve, City will have multiple resources from which to further address future costs if needed.

Proactive management, supportive City Council, and a very strong economic base have placed the City in strong financial position. Auburn compares favorably vs. other AA rated communities of similar size and financial position.



37

37

Financing Schedule

April 26	City Council Approval of Financing
May 3	Credit Presentation to S&P
May 10	Receive Rating
May 17	Validation Judgement Appeal Period Expires
June 3	Bond Pricing
June 10	Bond Closing

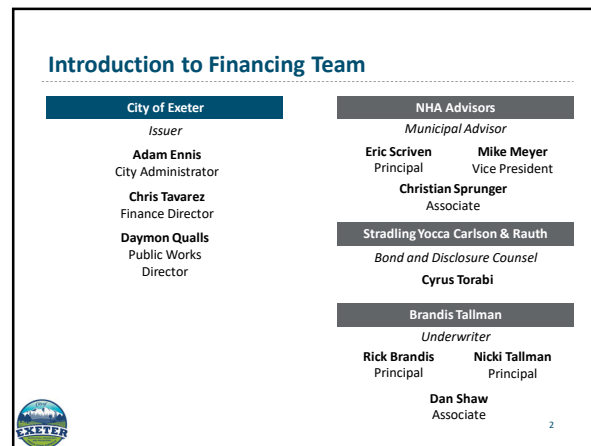


38

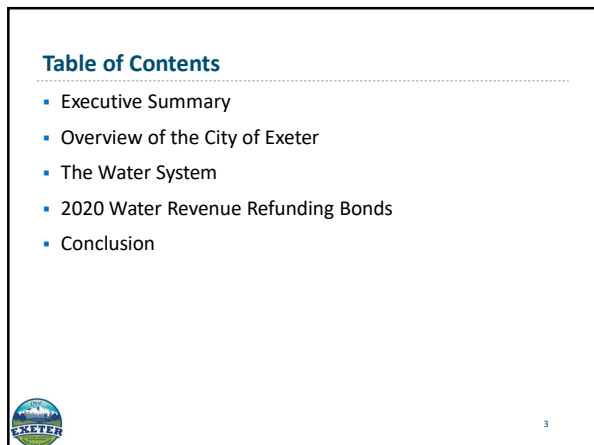
38



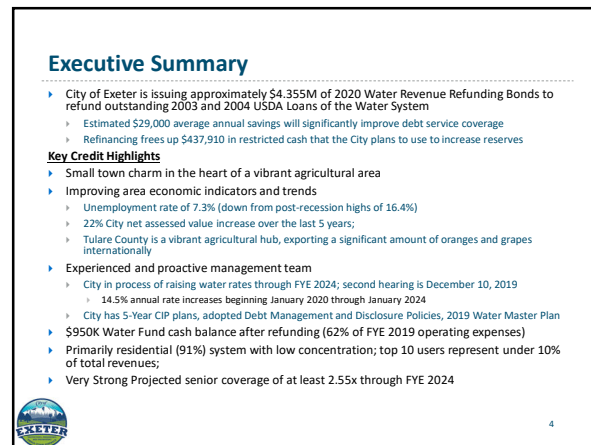
1



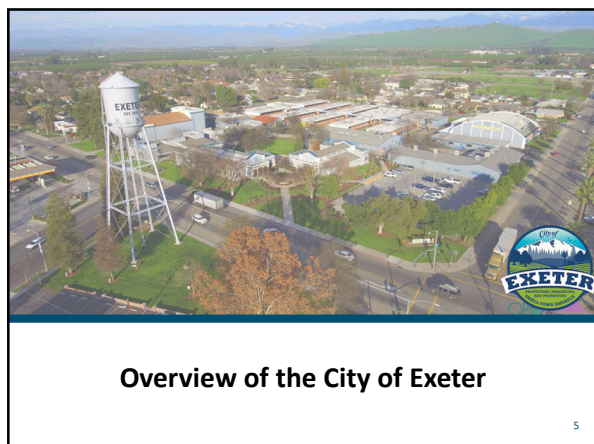
2



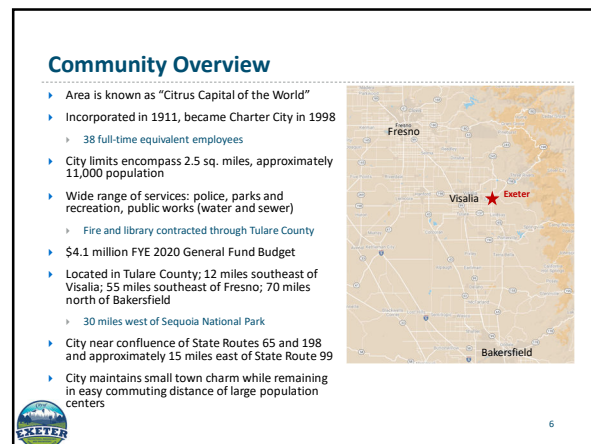
3



4



5



6

Experienced City Staff

Adam Ennis
City Administrator

- City administrator since June 2018
- 16 years at public agencies (previously at City of Visalia)
- 20 years of experience with private sector engineering and consulting

Chris Tavaraz
Director of Finance

- Appointed in 2017
- 18 years of experience
- Previously at City of Visalia (10 years) and San Joaquin Valley College (Assistant Controller)
- Certified Public Accountant

Daymon Qualls
Public Works Director

- Appointed Director in 2010
- City's Assistant Director of Public works from 2005-2010
- Worker's Occupational Health and Safety Certification
- Bachelors degree in Business Administration

City has an open recruitment practice for vacancies in management roles and also cross-trains staff to groom them for advancements

7

Adopted Policies

- Debt Management and Disclosure Policy adopted October 2019
- Investment Policy adopted in October 2014
 - Link: <https://nha.eqxte.com/dl/7ZC0F87X>
- Water Shortage Contingency Plan set forth in Title 7 of the City's Code of Ordinances
 - City operating under Stage 3 of that Plan currently and does not expect it to adversely impact ability to pay debt service
- Fiscal Reserves Policy adopted with FYE 2019 and 2020 Biennial Budget
 - In November 2019 City Council revised the fiscal reserve target of 25% of operating expenditures in all funds
 - General Fund unrestricted balance approximately 16% for FYE 2019
- City also presents mid-year budget update to City Council

City's Water Master Plan was Updated in August 2019 and can be accessed here: <https://nha.eqxte.com/dl/0eWmVAnGb>

8

Key City Statistics and Trends

Population

Source: California Department of Finance

Historical Net Assessed Value

Source: Tulare County Assessor

Unemployment Rate

Source: California EDO

Taxable Sales

Source: California BOE and California Dept. of Tax and Fee Administration

9

Tulare County Employment

- Diversified employment with three largest categories of 1) agriculture, 2) government, and 3) trade, transportation & utilities
- Exeter located in easy commuting distance to larger cities (Visalia, Tulare, Porterville) and has access to a broad employment base

Visalia Porterville MSA Employment by Type (Calendar Year 2018)

Tulare County – Top 25 Employers

Employer Name	Employees
Ritz Food Products Inc	1,000-4,999
Walmart Distribution Ctr	1,000-4,999
College of the Sequoias	500-999
Eagle Mountain Casino	500-999
Hagen-Dazs Shop	500-999
Jostens	500-999
Latino Farm Labor Svc	500-999
Monrovia Nursery Co	500-999
Porterville Developmental Ctr	500-999
Saputo Cheese USA Inc	500-999
Sierra View Medical Ctr	500-999
Tulare County Child Care Prgm	500-999
Tulare County Sheriff	500-999
Tulare High School District	500-999
Tulare Local Healthcare Dist	500-999
Valley Labor Svc	500-999
Wawona Packing Co	500-999
American Inc	250-499
KINGS Campen National Park	250-499
Land O'Lakes Indl Cheese	250-499
Solid Waste Collection	250-499
San Pacific	250-499
Tulare County Lake Patrol	250-499
Tulare County Resource Mgmt	250-499
US Cotton Classing Office	250-499

Source: California EDO

10

Agriculture in Tulare County

- Leading crops include milk (23% of production value), oranges and tangerines (18%), and grapes (all varieties, 12%)
- Total annual production stable over last several years
- Oranges comprise 50% of the agricultural exports
 - Approximately 75% of orange exports go to Korea, China, Japan

Top Export Commodities

Tulare County Agricultural Production Values

	2015	2016	2017	2018
Field Crops	\$810,715,000	\$520,553,000	\$479,766,000	\$522,365,000
Fruit and Nut Crops	\$3,254,386,000	\$3,288,076,000	\$3,884,384,000	\$4,105,817,000
Vegetable Crops	\$24,892,000	\$26,315,000	\$20,558,000	\$17,296,000
Nursery Products	\$76,002,000	\$75,018,000	\$72,141,000	\$97,136,000
Apiary Products	\$47,527,000	\$55,911,000	\$79,696,000	\$75,846,000
Seed Crops	\$596,800	\$1,533,600	\$4,939,000	\$4,553,400
Industrial Crops	\$2,006,000	\$1,951,000	\$1,747,000	\$1,895,000
Livestock & Poultry	\$1,022,620,000	\$742,060,000	\$701,472,000	\$694,538,000
Livestock & Poultry Products	\$1,733,033,000	\$2,458,104,000	\$1,795,224,000	\$1,693,857,000
Total	\$6,980,977,800	\$6,370,121,600	\$7,039,929,000	\$7,213,303,400

11

Top 10 Taxpayers – City of Exeter

- Diversified property taxpayers with top 10 taxpayers accounting for 6.7% of FYE 2020 net AV
- Top taxpayer accounts for 1% of FYE 2020 net AV

Number	Owner Name	FY 2020 Net Assessed Valuation	% of Total Net AV
1	Tulare County Investments LLC (LSE)	\$6,012,800	1.0%
2	Exeter-Ivanhoe Citrus Association	\$5,550,909	0.9%
3	Porterville Citrus Inc.	\$5,386,576	0.9%
4	Cal Mobile Home Parks LP	\$4,742,483	0.8%
5	Mountain States Bakeries LLC	\$3,754,553	0.6%
6	Thrifty Payless Inc. (LSE)	\$3,338,216	0.5%
7	Southern California Edison Company	\$3,287,363	0.5%
8	DI Citrus Plaza LLC	\$3,206,658	0.5%
9	Exeter Pacific Associates	\$3,160,278	0.5%
10	Baker Brent L & Kristi A (Trust)	\$3,146,782	0.5%
Total AV		\$41,536,618	6.7%
FY 2019-20 Net AV		\$623,126,667	

Source: Tulare County Auditor

Exeter has the second highest property values of any city in Tulare County, calculated as assessments divided by size (sq. miles)

12

Top 20 Sales Tax Producers – City of Exeter

- Top 20 sales tax producers account for 76% of the City's sales tax revenues for Q1 2019; includes national brand names

Company
(Listed Alphabetically)

AA Gas & Grub
Autozone
Chevron Service Stations
Craigs Auto Parts
Dollar General Store
Exeter Engineering
Exeter Mercantile Company
Exeter Mini Mart
Exeter Pik 'N Go
McDonald's Restaurants
Monarch Ford
Rite Aid Drug Stores
R-N Market
San Joaquin Valley Railroad Co
Save Mart Supermarkets
Shell Service Stations
Sierra Cellars
Taco Bell
TF Tire & Service
Valero Service Stations

13

Recent Developments in the City of Exeter

- Belmont Family Apartments
 - 25 low-income apartments on a 2.3-acre parcel
 - Construction completed in 2016
- Dollar General store constructed in 2015
- Residential Subdivision almost ready for approval
 - Up to 100 lots, to be built out in 5 phases
 - Giving new well site lot to the City for a new well to address additional demand
 - Significant part of the cost of that well would be funded with collected impact fees

14

The Water System

15

System Overview

- Service Area includes 3,363 service connections
- 100% groundwater system capable of delivering 4.8 MGD of water
 - System comprised of 6 active wells and two inactive wells
 - During winter months, City operates 5 wells; during summer months, City operates all 6 wells
- 100,000-gallon elevated storage tank
- 47 miles of water mains; 325 hydrants, 995 water valves
 - System laid out in a grid with no dead ends (looping)
 - Approximately 7 miles of pipeline was installed/replaced in 2004
- Wells are regulated with a Rugged computer (controls located at the elevated storage tank)
- City has a GIS asset management program in place
- No environmental needs driving CIP; only regulatory concerns are related to system capacity and storage (City is addressing these) and possible future SGMA regulations
- City has emergency generators on two wells and has plans to use mobile generators and set up sites with transfer switches
- No pending litigation against the Water System

System experienced two material service interruptions in the last 3 years due to pipe breaks that prompted a system shut down; City is addressing this by installing valves in the system to isolate future breaks

16

Water Supply

- Groundwater is source of water supply
 - City has six operating wells located at various locations throughout the City
 - Average well depth 469 feet; water level ranges from 82 to 138 feet
 - Total normal flow of 4.79 MGD from the six active wells
- City water from Kaweah Basin; 700 sq. mile basin in Tulare and Kings Counties
 - Total storage capacity of Kaweah Basin is currently unavailable
- Area of Kaweah Basin where City's wells are managed by Greater Kaweah Groundwater Sustainability Agency
 - GKWSA released draft sustainability plan in September 2015; included provisions to halt overdraft and bring Kaweah Basin into balanced levels of pumping/recharge
 - City provided significant input for draft sustainability plan and City does not expect that implementation of groundwater sustainability plan to have a significant impact on City's ability to draw water
 - Projected population in 2030: 15,062
 - Projected Maximum Day Demand: 6.4 MGD

Maximum Day Demand (Last 5 Years)					5.36 MGD
Average Daily Demand (Last 5 Years)					3.14 MGD
Peak Hour Demand					4,912 GPM / 7.07 MGD
System Capacity					4.79 MGD

Well	Year Built	Depth (feet)	Pumping Power (horsepower)	Normal Flow (Gallons Per Minute)	Status
E5W	1956	456			Inactive
E6W	1973	400	75		611
E9W	1964	292	75		439
E10W	1980	425			Inactive
E11W	1987	425	75		751
E12W	2002	615	100		206
E13W	2006	580	150		1,132
E14W	2007	555	100		186
Total Normal Flow					3,325

City is evaluating pay-as-you-go strategies to improve capacity of current system to meet projected demand; potential, 100-unit subdivision would include a new well largely funded by impact fees

17

Historical Water Production and Loss

- Water production has decreased by 13% since 2014
- Water loss has decreased from 18% in 2014 to 6% in 2018

Calendar Year	Total Water Production (Gallons)	Total Water Metered (Gallons)	Average Day Demand During Max Month (GPM)	Water Loss (%)
2014	724,856,908	591,395,384	1,709	18%
2015	594,657,304	525,699,285	2,183	12%
2016	625,786,096	540,011,819	1,545	14%
2017	637,593,867	582,763,994	1,892	9%
2018	631,604,276	591,497,815	1,656	6%

Source: Exeter Water System Master Plan (August 2019); presented on calendar year basis

18

Historical Water Consumption

- Between 2015 and 2019, total water consumption decreased by 25%
- Residential customers account for 80% of total system consumption in FYE 2019

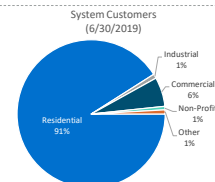
Water Consumption (In Gallons)					
Fiscal Year	2014-15	2015-16	2016-17	2017-18	2018-19
Commercial	74,391,045	63,551,622	68,304,736	81,155,637	77,264,145
Single Family Residential	593,164,847	353,556,440	388,495,647	423,267,461	394,218,239
Multiple Family Residential	52,499,230	48,950,017	56,478,637	60,071,885	56,220,016
Total Residential	645,664,077	402,506,457	444,974,283	483,339,347	450,438,255
Non-Profit (Church)	6,454,874	4,025,185	5,267,288	6,740,431	6,941,117
Government/Schools	22,334,448	20,549,471	23,054,410	42,374,473	24,893,402
Out of Town	873,725	518,700	601,258	586,762	677,833
No Charge Water	390,893	708,659	57,508	7,196	20,556
Total	750,109,063	491,860,095	542,259,483	614,203,845	560,235,309

Source: City of Exeter; presented on fiscal year basis

19

System Customers

- Residential accounts make up 91% of total accounts in FY 2019
- Top 10 ratepayers comprise 9.8% of total FY 2019 billing
- Top ratepayer represents 2.5%



Number	Customer	Billing	% of Total Billing
1	Mouchawar Mobilehome	\$39,012.96	2.5%
2	Svenhard's	\$20,725.41	1.3%
3	E.U.A.S. Pool/Softball	\$18,895.28	1.2%
4	Exeter APTS CBM	\$17,303.70	1.1%
5	Jacob Square APTS	\$16,860.25	1.1%
6	Exeter Senior Villa	\$12,908.70	0.8%
7	Wilson School	\$10,821.26	0.7%
8	Chamber Commerce Camp	\$8,032.08	0.5%
9	Bowsmith Irrig. Prod.	\$6,224.97	0.4%
10	Church of Jesus Christ	\$3,839.72	0.2%
Total Billing		\$154,614	9.8%

Source: City of Exeter

20

Billing and Delinquency Management

- Residential billing makes up 83% of total billing
- City water bills collected jointly with sewer and refuse service
 - Late accounts receive a late fee and shutoff notice
 - Re-connection fee charged after bills have been repaid
- Delinquencies have averaged 3.86% over the last 5 years

Fiscal Year	2018-19
Total Commercial	\$296,395
Single Family Residential	\$1,076,218
Multiple Family Residential	\$237,311
Total Residential	\$1,313,529
Non-Profit (Church)	\$16,832
Government/Schools	\$51,319
Out of Town	\$1,690
No Charge Water	50
Total	\$1,579,765

Fiscal Year	Delinquent Billing	Total Billing	Delinquent as % of Total Billing
2014-15	\$40,070	\$1,627,682	2.01%
2015-16	\$55,000	\$1,277,992	4.30%
2016-17	\$57,590	\$1,443,334	3.99%
2017-18	\$65,750	\$1,606,713	4.09%
2018-19	\$61,930	\$1,579,765	3.92%
	\$289,340	\$7,535,486	



21

Manageable, Pay-Go Water System CIP

- City plans total \$1.67M capital improvements to the water system over the next 5 years, assuming rate increases are approved
 - City's proposed rate increases reflect pay-as-you-go CIP and City does not anticipate additional debt to fund CIP over next 5 years
 - After expected adoption of the Rate Plan in December 2019, City anticipates additional pay-as-you-go projects to be added to capital improvement plan
- \$375,000 Water Valve Replacement Project that reduces system vulnerabilities and allows City to isolate small sections of water system to make necessary repairs, minimizing impact of water shut offs for repairs
- \$1,192,000 Pipe Replacement Projects planned

Project Description	2019/20	2020/21	2021/22	2022/23	2023/24
Water Valve Replacements	\$300,000	\$25,000	\$25,000	\$25,000	
Well 5 Chlorine Shelter	\$5,000				
Well 6 Bldg/Site Improvements	\$20,000				
Well 9 Chlorine Shelter	\$5,000				
Well 11 Chlorine Shelter	\$5,000				
Pipe Replacement - 12" Kaweah Ave from Sequoia to Firebaugh		\$292,000	\$300,000	\$300,000	\$300,000
Pipe Replacement - 12" Firebaugh Ave from Kaweah to Industrial				\$75,000	
Water Tower Piping and Valving					\$300,000
Total Capital Projects	\$335,000	\$317,000	\$325,000	\$400,000	\$300,000



22

Current and Proposed Water Rates

- City is in process of rate increase, with Proposition 218 Hearing set for December 10, 2019
 - Proposed 14.5% annual rate increases for FYE 2020 through 2024; if approved, rate increases would commence in January 2020
- Average single family residential monthly water consumption is 16.18 CCF
 - Current monthly bill of approximately \$26/month; Projected SFR bill in FYE 2020 after January rate increase approximately \$30/month
- Connection fee is currently \$5,700 for a single-family unit (no changes proposed in rate study)
- Rates designed to provide for operations and maintenance, pay-as-you-go capital improvements, and full replacement of the system over time

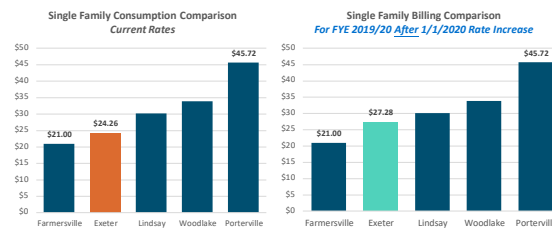
Proposed Rate Increases						
	Current	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Single Family Residential						
Monthly Base Rate (incl. 15 CCF Consumption)	24.26	27.78	31.81	36.42	41.7	47.74
Additional Volume Charge (per CCF, above 15 CCF)	1.52	1.74	1.99	2.28	2.61	2.99
Commercial and Industrial Businesses, Churches, Fraternal Organizations (per unit or office)						
Monthly Base Rate (incl. 15 CCF Consumption)	24.26	27.78	31.81	36.42	41.7	47.74
Additional Volume Charge (per CCF, above 15 CCF)	1.52	1.74	1.99	2.28	2.61	2.99
Multi-Family Residential (per Unit), Trailer Courts, Parks, Hotel, or Motel Units Made Into Permanent						
Monthly Base Rate (incl. 12.5 CCF Consumption)	24.26	27.78	31.81	36.42	41.7	47.74
Additional Volume Charge (per CCF, above 12.5 CCF)	1.52	1.74	1.99	2.28	2.61	2.99
Transient Motel or Hotels						
Monthly Base Rate (incl. 10 CCF Consumption)	24.26	27.78	31.81	36.42	41.7	47.74
Additional Volume Charge (per CCF, above 10 CCF)	1.52	1.74	1.99	2.28	2.61	2.99

Source: City of Exeter

23

Comparison to Surrounding Agencies

- Exeter water rates are currently lower than neighboring cities of Woodlake, Porterville, Lindsay; slightly higher than Farmersville
 - After proposed 1/1/2020 rate increases, the City stays in the second lowest position
- Assumes 15 CCF monthly consumption and 3/4" water meter



24

Projected CalPERS Costs

- City of Exeter has Miscellaneous (classic and PEPPA) and Safety (classic and PEPPA) plans
- Water Fund only responsible for 38% of total Miscellaneous Plan Costs
 - Water Fund net pension liability of \$624,158 as of 6/30/2019
 - Water Fund CalPERS costs projected to increase from \$122K to \$157K in FYE 2024
 - Represents only a 29% increase over next 5 years; pension costs also a relatively small line item of the Sewer Fund's operations

	Fiscal Year Ending				
	2020	2021	2022	2023	2024
Miscellaneous Plan					
Projected Payroll ¹	\$964,477	\$769,148	\$789,338	\$810,058	\$831,322
Employer Normal Cost Share (% of Payroll)	13.65%	14.72%	14.60%	14.60%	14.60%
Employer Normal Cost ²	\$132,056	\$113,288	\$115,243	\$118,269	\$121,373
Payment of Unfunded Actuarial Liability ²	\$153,275	\$178,405	\$208,000	\$232,000	\$246,000
PEPPA Miscellaneous Plan					
Projected Payroll ¹	\$458,556	\$500,899	\$514,048	\$527,541	\$541,389
Employer Normal Cost Share (% of Payroll)	6.99%	7.73%	7.70%	7.70%	7.70%
Employer Normal Cost ²	\$32,030	\$38,730	\$39,582	\$40,621	\$41,687
Payment of Unfunded Actuarial Liability ²	\$2,878	\$3,196	\$3,600	\$3,900	\$4,300
Total Employer Contribution (All Miscellaneous Plans)	\$320,239	\$333,618	\$366,425	\$394,789	\$413,360
Water Fund (38%) Share of Total Miscellaneous Plan Expenses	\$121,691	\$126,775	\$139,242	\$150,202	\$157,077

¹Source: CalPERS 6/30/2018 Actuarial Valuation Report, Miscellaneous and PEPPA Miscellaneous Plans
²Source: NHA Advisors' Calculations

The City has no OPEB liability

25

Water System Historical Balance Sheets

- Cash balance is 33% of operating expenditures for FYE 2019
- After refunding, cash balance includes \$437,910 USDA restricted reserve
- Increases to 62% of operating expenditures
- Cash Balance restricted for impact fees related to new development-related water system improvements

	Audited				Estimate
	2015	2016	2017	2018	2019
Current Assets					
Cash and Cash Equivalents	1,759,970	1,712,599	1,794,905	1,049,845	511,682
Accounts Receivable (Net of Allowance)	147,699	141,475	133,286	151,334	151,611
Due from Other Funds	131,157	131,656	2,003	2,003	2,003
Inventories	28,868	34,064	40,138	73,597	40,284
Non-Current Assets					
Restricted Cash and Cash Equivalents	285,712	320,137	326,999	1,228,730	1,021,078
Bond Issue Costs (Net of Amortization)	0	18,901	17,447	15,993	14,539
Capital Assets (Net of Depreciation)	8,052,149	7,727,407	7,880,196	7,532,074	7,232,187
Total Assets	10,405,585	10,111,139	9,941,294	10,000,576	9,473,184
Deferred Outflows (Total Pensions)	78,702	136,030	340,149	298,975	203,995
Current Liabilities					
Accounts and Other Payables	209,085	27,808	36,570	171,683	81,105
Compensated Absences	19,851	26,355	0	17,415	29,390
Accrued Interest	66,938	74,153	63,460	62,086	60,086
Due in One Year	192,503	205,554	213,848	222,395	231,204
Non-Current Liabilities					
Due to Depositors	67,376	70,051	71,333	71,398	74,438
Compensated Absences	7,129	9,772	9,027	15,340	12,538
Due in More than One Year	6,482,280	6,694,185	4,883,337	6,257,942	6,026,738
Net Pension Liability	462,113	439,265	615,152	699,417	624,158
Total Liabilities	7,907,425	7,547,143	5,511,725	7,517,666	7,139,657
Deferred Inflows (Total Pensions)	77,271	69,770	67,861	42,650	81,041
Net Position					
Net Investment in Capital Assets	976,716	872,668	936,151	1,051,737	1,488,784
Restricted for Inventory	28,368	34,064	0	0	0
Restricted for Debt Service (USDA Loans)	285,712	320,137	326,999	406,577	437,910
Restricted for Impact Fees	274,595	408,956	464,246	499,000	566,461
Restricted for Capital	934,250	1,014,531	976,461	512,368	(53,181)
Unrestricted	2,499,541	2,650,356	2,703,857	2,792,835	2,456,681

26

Historical and Projected Coverage Table

- All-in Coverage projected to remain over 1.5x through FYE 2024 after January 2020 rate increases go into effect; Senior coverage projected to remain above 2.55x
- Rate consultant revenue projections assume 0.5% annual increase in demand and conservative estimates of connection fees;
- Expenditure assumptions from Rate Study; also reflect estimated increases in CalPERS costs through FYE 2024

	Audited		Estimated		Rate Study	
	2015	2016	2017	2018	2019	2020
Revenues						
Connection Fees	14,128	47,366	60,252	43,033	45,040	45,000
Miscellaneous Income	14,403	31,614	36,031	37,091	39,131	39,000
Total Gross Operating Revenues	1,402,221	1,533,207	1,586,704	1,682,262	1,747,650	1,784,195
Operating Expenditures						
Personnel Services	415,727	367,231	379,129	387,660	395,519	375,300
General and Administrative	37,426	31,772	35,143	35,420	36,871	35,000
Materials and Supplies	325,769	392,609	389,802	403,259	399,436	366,300
Total Operating Expenditures	778,921	791,612	804,074	826,339	831,826	776,600
Net Revenues	700,360	740,302	628,600	655,717	628,024	594,595
Senior Debt Service	158,426	158,902	158,688	158,580	158,400	158,400
USDA Water System Improvement Loans	149,950	150,209	149,873	149,833	149,790	149,790
2019 Refunding Bonds (Estimated)	308,575	309,201	308,500	308,421	308,130	307,731
Total Senior Debt	416,351	408,312	417,061	417,244	416,320	417,921
Subordinate Debt Service	185,406	185,406	185,406	185,406	185,406	185,406
2014 Global Water Management Lease	491,961	494,607	493,367	493,827	493,597	493,827
Total Debt Service	1,093,718	1,088,325	1,095,534	1,096,477	1,095,323	1,097,154
Senior Debt Service Coverage	2.38x	2.38x	2.01x	2.13x	2.13x	2.13x
Subordinate Debt Service Coverage	2.38x	2.38x	1.88x	1.87x	1.87x	1.87x
All-in Debt Service Coverage	1.42x	1.50x	1.25x	1.33x	1.33x	1.33x

¹Source: Historical Coverage from City of Exeter; Projected Coverage from 2019 Water Rate Study (Prepared by NHA Advisors) and Municipal Advisor
²Revenues in FY 2020 reflect a 1.2 year of 14.5% rate increases, given 12/2020 rate increase
³Projections Reflect Personnel Services Cost projections from Rate Consultant and calculated increases CalPERS expenses in the Water Fund

- Increased personnel costs in 2019 due to updates to personnel/overhead cost allocation methodology
- Decreased coverage in FYE 2019 due to \$150K spent for Water Master Plan and unexpected materials, supplies, and repairs under the capitalization threshold

27

2020 Water Revenue Refunding Bonds

28

2020 Water Revenue Refunding Bonds Legal Structure

Proposed Financing Structure

Purpose	Refunding of 2003 and 2004 USDA Loans
Security	First pledge and lien on Water System Revenues
Coverage Requirement and ABT	115% net revenue coverage pledge and additional bonds test
Debt Service Reserve Fund	Standard Reserve Fund (funded with reserve surety policy)
Estimated Par Amount	\$4,355,000
First Interest Payment	4/1/2020
First Principal Payment	10/1/2020
Final Maturity	10/1/2045 (FYE 2046)
Payment Dates	April 1 (Interest only); October 1 (Interest and principal)
Debt Service Structure	Level Annual Debt Service through FYE 2044; step down in FYE 2045 and FYE 2046

The 2020 Water Revenue Bonds will be senior to the Water Fund's outstanding 2014 Global Water Management Lease

City has no plans for additional indebtedness in the next five years

29

2020 Water Revenue Refunding Bonds Estimated Sources and Uses and Debt Service

Sources and Uses

Date	Principal	Interest	Total P&I	Principal	Interest	Total P&I
6/30/2020	\$0	\$40,966	\$40,966	\$156,504	\$115,538	\$272,042
6/30/2021	\$105,000	\$178,275	\$283,275	\$106,463	\$125,188	\$231,651
6/30/2022	\$105,000	\$174,600	\$279,600	\$107,921	\$128,321	\$236,242
6/30/2023	\$110,000	\$170,300	\$280,300	\$109,389	\$127,889	\$237,278
6/30/2024	\$115,000	\$165,800	\$280,800	\$110,857	\$127,231	\$238,088
6/30/2025	\$120,000	\$161,200	\$281,200	\$112,325	\$126,569	\$238,894
6/30/2026	\$125,000	\$156,200	\$281,200	\$113,793	\$125,811	\$239,604
6/30/2027	\$130,000	\$151,100	\$281,100	\$115,261	\$125,053	\$240,314
6/30/2028	\$135,000	\$146,000	\$281,000	\$116,729	\$124,295	\$241,024
6/30/2029	\$140,000	\$140,900	\$280,900	\$118,197	\$123,537	\$241,734
6/30/2030	\$145,000	\$135,800	\$280,800	\$119,665	\$122,779	\$242,444
6/30/2031	\$150,000	\$130,700	\$280,700	\$121,133	\$122,021	\$243,154
6/30/2032	\$155,000	\$125,600	\$280,600	\$122,601	\$121,263	\$243,864
6/30/2033	\$160,000	\$120,500	\$280,500	\$124,069	\$120,505	\$244,574
6/30/2034	\$165,000	\$115,400	\$280,400	\$125,537	\$119,747	\$245,284
6/30/2035	\$170,000	\$110,300	\$280,300	\$127,005	\$118,929	\$245,994
6/30/2036	\$175,000	\$105,200	\$280,200	\$128,473	\$118,111	\$246,704
6/30/2037	\$180,000	\$100,100	\$280,100	\$129,941	\$117,293	\$247,414
6/30/2038	\$185,000	\$95,000	\$280,000	\$131,409	\$116,475	\$248,124
6/30/2039	\$190,000	\$89,900	\$279,900	\$132,877	\$115,657	\$248,834
6/30/2040	\$195,000	\$84,800	\$279,800	\$134,345	\$114,839	\$249,544
6/30/2041	\$200,000	\$79,700	\$279,700	\$135,813	\$114,021	\$250,254
6/30/2042	\$205,000	\$74,600	\$279,600	\$137,281	\$113,203	\$250,964
6/30/2043	\$210,000	\$69,500	\$279,500	\$138,749	\$112,385	\$251,674
6/30/2044	\$215,000	\$64,400	\$279,400	\$140,217	\$111,567	\$252,384
6/30/2045	\$220,000	\$59,300	\$279,300	\$141,685	\$110,749	\$253,094
6/30/2046	\$225,000	\$54,200	\$279,200	\$143,153	\$109,931	\$253,804
Total	\$4,355,000	\$2,646,741	\$7,001,741	\$7,001,741	\$2,646,681	\$7,001,741

Proportional savings solution with first principal on 10/1/2020 results in \$29,000 annual savings, \$763,000 cumulative savings

Preliminary, subject to change

30



Conclusion

31

Summary of Credit

City Issuing Approximately \$4.355M of 2020 Water Revenue Refunding Bonds

- Purpose is to refund outstanding USDA loans, improve debt service coverage, and release \$437K restricted cash related to USDA Loans (to be put into Water Fund balance)

Improved Economic Indicators and Trends

- Stable, growing population; taxable transactions trending upward
- Unemployment rate down to 7.3% (from post-recession highs of 16.4%)
- 22% City Net AV increase in the last 5 years

Strong Management

- Council Adopted debt management policies, disclosure policies, investment policies
- Updated Water Master Plan in 2019;
- Current 218 process to increase rates 14.5% per year for next 5 years

Stable, Residential Water System Customer Base

- Low concentration with 91% of Customers are residential; top 10 users represent under 10% of total revenues
- Manageable 5-year pay-go CIP that does not require any additional debt;
- Water system loss at 6% for CY 2018 (trending down over last 5 years)
- Low delinquency rate (3.9% average over last 5 years)

Strong Cash Balances and Projected Coverage

- \$511K Water Fund cash balance (33% of annual operating expenses) as of FYE 2019, increases to \$950K cash balance after refunding (62% of operating expenses)
- Senior coverage projected to stay above 2.55x through FYE 2024 (1.15x covenant and ABT)



32

32

Key Financing Dates

- November 25 – Credit Rating Presentation to S&P
- December 11 – Receive Rating and Insurance Bids
- December 13 – Post POS*
- December 19 – Pricing*
- January 9, 2020 – Closing*

**Timing dependent upon market conditions leading up to Christmas*



33

33



APPENDIX C: CORTE MADERA 2021 POBs STRESS TESTING PRESENTATION

APRIL 6, 2020

1

NHA | **ADVISORS**
Financial & Policy Strategies.
Since 1988.

2

NHA | ADVIS

3

*Interest rates through March 26, 2021

4

NHA **ADVIS**

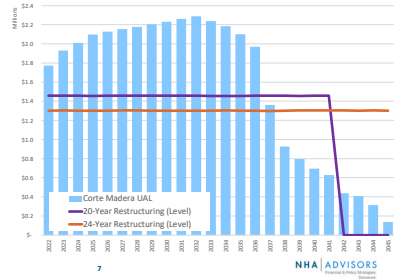
5

NHA | ADVISORS

6

Refined POB Structuring Options

- Two restructuring options
 - 20-year option (shortening of term)
 - 24-year option (maintains same term as CalPERS UAL)
- Shape: Both options structured to achieve level payments overall (POB debt service plus any unrefunded UAL)
- Size: 88% of UAL refinanced; bringing funding ratio to about 95-97%
- Reduces risk of being "overfunded" (i.e., > 100% funding ratio)



7

Refined POB Options & Savings Analysis

- \$6M-\$7M of estimated present value savings
- Annual cash flow savings \$660K-\$815K (next 15 years)
- 20-year lower interest rate than 24-year
- 24-year provides higher cash flow savings over next 15 years which enhances resiliency to future CalPERS shocks (losses)
- i.e. ~ more capacity to absorb new UAL from CalPERS underperformance

Metrics	20-Year Restructuring (Level)	24-Year Restructuring (Level)
UAL Funded (\$)	\$18,829,414	\$18,829,414
UAL Funded (%)	88%	88%
Funded Ratio	97%	97%
Avg. Life (Avg. Weighted Maturity)	11.4 Years	14.2 Years
All-In Interest Rate	3.01%	3.18%
Cumulative Savings (Through Maturity)	\$8,305,219	\$6,205,155
PV Savings (\$ - Discounted @ Bond Rate)	\$6,820,381	\$6,383,535
PV Savings (% of UAL - Discounted @ Bond Rate)	36.22%	33.90%
PV Savings (\$ - Discounted @ 7.0%)	\$5,230,918	\$5,737,895
PV Savings (% of UAL - Discounted @ 7.0%)	27.78%	30.47%
Cumulative Savings (2022-2036)	\$9,894,569	\$12,232,164
Average Annual Savings (2022-2036)	\$659,638	\$815,478

Note: All savings estimates assume future annual CalPERS earnings of 7.0%

8

Stress Testing / Risk Assessment

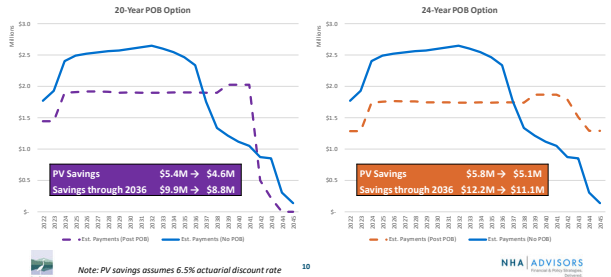
Overview of Scenarios

- Base Case (previous slide): CalPERS earns 7% every year in the future
- Stress Test #1: Discount Rate Reduction from 7.0% to 6.5% in FY 2022 (GovInvest)
- Stress Test #2: Sustained Underperformance @ 5.5% annual returns (GovInvest)
- Stress Test #3: Another "2008 Recession" Starting in FY 2022 (GovInvest)
- Stress Test #4: Break-Even Market Crash (High-Level NHA Estimate)
- On the following slides, first three stress tests will be charted (for both the 20 and 24-year POB)
- Blue line will represent new payments if Town doesn't issue a POB, and purple/orange dotted lines will represent payments if the Town DOES issue a POB
- The reduction in POB savings will also be shown from each of the stress tests

9

Stress Test #1: Discount Rate Reduction/Returns from 7.0% to 6.5%

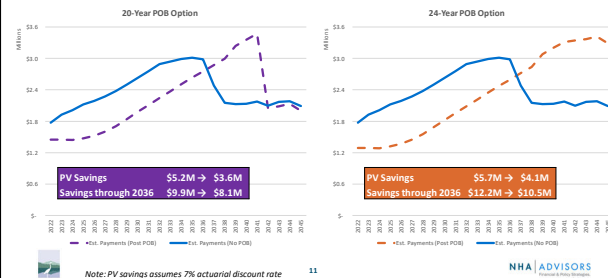
Savings Reduced by ~\$800K vs Base Case



10

Stress Test #2: Sustained Underperformance (5.5% Annual Returns)

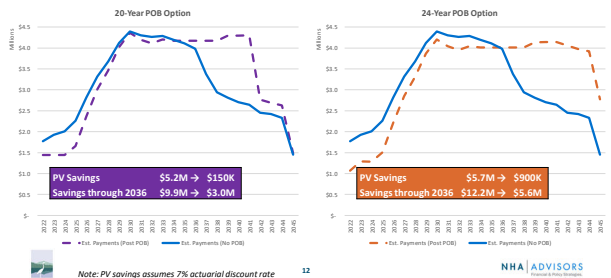
Savings Reduced by ~\$1.7 Million vs Base Case



11

Stress Test #3: 2008-Like Recession Immediately After POB

Savings Reduced by ~\$5 Million vs Base Case



12

Stress Test #4: Break-Even Market Crash With No Recovery How Much Negative Returns in Year 1 to Wipe Out Savings?

- Based on high-level NHA estimates, the proposed POB could withstand an approximate negative 25% to 29% return in Year 1 before PV savings are eliminated
 - 32% – 36% away from 7% target
- Example:
 - ≈\$6.5 million of estimated PV savings
 - Impact of 25% to 29% negative returns in year 1:
 - No POB: \$17.5M of new UAL
 - With POB: \$24M of new UAL
 - Differential: \$6.5M



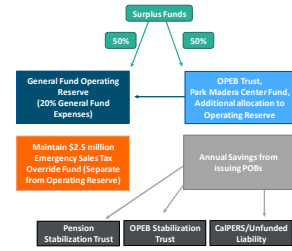
13

NHA | ADVISORS
FINANCIAL CONSULTANTS

13

New Proposed Reserve and Pension Funding Policy Credit Strength and Will Ensure Policy Driven Leveraging of POB Savings

- Increases Town's operating reserve from 10% to 20%
- Maintains \$2.5M emergency reserve held in the Sale Tax Override Fund
- Directs savings recognized from issuing POBs to be deposited in the Pension Stabilization Trust, OPEB Trust or sent directly to CalPERS for UAL



14

NHA | ADVISORS
FINANCIAL CONSULTANTS

14

Recommendation

- Staff and NHA Advisors recommend 24-year restructuring option
 - Slightly higher interest rate will be offset by additional cash flow savings (\$155K/year or \$2.3M over next 15 years) to provide Town with enhanced resiliency to absorb future CalPERS investment return shocks
- Significant portion of near-term cash flow savings is guaranteed based on how CalPERS future returns will impact scheduled payments (2-year lag + 5-year ramp up in payments) as demonstrated by stress testing
- 24-year option will allow reserve levels, including Section Trust, to be funded to higher levels than the 20-year option
 - If there is a future downturn, this money can be strategically transferred to offset new UAL (through Section 115 Trust or through CalPERS)
 - If no UAL remains, Town can apply funds to redeem POB early



15

NHA | ADVISORS
FINANCIAL CONSULTANTS

15

Next Steps

- April 6th (Tonight) – guidance on recommended POB option
- April 8th – Credit rating meeting with Standard & Poor's
- April 20th – Final Town Council approval of POS
- April 21st – validation proceedings formally complete
- Late April – pricing (locked POB interest rate)
- Early May – closing and funds delivered to CalPERS (UAL paid off)



16

NHA | ADVISORS
FINANCIAL CONSULTANTS

16



APPENDIX D: NEWARK 2021 PENSION REPORT

NHA 2020-21 PENSION SUMMARY REPORT



TRANSLATING 9 YEARS OF CALPERS ACTUARIAL REPORTS FOR CITY OF NEWARK

INCLUDING PLAN OVERVIEW, HISTORICAL STATISTICS, COST
PROJECTIONS AND ALTERNATIVE REPAYMENT AND COST
MANAGEMENT STRATEGIES

TABLE OF CONTENTS

Objective	1
Executive Summary	1
Why are Pension Costs Increasing so Rapidly?	1
“CalPERS 101” – Glossary of Terms.....	2
City of Newark Pension Plans – Overview	2
FYE 2020 Investment Performance and Historical Returns	3
9-Year History of Normal and UAL Costs and % of Payroll.....	4
UAL History and Sensitivity	4
30-Year Cost Projections	5
Alternative Repayment and Cost Management Strategies.....	6
A. Pre-Pay UAL at Beginning of Fiscal Year	7
B. Exit CalPERS.....	7
C. Fresh Start.....	7
D. Use Cash to Increase Contributions.....	8
E. Restructure Portion of UAL to Smooth Payments	9

OBJECTIVE

As a financial consultant and municipal advisor to cities and other local government agencies throughout the State of California, NHA Advisors, LLC (“NHA”) works with many agencies to distill and translate the complex nature of the CalPERS (“PERS”) annual actuarial reports. NHA’s financial expertise provides a more comprehensive historical trend analysis, simplified education materials (for elected officials, City staff and community stakeholders) and alternative repayment and cost management strategies. The NHA Pension Summary Report is meant to provide an executive summary of key PERS pension information in order to assist the City of Newark (“City”) with cash flow budgeting, future fiscal sustainability planning, and general education. Pension liabilities should be considered collectively with other long-term general fund obligations. NHA believes taking a comprehensive view of all general fund liabilities provides a better picture of future financial commitments.

EXECUTIVE SUMMARY

Rising pension costs are the most pressing financial issue facing California public agencies today. The City’s annual pension costs are expected to rise from \$5.2 million (31% of payroll) in FYE 2015 to an estimated \$11.7 million (59% of payroll) by FYE 2022. These costs represent about 26% of the City’s overall General Fund budget. Increasing pension costs reduce the City’s ability to fund other operations, capital projects and grow reserves.

Amortization of the City’s Unfunded Accrued Liability (“UAL”) is the most rapidly growing component of costs given that the UAL has more than doubled from \$47.7 million to \$115.3 million over FYE 2013 – 2020. The City’s total UAL is expected to rise to \$116.0 million as of 6/30/2021. Combined with the City’s other General Fund backed bond debt (\$62.3 million in outstanding certificates of participation), overall payments for the General Fund are expected to grow from approximately \$11.4 million in FY 2021 to \$18.8 million by FY 2026 and increasing to about \$20.8 million by FY 2036.

In response, there are various tools cities can use to address the fiscal challenge created by rising pension costs to provide greater financial and retirement security (see Alternative Repayment and Cost Management Strategies on Pages 6 through 10). NHA encourages PERS members to approach all impacted stakeholders in a collaborative manner to ensure long-term sustainability of the system. We hope that this document can help educate all stakeholders in an effective and transparent way.

WHY ARE PENSION COSTS INCREASING SO RAPIDLY?

Several factors are resulting in increased employer and in some case employee contributions:

- **The “Great Recession”:** A primary reason for pension cost increases was the economic downturn in 2008 when PERS suffered a 24% negative return with a gross impact of a 34.75% loss to the fund. Additional historical investment performance is provided on Page 3. The 20-year average is currently at 5.5%, its lowest mark in recent history, though that numbers will increase after FY 2021 strong returns are posted.
- **Lowering of Discount Rate:** When PERS lowers its investment return target, also known as the “discount rate,” member agencies must increase contributions to make up the difference. PERS reduced the discount rate from 8.25% to 7.75% in 2003, to 7.50% in 2014 and then to 7.00% in 2016. This last adjustment was phased in over a 3-year period, with the last phase being incorporated into the latest actuarial valuation report. With a 5-year payment ramp-up for every UAL increase, the full impact of the reduction will be realized in 2025.
- **Enhanced Pension Benefits:** These benefit enhancements authorized by state law in 2000 for public safety employees and in 2001 for all other public employees included a retroactive credit for years of service.



- **Mortality Rates:** People are living and drawing pensions longer, leading PERS to adjust assumptions for longer lifespans.
- **Lower Active vs. Retired Ratios:** There are fewer active employees for each retiree. In 2001, there were two active workers for each retiree. By 2016, that ratio dropped to 1.3:1, and PERS projects that in 10-20 years there will be just 0.6 active workers per retiree. Fewer people paying into the system means higher contribution rates from local agencies and their employees. Page 3 depicts active to retired ratios for the City.

“CALPERS 101” – GLOSSARY OF TERMS

- **Normal Cost (NC):** Annual cost for current employees.
- **Unfunded Accrued Liability (UAL):** Actuarial Liability *minus* Actuarial Value of Assets
 - “How much we currently have vs. how much we should have.”
 - UAL is amortized over 20 to 30 years.
- **Funded Ratio:** Percentage of assets available today to pay the pension benefits promised to employees.
- **Defined Benefit Plan:** A type of pension plan in which an employer/sponsor promises a specified monthly benefit upon retirement that is predetermined by a formula based on the employee’s earnings history, tenure of service and age. The City’s PERS plans are Defined Benefit Plans.
- **Actuarial Report:** An actuarial valuation is a type of appraisal that makes economic and demographic assumptions to estimate future liabilities. The assumptions are typically based on a mix of statistical studies and experienced judgment.
- **Discount Rate (or Expected Rate of Return):** The estimated long-term average return expected to be earned on investments.
- **PEPRA (Public Employees’ Pension Reform Act of 2013):** A pension reform bill that went into effect January 1, 2013 that impacts new public employees and establishes a limit on the amount of compensation that can be used to calculate a retirement benefit.

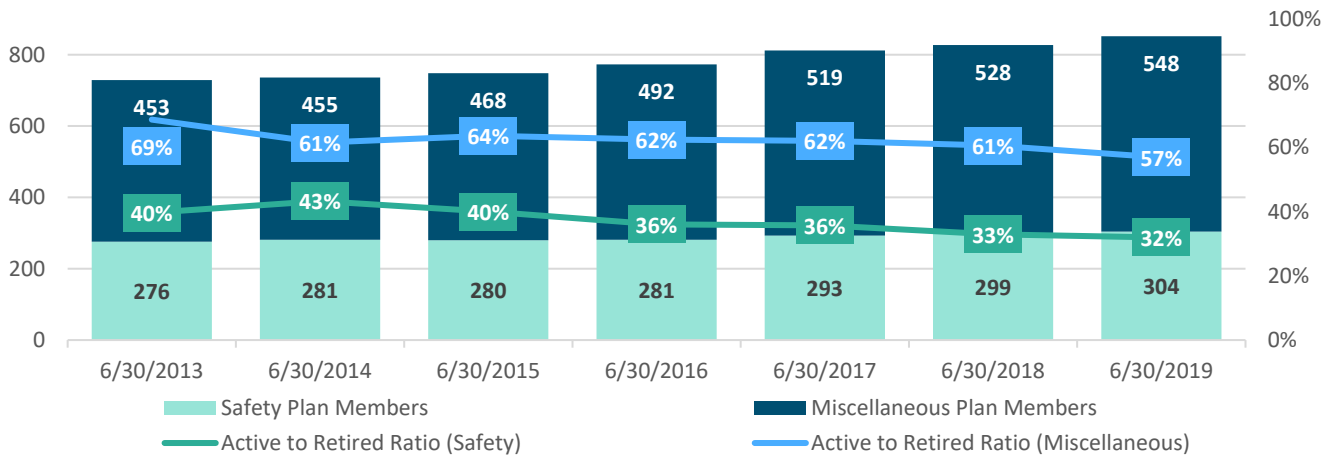
CITY OF NEWARK PENSION PLANS – OVERVIEW

The City currently has two primary plans with CalPERS: The Miscellaneous Plan, which covers all non-safety employees, and the Safety Plan, which covers all police employees. As shown in the table below, there are 124 active employees covered by the Miscellaneous Plan and 54 active employees covered by the Safety Plans. About 44% of the active Miscellaneous Employees, and 44% of the active Safety Employees, are subject to PEPRA limitations, while the remaining active employees are covered under one of the classic (pre-PEPRA) plans. The breakdown of active employees by benefit group and benefit formula is shown below.

MISCELLANEOUS PLANS			SAFETY PLANS		
Benefit Group	# of Actives	Formula	Benefit Group	# of Actives	Formula
Miscellaneous	70	2.5% @ 55	Safety	30	3% @ 50
PEPRA Miscellaneous	54	2% @ 62	PEPRA Safety Police	24	2.7% @ 57

As of June 30, 2019, the City has 852 total covered members within its Miscellaneous (548) and Safety (304) Plans. The ratio of active-to-retired members is 57% for the Miscellaneous Plan and 32% for the Safety Plan. The chart below describes in greater detail the historical trends of covered members and active-to-retired ratios for both of the City’s Plans since 2013. As shown, total covered members have collectively grown approximately 17% from 729 to 852. Total active and retired member counts for each Plan have also steadily risen over the 7-year period. Additionally, the ratio of active-to-retired members has fallen from 69% to 57% for the Miscellaneous Plan and from 40% to 32% for the Safety Plans. In comparison to prior years, this trend indicates that fewer active employees are paying into the Miscellaneous and Safety Plans relative to those receiving benefits.

Member Statistics and Active to Retired Ratio

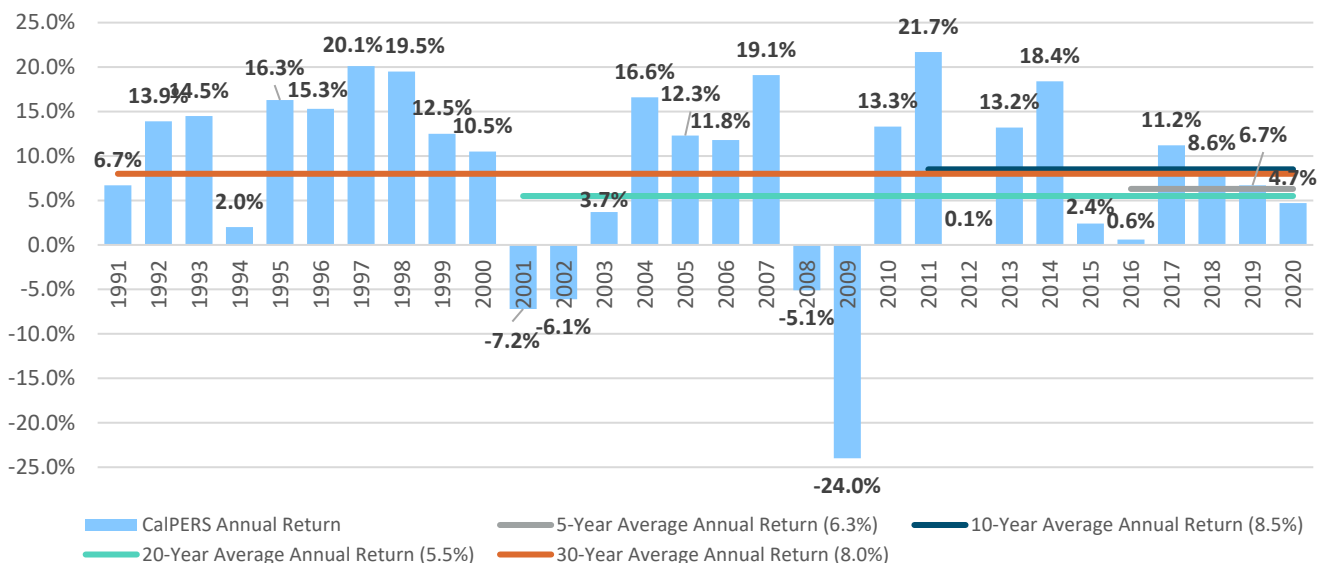


FYE 2020 INVESTMENT PERFORMANCE AND HISTORICAL RETURNS

In FYE 2020, PERS generated investment returns of 4.7%, moderately less than its target discount rate of 7.0%, marking its second consecutive year of underperforming its target. In FYE 2019, PERS generated investment returns of 6.7%.

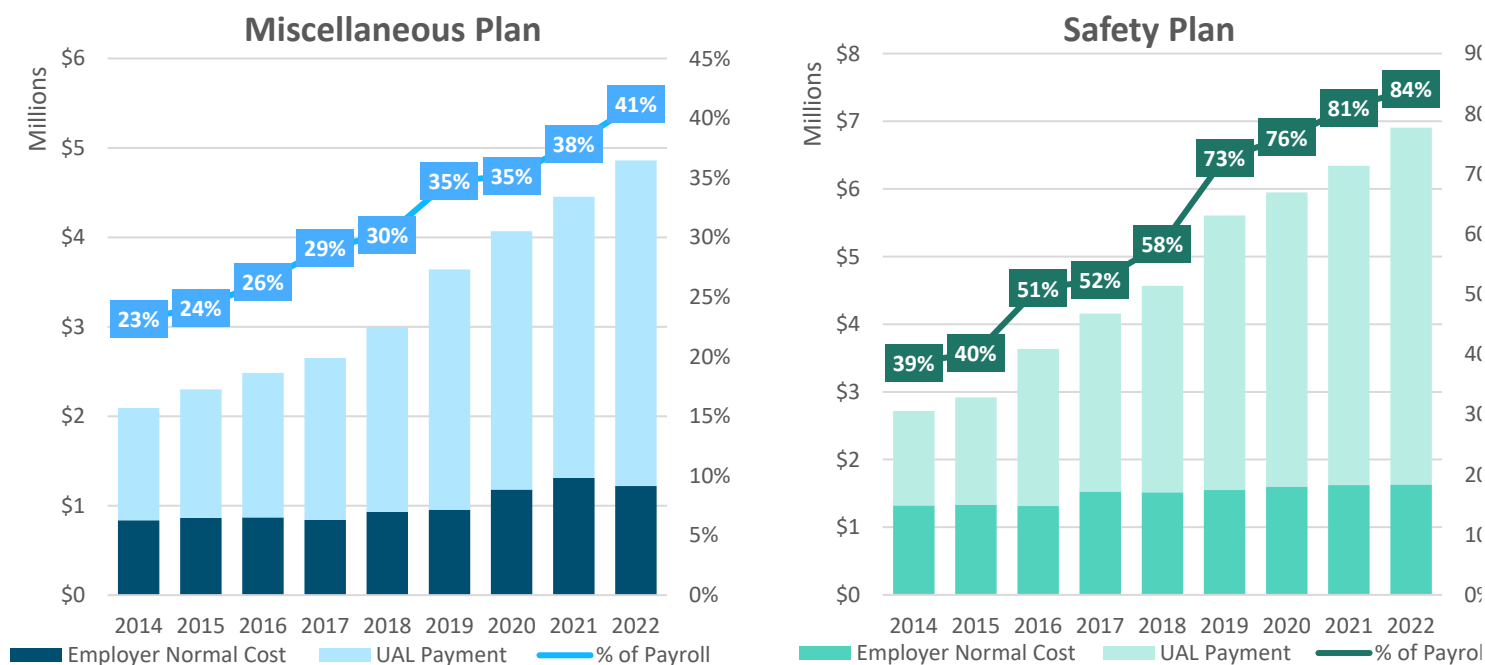
While the 4.7% underperformance has not been reflected in the current valuation reports and will be incorporated in the upcoming 6/30/2020 valuation reports (likely increasing the UAL by about 5-6%), it is notable that, to date, CalPERS is on pace to conclude FY 2021 with investment returns nearing approximately 15-20%. This is likely to reduce UALs by between 30-35% for many agencies, though these benefits will not be reflected until the 6/30/2021 valuation reports are released in the Summer of 2022. However, it is possible that CalPERS may further reduce the discount rate following FY 2021's strong performance, potentially offsetting some of these benefits.

The current 5-year average return for PERS is 6.3%, 8.5% for the 10-year average return, 5.5% for the 20-year average return, and 8.0% for the 30-year average return. Moving forward, annual investment performance will continue to be a key driver to future fluctuations in the UAL. These changes will be incorporated annually, with increases from lower than expected investment returns (or conversely, decreases if there are strong investment returns) amortized over a 20-year period.



9-YEAR HISTORY OF NORMAL AND UAL COSTS AND % OF PAYROLL

The two charts below provide a breakdown of Normal and UAL costs for both of the City's plans over the last nine (9) years, as well as the percentage of total payroll that those payments represent. We note that the Normal Cost component only includes the Employer share and does not include the Employee share, or any portion of the Employee share being picked up by the City. As shown, Miscellaneous Plan payments will have grown from \$2.1 million (23% of payroll) in FYE 2014 to an estimated \$4.9 million (41% of payroll) in FYE 2022. Similarly, Safety Plan payments will have grown from \$2.7 million (39% of payroll) to \$6.9 million (84% of payroll) over the same period.

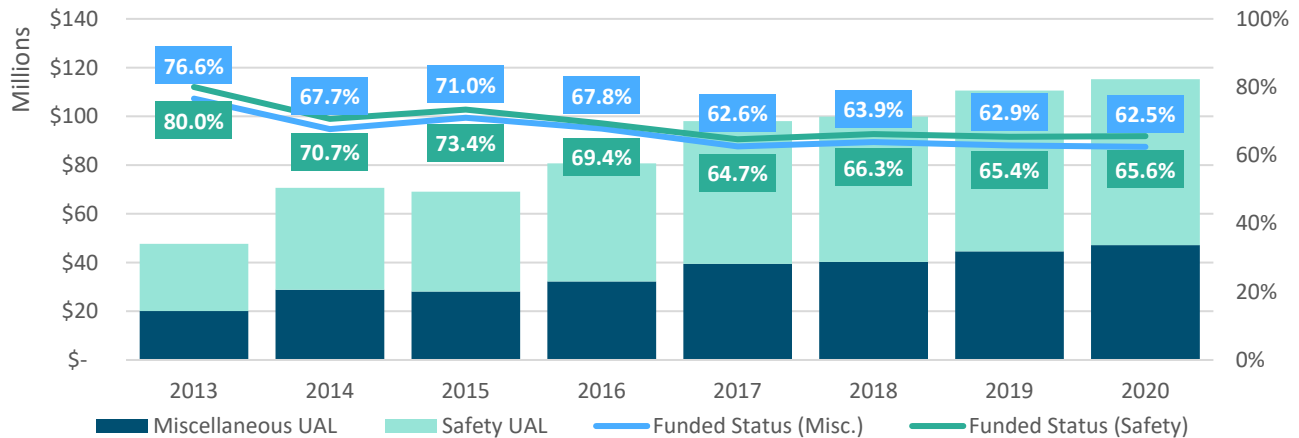


UAL HISTORY AND SENSITIVITY

The chart at the top of the next page depicts the City's UAL and Funded Status for each plan annually from the June 30, 2012 through June 30, 2019 valuation dates. Overall, the City's UAL has more than doubled during that time, increasing by \$67.6 million (from \$47.7 million to \$115.3 million). Total UAL is projected to increase further to \$116.0 million as of 6/30/2021. From FYE 2013-2020, funded ratios for the Plans have dropped from 76.6% to 62.5% for the Miscellaneous Plan and 80.0% to 65.6% for the Safety Plan. The key factors impacting the UAL fluctuations over this period include:

- **2013 → 2014:** Discount Rate lowered from 7.75% to 7.50%; PERS changed mortality assumptions (people living longer) and moved from an actuarial (AVA) to a market valuation of assets (MVA) which significantly increased the UAL
- **2014 → 2015:** Strong returns of 13.2% (2013) and 18.4% (2014) factor into a reduced UAL
- **2015 → 2016 → 2017:** Below average returns of 2.4% and 0.6%, combined with discount rate reduction from 7.50% to 7.00% (phased in over 3 years) factor into an increased UAL
- **2017 → 2018:** Above average returns of 11.2% factor into a reduced UAL
- **2018 → 2019:** Above average returns of 8.6% outweighed by final phase of planned discount rate reduction
- **2019 → 2020:** Slightly below average returns of 6.7% factor into an increased UAL
- **2020 → 2021:** Below average returns of 4.7% factor into an increased UAL for upcoming valuation

UAL History and Funded Status



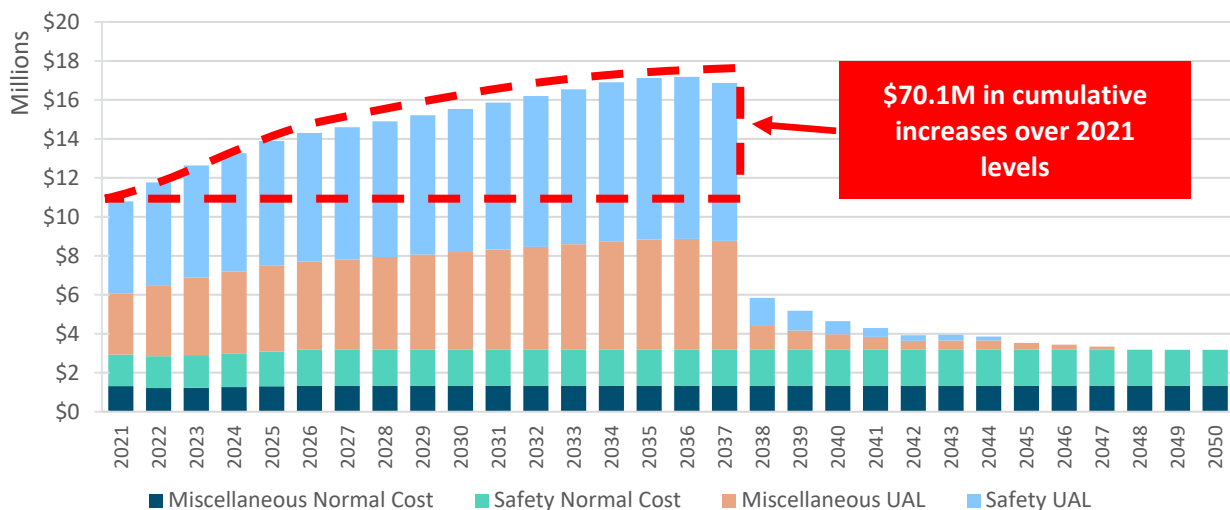
Sensitivity Analysis: The table on the right describes the sensitivity of the City's UAL to hypothetical discount rate changes to 6% and 8%. The PERS reports indicate that the City's UAL would increase by \$42.3 million (36.7%) from a discount rate reduction to 6% (or long term returns of 6%) and decrease by \$34.8 million (-30.2%) with a discount rate increase to 8% (or achieving long term returns of 8%).

UAL Sensitivity Analysis			
As of June 30, 2019	Total UAL	UAL Change (\$)	UAL Change (%)
6.0%	\$157,549,030	\$42,279,477	36.7%
7.0% (Current)	\$115,269,553	-	-
8.0%	\$80,442,555	(\$34,826,998)	-30.2%

FY 2021 Return Impact: As mentioned on Page 3, CalPERS is currently on track to generate 15-20% returns for FY 2021, which will likely dramatically reduce the City's UAL (perhaps by up to 35%). This benefit will likely not be reflected until the Summer of 2022 valuation reports and won't impact the City's payment schedule until FY 2024. We also note that it is highly likely that these positive benefits will be tempered by another round of discount rate reductions. Whether this reduction may range from 0.25% - 0.50% or another amount is currently unknown.

30-YEAR COST PROJECTIONS

30-Year Projected PERS Costs - UAL & Normal Cost

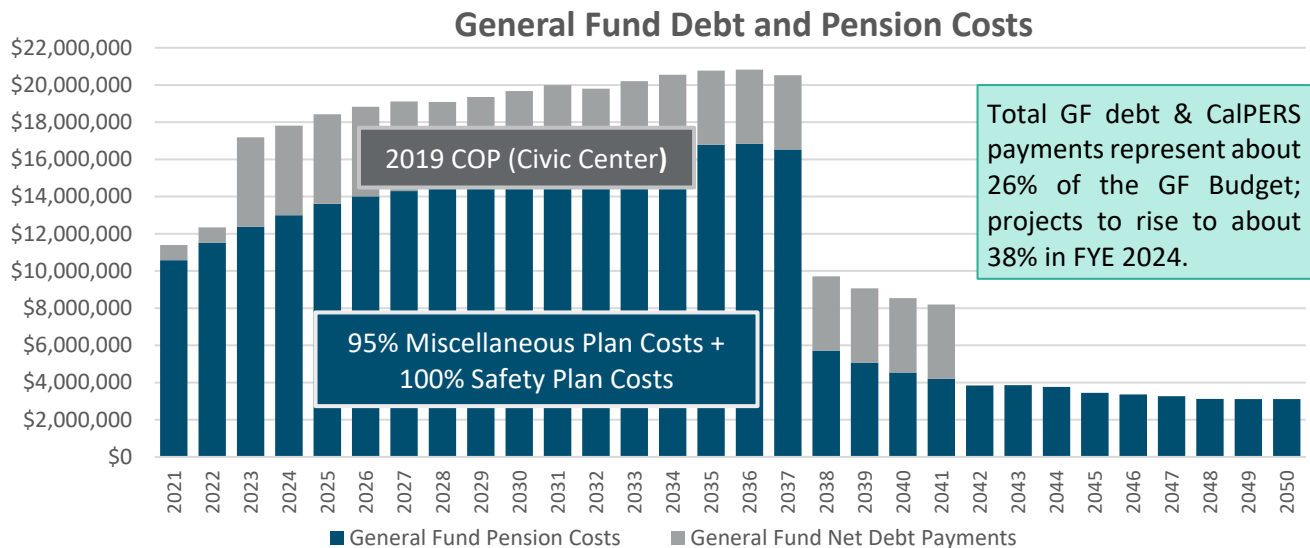


\$70.1M in cumulative increases over 2021 levels

The chart above depicts cost projections for the next 30-years and is primarily based on the UAL and Normal Cost figures shown in the latest 2020 PERS actuarial report. For the Normal Cost, we have matched the growth assumption in the PERS report for the next 5-years (3% payroll growth), and have assumed flatlined growth thereafter given that these costs may be affected by future employee turnover, which is difficult to predict (i.e. payroll costs for classic employees may rise but be off-set by lower costs for new PEPRAs employees). As shown, the vast majority of the City's projected UAL is to be amortized through FYE 2037, with **annual costs rapidly increasing from FYE 2021-2037 (from \$10.8 million to \$16.9 million)**. On a cumulative basis, the City is projected to face \$70.1 million of increased PERS required payments above 2021 levels through FYE 2037.

Why Is My Payment Schedule Increasing Then Declining Sharply? – The City's UAL is comprised of several components (called "bases"), each of which has a different time period for repayment. This schedule is shown in the "Schedule of Plan's Amortization Bases" section of the 2019 PERS actuarial report. Prior to 2016, the City's amortization bases ranged from 8-30 years for its classic Miscellaneous and Safety Plans. In the ensuing two years, the City implemented Fresh Start options that aggregated the amortization bases for each Plan and amortized payments for both Plans over a new 20 year period (more on this strategy in "Alternative Repayment and Cost Management Strategies" below). With 4 years of the new amortization period having passed, 16 years remain on the bulk (approximately 69% of the City's UAL) of the City's UAL payments. Based on current assumptions, the City is likely to see a significant drop off in payments starting around FYE 2038.

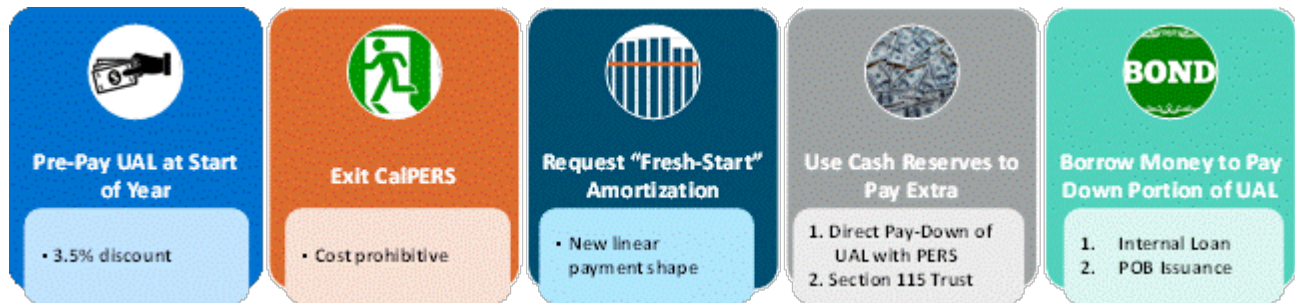
What Costs are Attributable to Only the General Fund and How Much of the Total Budget is That? – The chart below illustrates projected PERS costs that are attributable to the City's General Fund. **Based on an estimated 5% allocation of Miscellaneous Plan costs to the City's other funds, the remaining 95% of this Plan's costs are detailed in the chart below.** Many agencies have found it prudent to view their General Fund PERS costs in combination with other General Fund-backed debt service. The grey portion of the bar chart reflects estimated debt service attributable to the City's 2019 COP. The front-loaded nature of rising PERS costs along with a rise in General Fund debt service in FYE 2023 will add pressure on the City's budget; PERS and debt costs currently represent a combined 26% of the City's overall General Fund budget, which is projected to rise to 38% in FYE 2024.



ALTERNATIVE REPAYMENT AND COST MANAGEMENT STRATEGIES

While there is no "magic bullet" to solve the issue of rising pension costs, there are several strategies that municipalities have undertaken to better manage these costs and/or create alternative repayment schedules. The information presented on the next page provides a quick summary of each. Aside from these five (5) pension

specific strategies outlined, the City can also evaluate other internal cost cutting/budgetary measures. NHA can provide a more precise analysis if the City is interested in learning more about any of the five strategies shown below and the cost/benefits of each.



A. Pre-Pay UAL at Beginning of Fiscal Year

Instead of making monthly payments, the City can prepay its annual UAL payment and receive an approximate 3.4% discount (roughly half of the discount rate) on the required amount. This prepayment is often made from cash reserves or from the proceeds of a Tax and Revenue Anticipation Note (TRAN). For FYE 2022, these savings would amount to about \$303,000.

B. Exit CalPERS

Many cities have expressed interest in leaving PERS. Unfortunately, at an estimated cost of over \$319 million to the City (per the "Hypothetical Termination Liability" section of the PERS report), this option is extremely cost prohibitive given that PERS uses a "risk-free" rate of return to calculate this payment. Hypothetical rates of return of 1.75% and 3.25% were used in the most recent 2020 PERS actuarial report, translating to an **estimated termination payment somewhere between \$319 million and \$657 million.**

C. Fresh Start

An option that can be considered by public agencies is the Fresh Start that PERS provides to shorten the UAL amortization period and create a more linear payment structure. The UAL balance would remain the same and be amortized at the same current discount rate (7%), so there would be no present value savings to the modified structure. A shorter Fresh Start time horizon relative to more standard UAL amortization schedules would increase payments in the near term, but would also reduce overall cumulative payments as less interest would be accrued over time. However, it should be noted that once a Fresh Start is initiated, a public agency would not be allowed to revert back to its prior (longer) amortization schedule.

The City has previously implemented 20-year Fresh Start options for its PEPRSA Safety Police Plan in FYE 2015, Safety Plan in FYE 2016 and Miscellaneous Plan in FYE 2017. While the City is restricted in extending these UAL payment schedules with PERS, it does retain the ability to restructure them again with a shorter payment schedule (e.g. 10 or 15 year Fresh Starts). For FY 2022, implementing a 15-year Fresh Start would increase the annual UAL payment by \$3.4M. The 15-year Fresh Start payments project to be higher than the City's current UAL payments through FYE 2029, generating cumulative dis-savings of \$12.5 million during that period. From FY 2030 to FY 2048, the Fresh Start would generate positive savings totaling \$30.8 million. In aggregate, a 15-year Fresh Start beginning FY 2022 would produce net savings of \$18.3 million to the City.

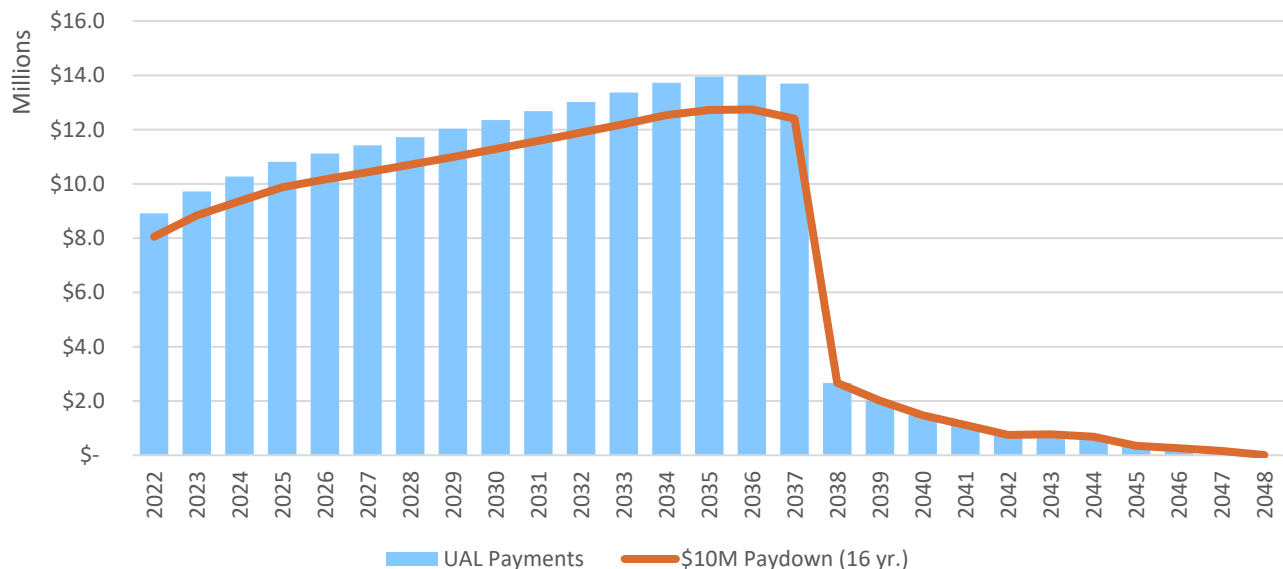
D. Use Cash to Increase Contributions

Public agencies typically use cash reserves to make additional discretionary contributions in one of two ways. These options commonly involve directly paying off a portion of specific amortization bases with PERS or establishing and funding a Section 115 trust that is managed by a separate entity. Under more specific circumstances, public agencies can also consider integrated strategies to more efficiently fund capital projects in tandem with their pension liabilities.

Direct Pay Down. For a direct pay down, the City can choose to eliminate a portion or all of any amortization base within its Plans and receive credit at the PERS discount rate (currently 7.0%). A paydown would thereby eliminate the future payments associated with the amortization base that is paid off. It should be noted that the longer (maturity) an amortization base is, the more cumulative cash flow savings would be presented relative to those of a shorter base, but savings would be relatively lower on an annual basis. Conversely, a shorter amortization base paid off would show higher annual savings, but a lesser relative amount on a cumulative basis.

As of June 30, 2020, the City's CAFR indicates an estimated unassigned General Fund balance of approximately \$39.6 million (with \$17.4 million unallocated) in addition to Pension/OPEB reserves of approximately \$16.0 million. We understand that the City has considered deploying up to \$10 million of reserves towards a direct UAL paydown. For illustrative purposes, the chart below depicts the future payment reductions from a \$10 million pay-down for a 16-year amortization base. **As shown, a \$10 million paydown could present annual savings ranging from about \$861,000 to \$1.29 million, or about \$1.06 million on average through FY 2037 (\$17 million in total payment reduction).** Cumulative savings net of the initial \$10 million deposit is estimated to be about \$7.02 million (\$17 million minus \$10 million).

Estimated UAL Payments After \$10M Paydown (16 yr. Base)



Section 115 Trust. A Section 115 Trust is a separate account managed by a third party, but can only be used to fund pension and OPEB costs. The key benefit of this trust is flexibility, meaning that the City can elect when and how it would like to utilize the funds. The funds can be invested in a variety of ways, with varying investment objectives available based on the City's desired risk tolerance. Funds can be left in the account to grow over time, used to make additional contributions directly to PERS, or used to make the City's required annual PERS payments during challenging budgetary years.

E. Restructure Portion of UAL to Smooth Payments

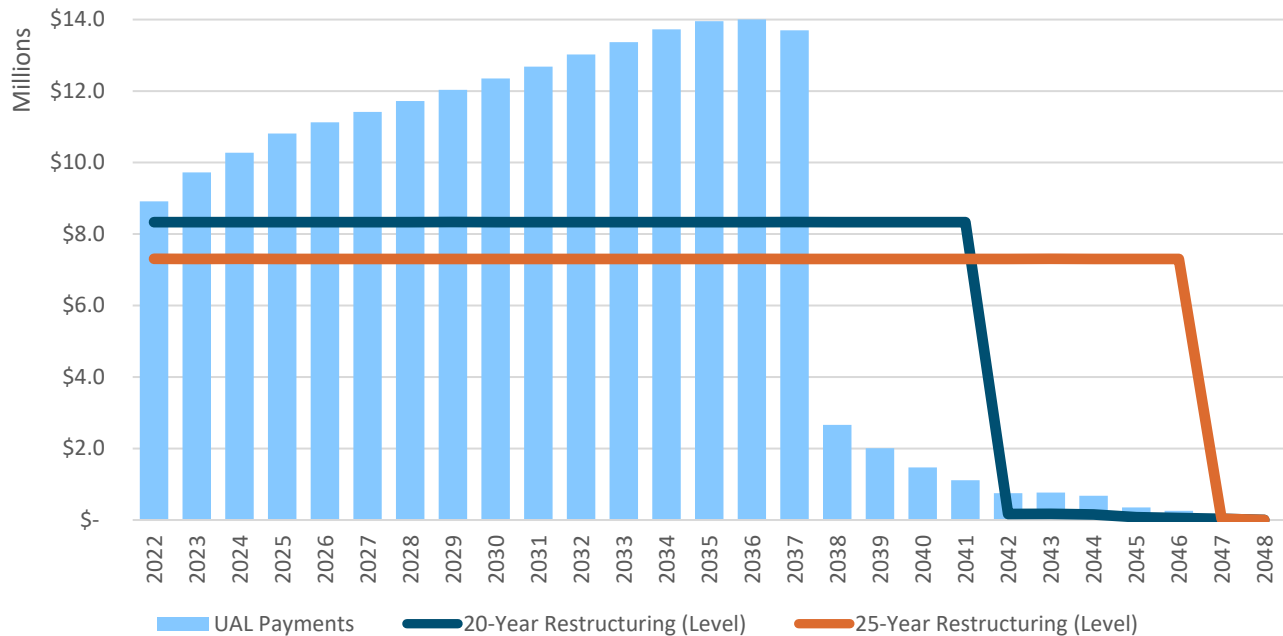
In recent years, several cities have borrowed money (commonly through a Pension Obligation Bond (POB) issuance, or alternatively using a lease revenue bond structure) to pay down all or a portion of their UAL and restructure their UAL amortization schedule with new payments at a lower interest rate. It should be noted that any prepayment of UAL is not without risks, most notably including reinvestment/market timing risk. A general rule of thumb, however, is that amounts borrowed for a paydown (i.e. debt issuance) will produce positive present value (PV) savings if the investment earnings earned by PERS, over the term of the borrowing, is greater than the rate paid on the debt. Additionally, the ability to restructure (“smooth-out”) the overall UAL payment shape to enhance budget predictability is another important consideration and, in our view, generally more impactful than simply creating present value (PV) savings through arbitrage.

Since 2020, issuance activity for UAL restructuring bonds has grown markedly amidst historically low interest rates, growing investor interest and the continued rise of CalPERS costs for California public agencies. In that time, over 45 public agencies have issued POBs or other forms of UAL restructuring debt, most recently including the cities of Auburn, El Segundo, Willows, Corte Madera, Manhattan Beach, Huntington Beach, Orange, Chula Vista, Downey, Monterey Park and El Cajon in 2021 alone.

Most of these issuances have utilized a “smoothing” strategy for their new payment schedules in order to (1) create near term cash flow savings, (2) stabilize and lower pension costs as a % of payroll, (3) enhance long term budget predictability, and (4) enhance the General Fund’s resiliency to future economic shocks and additional UAL. As interest rates have remained low through the first half of 2021, 9 of the last 10 pension bond issuances have achieved interest rates under 3.00%. Interest rates on UAL restructuring bonds since 2020 have ranged from about 2.50% - 4.25% pursuant to length of term, credit profile and market conditions at the time of issuance.

In the current market environment, a strategically structured POB for Newark could potentially generate around \$3.7 million to \$4.7 million of annual cash flow savings over the next 16 years. Shown below are preliminary estimated savings for a 20-year and 25-year UAL restructuring, assuming a \$90 million UAL payoff amount and CalPERS achieving future investment returns of 7%. This sizing projects to increase the funded ratios of the City’s Plans to about 92% at present, though in consideration of CalPERS’ strong investment returns for FY 2021, this may accommodate a more fully-funded status level for the Plans. Ultimately, such savings would be dependent on the size of issuance (i.e. UAL paid off), the structure/amortization of the UAL restructuring and market rates at issuance. If a restructuring is evaluated by the City, it is important to analyze all options available to carefully tailor the strategy to the City’s budgetary objectives. This includes evaluating selective amortization base pay-offs, bond sizing and differing amortization shapes.

Metrics	20-Year Restructuring (Level)	25-Year Restructuring (Level)
UAL Funded (\$)	\$90,000,000	\$90,000,000
UAL Funded (%)	78%	78%
Funded Ratio	92%	92%
Maturity	20 Years	25 Years
Average Life	11.8 Years	16.0 Years
All-In Interest Rate	2.95%	3.23%
Present Value Savings (%)	33.79%	30.59%
Present Value Savings (\$)	\$30,407,511	\$27,534,825
Cumulative Savings	\$35,746,518	\$20,435,066
Savings (2022-2037)	\$59,507,819	\$75,967,766
Avg. Annual Savings (2022-2037)	\$3,719,239	\$4,747,985



While a UAL restructuring may present notable projected savings, it is highly critical to evaluate the core risk of any restructuring, which is reinvestment and market timing risk, and develop strategies to help mitigate these risks. NHA can help estimate the impact of poor market timing and a significant crash immediately after a POB is issued. Beyond this initial worst-case breakeven analysis, we often recommend considering the services of a professional actuary to conduct more comprehensive stress-testing to quantify the risks associated and evaluate a status quo vs. POB scenario under a myriad of reinvestment scenarios by CalPERS, and particularly under a recessionary scenario. This “what-if” stress testing process is extremely helpful in illuminating potential risks for prudent decision making, as well as helping to refine the ultimate UAL restructuring strategy to ensure that there is sufficient resiliency in the structure to absorb potential CalPERS underperformance.

OTHER RESOURCES

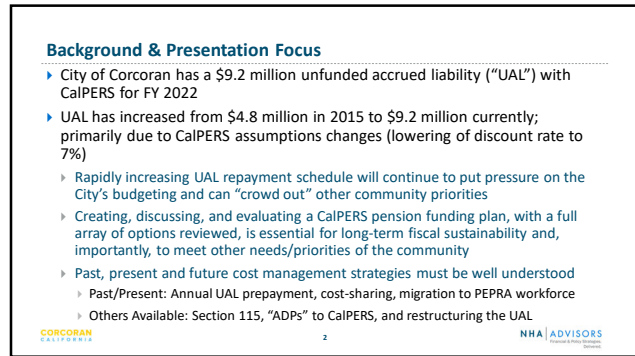
- GovInvest 2021 POB Webinar: What Should I Know About Refinancing Pension Obligations?
 - <https://govinvest.com/what-should-i-know-about-refinancing-pension-obligations/>
- NHA 2019 Pension White Paper (“Pension Costs: The Everchanging Landscape”)
 - <http://nhaadvisors.com/wp-content/uploads/2018/09/NHA-Pension-White-Paper-Fall-2019.pdf>
- League of California Cities: <https://www.cacities.org/>
 - Pension: <https://www.cacities.org/Policy-Advocacy/Hot-Issues/Retirement-System-Sustainability>
- Government Finance Officers Association: <http://www.gfoa.org/>
 - Pension: <http://www.gfoa.org/pension-resource-center>
- CalPERS: <https://www.calpers.ca.gov/>
- List of Actuaries: <https://www.calpers.ca.gov/docs/opeb-actuaries.pdf>



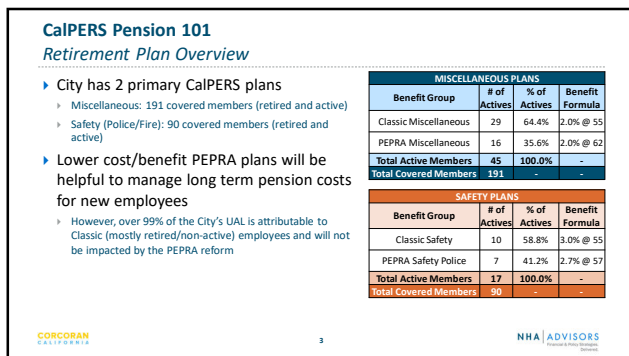
APPENDIX E: CORCORAN CALPERS COST MANAGEMENT STRATEGIES PRESENTATION



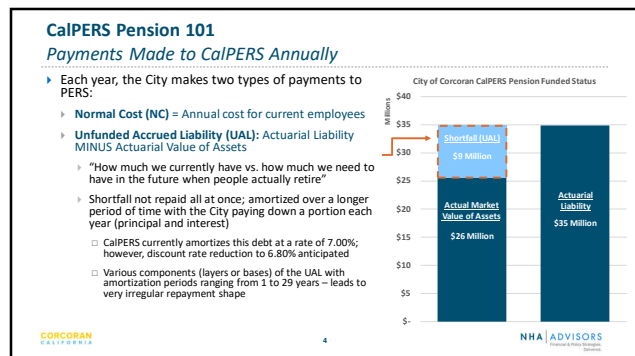
1



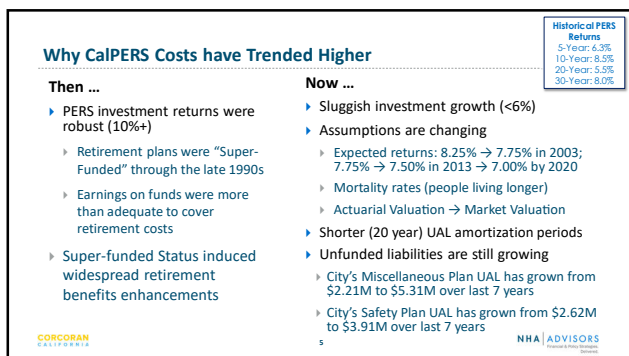
2



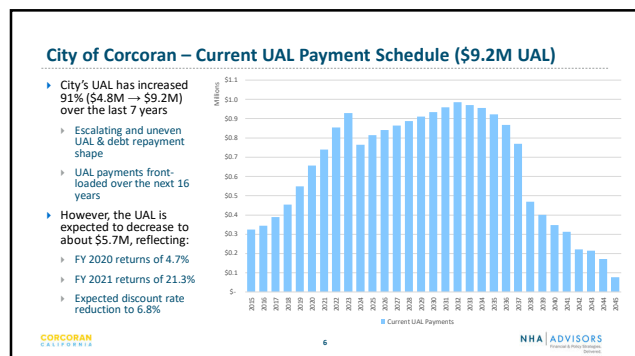
3



4



5



6

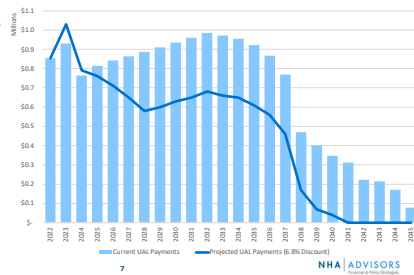
City of Corcoran – Projected UAL Payments

Accounting for FY '21 21.3% Returns & Expected 6.80% Discount Rate Reduction

- ▶ The City's UAL is projected to decrease from \$9.2M to \$5.7M

UAL change reflects:

- ▶ FY 2020 returns of 4.7%
- ▶ FY 2021 returns of 21.3%
- ▶ Expected discount rate reduction to 6.8%
- ▶ 6.8% discount rate reduction is anticipated at present, in line with CalPERS' risk mitigation policy
- ▶ Discount rate change determination expected in November 2021



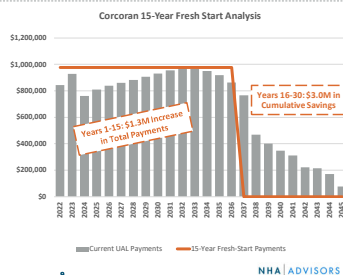
Strategies to Address Rising Pension Costs

These Strategies are Not Mutually Exclusive

- (1) Prepay UAL early in Fiscal Year (= 3.4% discount) – **City uses this strategy**
 - (2) Negotiate Cost Sharing With Employees – **City has completed**
 - Require employees to pay their share; New employees already governed by lower cost/benefit PEPPA plans
 - (3) Fresh Start Amortization w/ CalPERS
 - Pros: Smooths payment, shortens repayment period; reduces overall interest paid from shorter amortization period
 - Cons: New structure "locked-in" + increased annual payments in near term; still amortized at discount rate
 - (4) Use Cash Reserves to Pay Extra (two options) – **City has used this strategy**
 - **Section 115 Trust** – Separate trust solely dedicated to pension/OPEB
 - Offered by PARS, CalPERS, Keenan, PFM and others
 - City has **\$423K** in General Fund Pension Contributions account
 - **Lease Sum Pay Down of UAL** – Reduce UAL through "Additional Discretionary Payments" (ADPs)
 - Choose optimal amortization bases to pay off
 - **City has made a \$...M ADPs during each of the past two years**
 - (5) Restructure All or Portion of Remaining UAL
 - Restructure portion of UAL at lower bond interest rate (i.e. 3.50% vs. CalPERS rate of 7.0%) and "smooth out" payments for enhanced budget predictability, near and mid-term potential savings, and preservation of cash for other critical projects
- 8

Fresh Start Amortization

- ▶ City can request new amortization schedule with CalPERS
- ▶ Still amortized at 7%; Must be shorter than current schedule
 - ▶ Near term payments are higher, interest savings taken in later years; No NPV savings
- ▶ Schedule is "locked-in" and City can't go back to old schedule
 - ▶ Due to lack of flexibility, this strategy is not commonly utilized – City could effectuate the same results using either the ADP or Section 115 strategy while maintaining some flexibility



Applying Reserve Funds/Annual Surplus

Option 1: Section 115 Trust

- ▶ **What is it?** - Separate trust managed by 3rd party (typically not CalPERS)
 - ▶ Dedicated / restricted to pension and/or OPEB costs
 - ▶ **Benefits**
 - ▶ Potential for increased investment returns vs. current General Fund reserves
 - ▶ General Fund investments restricted by Government Code (limits types of instruments and maturities)
 - ▶ Flexibility – more investment options than CalPERS and can decide when and how to use
 - ▶ **Longer-Term:** Can grow over time and pay off full UAL in the future
 - ▶ **Shorter-Term:** Apply during challenging budget years or to "smooth" payment spikes
 - ▶ Diversify assets under management away from CalPERS
 - ▶ The Trust will show up as an asset on the City's financial statements, but will not technically offset UAL until funds are transferred to CalPERS
 - ▶ **City currently has \$423K in a General Fund Pension Contributions account**
- 10

Applying Reserve Funds/Annual Surplus

Option 2: ADP – Additional Discretionary Payment

- ▶ **What is it?** – City makes Additional Discretionary Payment (ADP) to CalPERS and applies funds to a selected amortization base (layer of UAL)
 - ▶ CalPERS will eliminate payments associated with the portion of the UAL paid off, essentially giving the City credit at 7% interest
 - ▶ While credit is given at 7% interest, the true benefit of the pay down will be based on CalPERS actual returns on those funds in the future
 - ▶ **Benefits**
 - ▶ Reduced UAL with CalPERS and associated payments
 - ▶ Opportunity for increased investment returns vs. current GF reserves
 - ▶ Higher funding ratios
 - ▶ **City has made \$... of ADPs, reducing annual payment by about \$... annually**
- 11

Restructuring UAL Debt – Conceptual Overview

- ▶ Borrow money to pay off all or a portion of UAL with CalPERS
 - ▶ Pension Obligation Bond (POB) is typically utilized
 - ▶ Unsecured debt (no collateral required)
 - ▶ "Court Validation" to confirm UAL is a "debt" that can be refinanced
 - ▶ Typically a 3-to-4-month process; City of Oroville already completed and process not likely necessary
 - ▶ Validation provides foundation to issue POBs now or anytime in the future if approved by City Council
 - ▶ Alternative option is lease revenue bond
 - ▶ Interest rate paid on a POB significantly lower than the 7% CalPERS charges
 - ▶ Current market is 3.00% to 3.50% depending on length of term and credit rating
 - ▶ Restructuring the annual payments into a smoother, predictable schedule is core objective
 - ▶ Key risk / consideration: re-investment and market timing risk
- 12

POB Market Update - Recent Issuances

- Over the last 12 months, about 50 agencies have issued UAL Restructuring Bonds for over \$6 billion in CalPERS UAL refinanced
- Interest rates have ranged from 2.54% to about 4.25%
- Most of recent 16 POBs to come to market in 2021 have achieved interest rates under 3.0%

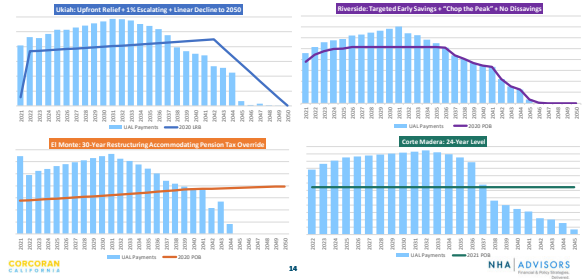


CORCORAN

13

NHA ADVISORS

Recent Issuances: Restructuring for Smoothing is a Common Strategy No One Size Fits All: Term and Shape of Repayment Unique to Each Issuer



CORCORAN

14

NHA ADVISORS

Taxable Interest Rate Trends (30-Year Treasury Rates)



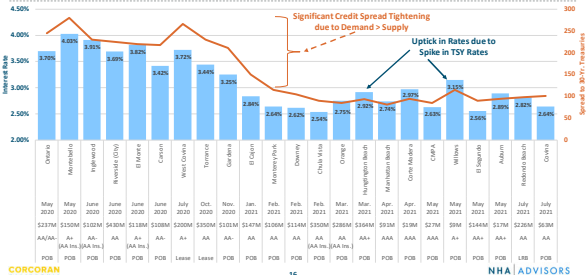
CORCORAN

*Interest rates through July 30, 2021.

15

NHA ADVISORS

Pension Bond Market Update: Interest Rates (Blue Bars) Have Dropped Dramatically due to Growing Investor Demand (Orange Line)



CORCORAN

16

NHA ADVISORS

Preliminary UAL Restructuring Options for Corcoran Three Baseline Options for Presentation Purposes

OPTION 1
15 Year – Level
Payments

OPTION 2
20 Year – 1% Escalating
+ Linear Decline

OPTION 3
20 Year – Level
Payments

Assumptions

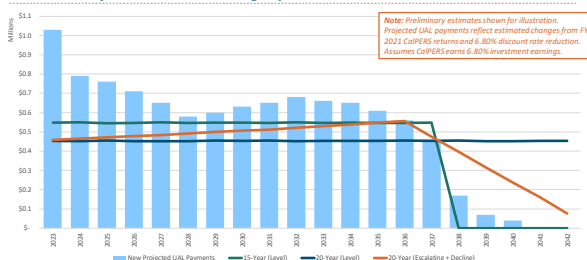
- 100% of New Projected UAL Paid Off (\$6.7M)
- Factors in net effect of FY 2021 21.3% returns & 6.80% discount reduction
- Estimated Interest Rates from recent "A+" category POB
- Bonds are "callable"
- i.e. City has ability to pay off (or refinance) the POBs early if desired

CORCORAN

17

NHA ADVISORS

Preliminary UAL Restructuring Options



CORCORAN

18

NHA ADVISORS

Preliminary UAL Restructuring: Savings Analysis

- PV savings ranges from \$1.56M - \$1.78M
- 23.4% - 26.7% of refunded UAL
- Savings through peak period (next 15 years) estimated at \$1.8M - \$3.2M
- \$121K - \$215K annually on average

Metrics	15-Year (Level)	20-Year (Escalating + Decline)	20-Year (Level)
UAL Funded (\$)	\$6,680,000	\$6,680,000	\$6,680,000
UAL Funded (%)	100%	100%	100%
Funded Ratio	100%	100%	100%
Maturity	15 Years	20 Years	20 Years
Average Life	8.5 Years	10.3 Years	11.5 Years
All-In Interest Rate	3.18%	3.40%	3.47%
PV Savings (%)	26.70%	24.28%	23.37%
PV Savings (\$)	\$1,783,345	\$1,621,788	\$1,560,876
Cumulative Savings	\$2,094,052	\$1,581,256	\$1,240,940
Savings (2023-2037)	\$1,814,052	\$2,486,964	\$3,223,568
Average Savings (2023-2037)	\$120,937	\$165,798	\$214,905

Note: Preliminary estimates shown reflect estimated changes from FY 2021 CalPERS returns and 6.80% discount rate reduction. Assumes CalPERS earns 6.80% investment earnings.

CORCORAN

19

NHA ADVISORS

19

Preliminary UAL Size: Why \$6.7 Million?

- City's current \$9.2M UAL is likely to be reduced to \$6.7M
- FY 2021 returns (21.3%) are expected to significantly reduce the UAL
- However, CalPERS is also anticipated to lower the discount rate from 7.00% to 6.80%, which would slightly offset expected UAL reductions
- \$6.7M UAL restructuring size is a very preliminary target to both (1) maximize savings to the City while (2) reducing the risk of being overfunded (> 100% funding ratio)

Current UAL	\$9.2 Million
Est. UAL Change From FY 2021 Returns & New Discount Rate	(\$2.5 Million)
Estimated New UAL	\$6.7 Million

CORCORAN

20

NHA ADVISORS

20

Preliminary Options - Takeaways

- 3 preliminary options presented to enhance discussion and understanding of the core concepts
 - Many options are available to evaluate (shapes, maturities, sizes, etc.) if more comprehensive evaluation process is initiated
 - Dozens of options are evaluated to best tailor to each agency's individual objectives, risk/reward tolerance, and financial constraints
- Tradeoffs between shorter and longer maturities
 - Shorter: More cumulative savings, but less over next 14 years and less resiliency to handle future economic shocks, including CalPERS' underperformance
 - Longer: Less Cumulative savings, but more in the next 14 years & increased long-term resiliency
- A stress testing process is highly recommended to understand the core risk of a POB, which is reinvestment and market timing risks
 - Quantifies the impact to the City, and POB performance, under various future CalPERS return scenarios
 - For example, what if: (1) there is another 2008-type recession after the POB is issued?; (2) what if CalPERS only earns 5% for the next 20 years; (3) What if there are discount rate reductions in the future?
 - Modeling out these scenarios is helpful for prudent decision making and to help evaluate the pros and cons of various POB structuring options
- A Pension Funding Policy should be adopted to provide roadmap for addressing this challenge

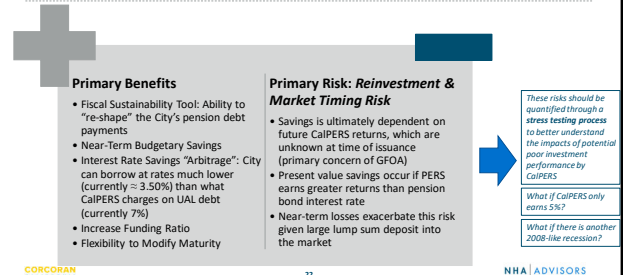
CORCORAN

21

NHA ADVISORS

21

Pension Bonds - Benefits and Risks



CORCORAN

22

NHA ADVISORS

22

Government Finance Officers Association (GFOA) Critique of POBS

Invested pension bond proceeds might earn less than the borrowing costs	*Yes, instead of CalPERS' expected earnings rate of 7.0%, lower actual returns could occur. The chances of long-term returns being below current ~3.50% borrowing costs are low, but they do exist. A "stress testing" process is often helpful to better quantify this risk (i.e., analysis based on CalPERS earning poor returns in the future)
"Pension bonds are complex instruments that carry considerable risk...and may include swaps or derivatives..."	*No. Current pension bond issuances are fixed rate bonds that typically do not include swaps or derivatives.
"Using taxable debt to fund the pension liability increases the jurisdiction's bonded debt burden and potentially uses up debt capacity..."	*No. Pension bonds replace all or a portion of an agency's payments to PERS with debt service on the bond. It is converting one liability for another on the balance sheet at a lower interest rate. A lease bond will reduce asset capacity for future issuances.
Pension bonds are "typically issued without call options" making it more difficult to rebond bonds if interest rates fall or a different debt service structure is desired in the future.	*No. Nearly all recent pension bonds are issued with an optional redemption feature, allowing agencies to refinance or accelerate repayment upon them in the future.
"Pension bonds are frequently structured in a manner that defers the principal payments..."	*Not Always. Most of the recent pension bonds amortize principal immediately. Shortening, lengthening, or maintaining the same term of payments is at the discretion of each agency.
"Rating agencies may not view the proposed issuance of Pension bonds as credit positive..."	*Not true if pension bond is prudently structured to increase payment affordability, financial flexibility and resiliency as part of a policy driven reserves and pension funding strategy.

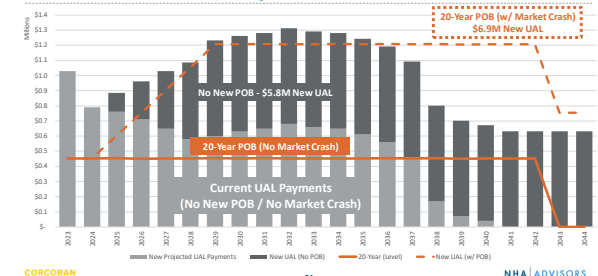
CORCORAN

23

NHA ADVISORS

23

Preliminary Stress Test for Corcoran* -10% Negative CalPERS Returns in First Year After Issuance (Savings Reduced to ~\$100K)



CORCORAN

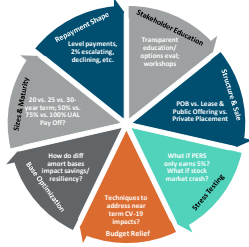
24

NHA ADVISORS

24

Components of a Thoughtful Evaluation Process

- Proper Stakeholder education
- Full exploration of options
 - Shapes, sizes, durations
 - Tailor to City's financial objectives, risk tolerance and other constraints
- Stress testing process to quantify risks
 - Structuring techniques to optimize savings / resiliency to future PERS volatility
 - Market timing of investing proceeds
 - Restructuring strategy and use of future savings should be governed by a Pension Funding Policy



CORCORAN CALIFORNIA

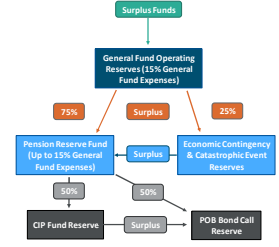
25

NHA ADVISORS

25

Recommendation: Pension Funding Policy (Illustrative Purposes)

- Integrated into a comprehensive reserve policy
 - Provides direction and prioritization to use surplus funds for "filling up" City reserves and other important accounts
- Detailed projections that account for positive POB cash flow benefits under different CalPERS performance assumptions can be a very strong planning tool
 - Also, a "credit positive" by rating agencies
- Beyond economic contingency reserves, surpluses may also be targeted towards funding Section 115 Trusts for additional future smoothing, if needed, of pension or OPEB costs
- Finally, funding an early redemption account of POBs, as well as other priority capital project funds may be considered



CORCORAN CALIFORNIA

26

NHA ADVISORS

26

Conclusion

- The City's Pension Liability is the largest General Fund debt on its balance sheet
 - Debt has grown significantly over the past 7 years
 - During this time, annual payments to retire this debt have grown and these annual payments are projected to fluctuate significantly over the next 10 years
- Funding and Restructuring this pension Liability would be a very complex undertaking:
 - The problem, the options and the risks must be translated properly to decision-makers and stakeholders
 - Quantitative aspects require significant iterations to optimize results
 - Risks are quantifiable; but the City must make its own informed decision that weighs the risks vs. rewards
- Given the potential benefits, but also knowing the complexity inherent in such an important decision for the City, it is recommended that a comprehensive evaluation process be pursued to ensure that decision makers and stakeholders understand the pros and cons, including risks, in order to make an informed decision that is in the best interests of the City
- It is highly recommended that a Pension Funding Policy be integrated within the City's robust reserves policy and its long-term forecasting process to create a roadmap for addressing this long-term challenge regardless of whether the UAL is restructured or not

CORCORAN CALIFORNIA

27

NHA ADVISORS

27

Next Steps

- Council direction on whether concept should be evaluated further
 - If so, additional workshop(s) could be scheduled to provide additional information and answer questions
- Assuming City wanted to continue process, it would take about 4-5 months before being in position to execute POB and lock interest rates
 - Staff and financing team could continue the evaluation/education process and conduct more robust options and stress testing analysis during this timeframe
 - City Council would still have to formally approve POS, financing strategy and financing team

CORCORAN CALIFORNIA

28

NHA ADVISORS

28



APPENDIX F: NHA SENIOR STAFF RESUMES



Public Finance
Professional Since:
1990

Expertise

- Cities and Special Districts
- Utility Expert - Water, Wastewater, Refuse, Land-Secured
- Expert on Educational Presentations, Public Speaking

Education

Berkeley
UNIVERSITY OF CALIFORNIA

- B.S. Urban Land Economics and Finance
- MBA, Haas School of Business

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License
- Series 54 License

Eric Scriven, *Principal*

Since 1990, Mr. Scriven has developed a generalist background and a common-sense approach to solving problems and “going the extra mile” to serve his municipal and special district clients. He provides a high level of due diligence, always developing the widest array of strategic options, using his skills (and his fiduciary ethos towards his clients) to be their agent and energetic advocate during negotiations with other parties, and an efficient and effective project manager when called upon to act in a municipal advisory or investment banking (in prior firms) role.

Mr. Scriven has developed an expertise in lease, utility revenue, labor secured and pension restructuring transactions. His assignments have ranged from large, AAA metropolitan city credits to non-rated, “structured bond” financings in remote locations. As banker and advisor, he has successfully structured and closed, variable rate notes, interest rate swaps and caps, forward closing bonds, anticipation notes, transactions with extraordinary redemption flexibility, as well as many long-term fixed rate bonds. Mr. Scriven draws upon his years as an investment banker to advise his clients on how they may best match their goals and objectives with feasible solutions that will be accepted by underwriters and investors. Additionally, he uses this detailed experience to assist his clients during the bond sale process to be an active participant to help secure optimal results.

Between virtual visits to city halls and time spent in the office, Eric actively seeks out outdoor adventures. Kings Canyon, Colorado, Crested Butte, Half Dome, Glacier NP, the Mt. Shasta summit and the Grand Canyon—and always the Pacific Ocean—are recent and very memorable destinations!

Mr. Scriven earned his MBA from the Haas School of Business and his B.S. in Finance and Urban Land Economics from UC Berkeley. He holds Series 50 (Registered Municipal Advisor) and Series 54 (Municipal Principal) licenses.



**Public Finance
Professional Since:
2003**

Expertise

- General Fund Financing
- Pension Obligations
- Utility Financing
- Redevelopment Financing and Tax Increment Modeling
- Project Management
- Financial Modeling
- Credit Analysis and Presentations

Education

UC San Diego

- B.S. Management Science

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License

Mike Meyer, Vice President

Since 2003, Mr. Meyer has been providing a high level of support to California municipalities as an advisor, consultant, and an investment banker. He manages NHA's San Diego office and the firm's Pension and Fiscal Sustainability Group.

Mr. Meyer has executed all types of financings available to California municipalities including pension obligation bonds, utility revenue (water/wastewater/storm drain) general fund backed leases, tax increment, general obligation, transportation, land use secured, housing and sales tax transactions. Mike's clients range from medium/large cities like Oxnard, Riverside, Chula Vista and Berkeley to smaller cities like Corcoran, Riverbank and Ukiah, to special districts such as the Novato Sanitary District and North County Fire Protection District.

As the firm's resident pension expert, Mr. Meyer also manages NHA's Pension and Fiscal Sustainability Group, which has advised over 45 California local agencies on topics ranging from basic CalPERS education, to UAL cost management strategies (Section 115 Trusts, Additional Discretionary Payments, etc.), to UAL restructuring projects. In 2015, he led the firm's efforts to pioneer some of the first UAL "smoothing" transactions, which were executed as privately placed lease revenue bonds given that POBs were not feasible at that time. As the POB market re-emerged in 2018 and 2019, Mike has recently worked on over \$1.5 billion of pension bonds transactions for cities, utilities districts and fire districts. This experience includes various types of UAL financing structures: both privately placed debt as well as publicly offered, validated and non-validated POBs, as well as alternative structured like lease revenue bonds and utility revenue bonds. Notable transactions include the \$400 million City of Riverside POB (closed 2020), \$120M El Monte Tax Override Secured POB, \$350 million City of Torrance Lease (closed 2020) and the \$350 million Chula Vista POB (January 2021 expected pricing).

Mike and the Pension Group pride itself on delivering an agnostic, comprehensive process to evaluate cost management strategies, including (1) comprehensive staff and stakeholder education, (2) agnostic evaluation of all options available and their pros/cons, and (3) stress testing to assess the downside risks (reinvestment and market timing) of pension bonds. Mike has spoken on this topic in several public forums, including CSMFO chapter meetings.

Prior to NHA Advisors, Mike served as a Principal with Eric Scriven (NHA partner) at Capital Advisors (2012 to 2014), providing independent consulting and advisory work to numerous California public agencies. Prior to that, he served as a Vice President at De La Rosa Investment Bankers. Mike has also worked on several unique financing programs in his career including the 2004 Vehicle License Fee (VLF) pooled financing (>100 different city participants), 2009 Beverly Hills OPEB Buyout, 2016 Berkeley Parking Revenue Bonds for a new downtown garage, transportation revenue secured financings (gas tax and local sales tax return) for Oxnard and Lancaster, and lease bonds to fund CalPERS UAL in the cities of Torrance, Ukiah, West Covina, Lakeport and Arcata.

From 2013 to 2017, Mike also helped coach the Division I UC Davis Men's Tennis team and obtain the program's first national ranking and NCAA tournament berth. Mike enjoys being active and in nature, spending his free time backpacking, hiking, surfing, playing sports and is a dedicated practitioner of yoga and meditation.



**Public Finance
Professional Since:
2016**

Expertise

- Cities & Successor Agencies
- General Fund Financing
- Utility Financing
- Budgeting and Cashflow Analysis
- Demographic Research and Credit Presentations
- Pension Analysis
- Market Research and Refinancing Analysis

Education



- M.S. Finance
- B.S. Biological Sciences (Biola University)

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License

Christian Sprunger, Assistant Vice President

Christian's role in NHA Advisors' analytical and research department is to provide support to California cities and special districts in a variety of ways. His work has covered a variety of assignments, including: cashflow and market analysis, refinancing projects, demographic research and credit presentation preparation, CalPERS and pension analysis, and proposal writing. He has assisted on over 100 financings for California agencies, representing over \$2 billion in par.

Examples of Christian's recent experience include competitive general fund and general obligation bond financings for the cities of Hermosa Beach, Carmel, Gilroy, Berkeley, Campbell and San Francisco; negotiated utility financings for the cities of Willits, Santa Paula, Morgan Hill, and Martinez; tax and revenue anticipation notes for the Cities of Berkeley and El Cerrito; pension obligation bonds for the City of Grass Valley and the North County Fire Protection District.

In 2020, Christian worked on the Fort Ord Reuse Authority's \$31M tax allocation bond financing for land remediation and building removal at the former Fort Ord army base. This financing featured a new money tax allocation bond financing (extremely rare in California post-dissolution), presentations to the California Department of Finance staff to receive approval, negotiation and coordination with eight public jurisdictions, a multi-credit rating presentation to S&P Global Ratings and a CalPERS termination payment due to the sunset of the issuing agency. Finally, this financing featured the escrow term bond structure with additional release to a portion of the bond proceeds. This financing successfully closed in June 2020, 30 days prior to the statutory sunset of the Authority.

In 2020, Christian assisted the Tahoe Douglas Visitors Authority to issue hotel and tax increment secured new money revenue bonds to finance a \$100M event center on the Nevada side of Lake Tahoe. Christian assisted with developing a robust line-item detail, 30-year cashflow projection model to allow the team to stress test multiple structuring options and determine an optimal structure. Because this primarily hotel tax secured financing was issued during COVID-19, it also featured an innovative Revenue Stabilization Fund that functioned as a secondary reserve fund for bond investors. These bonds were sold in November 2020 and were heavily subscribed (over 8 times) by investors.

In 2018, Christian worked with the City of Farmersville to secure combination US and SRF loans to finance \$24M in wastewater treatment plant improvements. The funding package for this project was a combination of City reserves, USDA loan, SRF loan, SRF principal forgiveness loan, SRF disadvantaged community grant. Christian assisted with managing the timing of the loans (USDA and SRF require simultaneous closings), developed a cashflow model for projected coverage and determining debt service, and worked with the City to secure a \$2M line of credit for interim project financing.

Prior to making a career switch into public finance in 2016, Christian was an RMT microbiologist at a veterinary pharmaceutical company and taught microbiology laboratory techniques as adjunct faculty at Biola University for several years.



**Public Finance
Professional Since:
1989**

Expertise

- Cities and Special Districts
- Renewable & Energy Efficiency Financing
- Utility Expert – Water, Wastewater, Refuse
- Educational Presentations, Public Speaking
- Public Finance and Policy Leadership
- Voter-Approved Financing

Education

UC DAVIS
UNIVERSITY OF CALIFORNIA

- B.S. Managerial Economics
- B.S. Agricultural Economics

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License

Craig Hill, Managing Principal

Mr. Hill has been a public finance professional since 1989 and is a founding partner of NHA Advisors, LLC. His clients include California cities, special districts, county K-12 school districts and former redevelopment agencies throughout the State. In addition to providing traditional financial advisory expertise on public finance, Mr. Hill's expertise includes advising on public policies related to financial matters, appropriate reserve levels and capital finance requirements. His understanding of local government and the operational components (public safety, water, sewer, marinas, airports, golf courses and other enterprise funds) provides a professional basis to assist public agencies in developing sound financial planning practices.

Mr. Hill's technical experience includes advising on the issuance of water and sewer revenue bonds, general obligation bonds, tax allocation bonds, certificates of participation, tax and revenue anticipation notes, land-secured improvement bonds, and bond anticipation notes. In addition to traditional projects, Mr. Hill is also active in energy efficiency and renewable energy project financing including power purchase agreements.

Mr. Hill regularly speaks on public finance, renewable and energy efficiency project finance and public policy matters to professional associations including the League of California Cities, the California Society of Municipal Finance Officers, California Debt and Investment Advisory Commission, Municipal Management Association Northern California (MMANC), the Milken Institute and Carbon War Room.

Prior to founding NHA Advisors, Mr. Hill began his public finance career as a financial analyst for the Sacramento Municipal Utility District (SMUD) to evaluate the financial and economic feasibility of the Rancho Seco Nuclear Power Plant Project. In addition to working for the SMUD, Mr. Hill worked for the State of California (Office of Energy Assessments) to develop financing programs for statewide facility upgrades mandated by the governor. Since joining the private practice, he manages the financial services group of Jones Hall Hill & White, a premier bond counsel firm in San Francisco. Mr. Hill began his own municipal advisory practice with Mr. Northcross in 1996 after working for Kelling, Northcross & Nobriga.

In addition to working as a municipal advisor, Mr. Hill serves as a board member of the HdL Companies and has served as a member of the Novato Park & Recreation Commission, Novato Investment Committee, and Novato Budget Committee. He has also served on the board of directors for the Novato Youth Soccer Association and as President of the Novato Lacrosse Club. He is enjoying the fruits of parental labor with four kids in high school or college and playing competitive lacrosse at the highest level.



**Public Finance
Professional Since:
1981**

Expertise

- Public Policy
- Utility Financing
- Climate Change Infrastructure
- Development/Land-Secured Financing
- Economic Development
- Developer Negotiations
- Pension Financing

Education



- B.A. Social Sciences

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License

Mark Northcross, *Principal*

During a California public finance career that spans back to 1981, Mark Northcross has structured debt for many issuer types using various legal and available revenue sources.

Mr. Northcross is experienced in utility revenue financings, particularly water and sewer utilities. He has structured about 80 sewer and water revenue bond issues for over 30 water districts, sewer districts and cities since 1983, including private placements with commercial banks. More recently he secured funding for severely drought impacted water utility on the central coast for a desalination plant and for the City of Napa's water utility in the immediate aftermath of the South Napa Earthquake. He has also arranged financing for two major public utilities in the midst of major litigation regarding Proposition 218 and the legality of their water rates. Projects financed include the acquisition of new water supply, wastewater treatment plants and upgrades to newly acquired service area infrastructure. Mr. Northcross is active in water policy issues for the State, serving on the Water Committee of the Bay Area Council and the SRF committee of the California Association of Sanitation Agencies.

Mr. Northcross has been a leading innovator in financing climate change infrastructure, serving as financial advisor for the Resilient by Design Bay Area Challenge, a collaboration to strengthen the Bay Area's resilience to climate change, as well as on the Bay Conservation and Development Commissions Financing the Future committee.

Mr. Northcross's career has also been focused on the interface between public finance and land development. He is a leader in California negotiating both public-private partnerships for both land secured debt and redevelopment. He has negotiated public-private partnerships for the successful development of major mixed-use projects throughout the State. Since the early-1990s, Mr. Northcross has negotiated the restructuring and workout of nearly \$200 million in either defaulted or highly stressed municipal bond issues. He also has significant experience in negotiating joint ventures between different public agencies – with notable success in putting together bond funded risk sharing programs for cities, counties, and school districts in California.

When not working on solutions to tough problems for his clients, Mark Northcross serves on a variety of non-profit corporation boards. He is also a proud recipient of the Norman Bright trophy in the annual Dipsea Race, the oldest cross country foot race in the nation. Mr. Northcross is also the Treasurer of the West Point Inn Association, a non-profit that runs a 11 year-old hike-in lodging in the parklands of Mt. Tamalpais. He graduated from the University of California at Irvine in 1973.



**Public Finance
Professional Since:
2007**

Expertise

- General Fund Financing
- Redevelopment Financing and Tax Increment Modeling
- Pension Obligations
- Utility Financing
- Project Management
- Financial Modeling
- Credit Analysis and Presentations

Education



THE UNIVERSITY
OF ARIZONA

- B.S. Accounting and Finance

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License

Leslie Bloom, *Vice President*

Since 2007, Ms. Bloom has provided municipal advisory and implementation services for public agencies throughout California. Prior to joining NHA Advisors in February 2021, Leslie worked in Public Finance Debt Investment Banking, most recently with Raymond James. In an investment banking role, Leslie completed over 200 senior managed and private placement financings totaling more than \$3.5 billion while working with a wide variety of public agencies throughout the State. Leslie's experience includes general fund lease, tax allocation, land secured, utility (water and wastewater), sales tax, general obligation, pension obligation, and short-term notes.

Leslie is active with CSMFO and Women in Public Finance. She is currently a Board Member for the San Diego chapter of women in Public Finance.

Leslie received her BS in both Accounting and Finance from the University of Arizona.



Public Finance
Professional Since:
2004

Expertise

- Cities & Successor Agencies
- General Fund Financing
- Utility Financing
- Land-Secured Debt
- Continuing Disclosure
- Renewable Energy & Energy Efficiency Financings
- Financial Modeling

Education

UCLA

- B.A. Economics
- Specialization in Computing

Licenses & Registrations

- Registered with the SEC and MSRB
- Series 50 License

Rob Schmidt, Vice President

Rob Schmidt is a founding member of NHA Advisors, LLC. He has served as municipal advisor and consultant to cities, special districts, school districts, and counties on hundreds of financial transactions and consulting assignments. His clients have come in all shapes and sizes, ranging from small rural farm communities to the largest cities and counties in the California.

Mr. Schmidt's experience spans a variety of financing structures, including general fund lease obligations, utility revenue bonds (water, wastewater, etc.), general obligation bonds, short-term notes (TRANS, BANS, etc.), special tax and assessment bonds, tax allocation bonds, sales tax revenue bonds, and pensions obligation bonds. His experience also includes state and federal loan and tax credit programs.

Mr. Schmidt has established himself as a subject matter expert in continuing disclosure compliance and leads NHA Advisors' Continuing Disclosure Compliance Group, which provides SEC and CDIAC reporting and compliance services.

While Mr. Schmidt's financial and analytical acumen serves as a key benefit to clients, he believes the most important attribute of any advisor is integrity, which drives Mr. Schmidt to serve his clients to the utmost of his ability. His willingness to listen and learn allows him to gain a full understanding of a client's objectives and needs, creating an opportunity to develop a wide spectrum of funding options and deliver a successful solution.

As a trusted confidant to each of his clients, Mr. Schmidt provides impartial, financially sound, and creative solutions to meet their long-term objectives and ensure integrity and accountability throughout the financial process.

Prior to beginning his career as a municipal advisor, Mr. Schmidt served as a Senior Associate and Northern California manager for a public finance consulting firm, which he formed and administered dozens of public financing districts throughout California.

Mr. Schmidt earned a B.A. in Economics and a Specialization in Computing from the University of California, Los Angeles.

Personal Notes

Mr. Schmidt takes a very personal approach to his financial advisory practice, and he takes great pleasure in seeing his clients succeed. The origins of his desire to help people and provide financial guidance can be traced to both his upbringing and early love of numbers. Mr. Schmidt watched his grandfather, a successful entrepreneur, willingly give his spare time providing free financial and budget counseling to anyone who needed help. He also saw his parents open their home and give generously even during their own financial struggles.

In his spare time, Mr. Schmidt enjoys spending time with his wife and three kids, expanding his knowledge on topics ranging from personal finance to global economics, coaching youth sports, and participating in a wide range of his own competitive and recreational sports.



APPENDIX G: NHA SCOPE OF SERVICES



Objectives, Scope of Services, & Duties and Disclosures as Financial Consultant
and Municipal Advisor

Provided to

City of Hanford, California



August 20, 2021

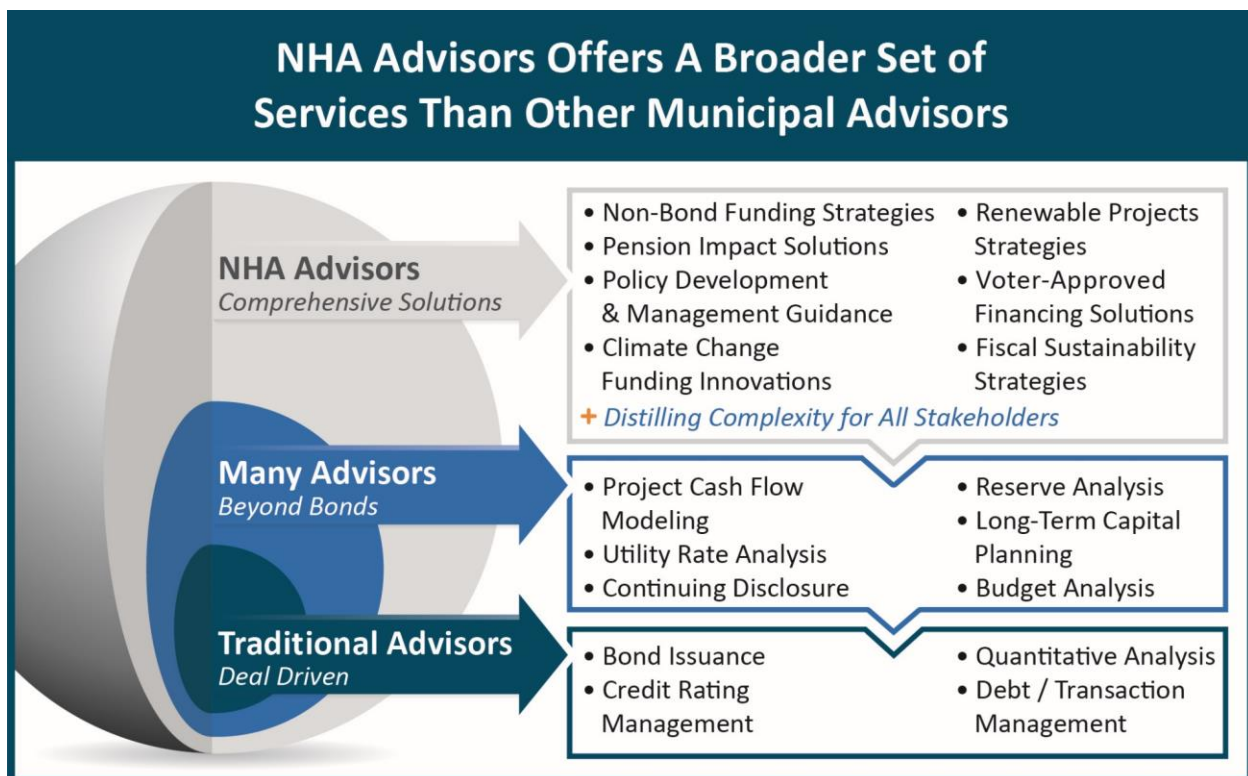
Table of Contents

Section 1: NHA Advisors, LLC	1
Section 2: Objectives of the City and Consultant	1
Section 3: Scope of Services	2
Independent Registered Municipal Advisor	2
Financial Consulting	2
General Financial Consulting Assistance	2
Financial Risk or Fiscal Sustainability Assessment	2
CalPERS Review & Forecasting	3
City Utility Review & Forecasting	3
“Extension of Staff” Services	3
Financial Policy Assistance	3
Financial Modeling/Quantitative Analysis	3
Strategic Capital Planning	3
“Green” Energy Projects	3
Public-Private Partnerships (P3)	4
New Development Finance	4
CFD / Assessment District Formation Project Management	4
Subsidized Loan / Grant Programs	4
Redevelopment/In-Fill Project Financing (Private or Public Projects)	4
Voter Approved, Pre-Election Assistance	4
Credit Rating Management / Investor Outreach	5
Continuing Disclosure Design / Maintenance	5
Municipal Advisory	5
Bond Types	5
Sources of Funds / Security	5
Methods of Debt Placement / Sale	5
Transaction Management / Services	6
Post-Transaction / Other MA Services	7

Section 4: Additional Consultant Statements & Certifications	8
Section 5: Sample Scope of Service	9
General Municipal Advisory Financial Assistance	9
Financial Modeling/Quantitative Analysis	9
Strategic Capital Planning	9
Solar/Energy Projects & Programs	9
Public-Private Partnerships (P3)	10
New Development Finance	10
Redevelopment/In-Fill Project Financing (Private or Public Projects)	10
General Fund Financing	11
Section 6: Sample Approach, Scope of Service, Compensation and Expenses	12

Section 1: NHA Advisors, LLC

NHA provides California public agencies a full range of financial consulting and municipal advisory services. All projects start out as objective non-bond engagements to develop the best funding solution. Our “consulting” practice takes into consideration policy issues, financial constraints, taxpayer effects and overall community impact prior to any recommendation on whether a funding strategy or financing solution is appropriate. NHA’s expertise includes a full range of qualifications to meet the City of Hanford’s (the “City”) needs, from assessment and community facilities district formation, developer and other stakeholder negotiations, financial fitness forecasting, CalPERS projections and re-structuring analysis, utility rate studies and 218 process oversight, public policy and political consulting, and continuing disclosure oversight. Since 2010, NHA has completed over 187 successful non-bond projects.



Section 2: Objectives of the City and Consultant

From time to time, the City requires expert, professional services related to financial review and analysis of various aspects of its operations and capital structure. Additionally, periodically, the City requires municipal advisory services with respect to ideas, advice and execution regarding financing of City projects and refinancing of existing City debt obligations. The City desires NHA Advisors, LLC (“Consultant”) to provide such services.

Consultant shall provide a high level of customer service to the City. This objective shall be accomplished through a consistent responsiveness, by all members of Consultant’s team, to City communications,

consistent efforts to secure data and information on behalf of the City, and consistent and diligent execution upon all tasks and assignments given to Consultant by the City.

Section 3: Scope of Services

Consultant will serve in the capacity of Independent Registered Municipal Advisor, Financial Consultant and Municipal Advisor to the City. Consultant will work with City staff and other parties to develop funding strategies, options for project finance and other general advice as needed by City staff.

Independent Registered Municipal Advisor

If acting in the capacity of an Independent Registered Municipal Advisor (“IRMA”) with regard to the IRMA exemption of the SEC Rule, Consultant will review all third-party recommendations with respect to municipal financing securities and/or loans submitted to Consultant in writing by the City. Consultant shall not be responsible in an IRMA capacity, without prior written receipt of such third-party recommendations and/or proposals.

Financial Consulting

Consultant may apply, upon the City’s request, its expert research, data collection, analytics, project management and communication (written/verbal/public presentations) skills to deliver information and results that the City requires. Certain assignments, if they relate in any way to outstanding publicly offered municipal debt, may also be considered municipal advisory work (e.g. continuing disclosure, credit rating management consulting, etc.); however, this work may also fall under consulting if no transaction is imminent. A sampling of recent, successfully delivered assignments include, but is not limited to, the following types of projects and/or deliverables:

General Financial Consulting Assistance

Assisting the City with development of strategic financial plans for funding long-term operating, debt service, and capital needs (evaluating the capital needs of the City and the revenue available to finance those needs). This shall include, upon request of the City, collecting data from the City and external sources, developing financial models and presentation materials as required to educate internal and external stakeholders of the City.

Review the City’s existing indebtedness (including short-term debt, private loans), evaluate for refinancing opportunities. Respond to ad-hoc inquiries from the City as to options for financing.

Financial Risk or Fiscal Sustainability Assessment

Long-term financial forecast modeling with specific focus upon threats and opportunities currently or potentially present that can substantially impact the City ability to carry-out its core functions.

CalPERS Review & Forecasting

Provide data, research and advisory services with respect to the City's CalPERS retirement programs. Consultant is not an actuary and advises that for precision on certain assignments, that an actuary be retained; however, Consultant can provide financial modeling, education materials and reports and presentations to provide staff and elected officials (and other stakeholders) an unbiased, third-party discussion of the changes and their impacts which can be an essential element to proper planning and assisting in determining potential options going-forward.

City Utility Review & Forecasting

Provide data, research and advice on recent trends with respect to utility (i.e. water, storm, wastewater, etc.) finance and regulatory matters. Rate sufficiency or other limited consulting assignments are provided. NHA is not a rate consultant and advises a specialist in this field for those requirements.

"Extension of Staff" Services

Provide, upon request, certain "extension of staff" services such as assistance with request for proposals development and procurement of services such as rate, fee, and enterprise valuation studies.

Financial Policy Assistance

Make recommendations and provide implementation assistance upon public policy related to capital projects, reserve levels and allocation of funds.

Financial Modeling/Quantitative Analysis

Provide modeling and analysis as required to project financial impact on fund balances for capital projects, budget projections or other financial projects as requested by City staff.

Strategic Capital Planning

Review proposed development plans for public infrastructure requirement or other possible financeable components. Develop initial funding model and tax impact of potential bond financing.

"Green" Energy Projects

Provide data, research and advice on recent trends with respect to renewable energy finance, technology and regulatory matters. Develop funding options for energy projects (solar, battery storage). Review, evaluate, advise upon purchase or power purchase options. Develop PACE (property assessed clean energy) policy and program recommendations. Review, evaluate, advise upon proposals presented to the City by contractors and vendors.

Public-Private Partnerships (P3)

Work with City staff to identify viable projects for P3 development approach. Provide strategic recommendation on P3 policies. Assist in or Manage RFP for P3 partners. Review, evaluate, advise upon proposals (solicited and unsolicited) from P3 entities. Provide comparative analysis for P3 to City-funded solution for projects.

New Development Finance

Review proposed development plans for public infrastructure requirement or other possible financeable components. Develop initial funding model and tax impact of potential bond financing. Work with City staff and property owner(s) to understand financial impact of project scoping on future property tax collections. Develop non-capital (services) funding vehicle if requested by the City. Work with City staff, consultants and property owner to develop funding agreement.

Consultant may also serve in lead or supporting role in development agreement negotiation with developer(s) / landowner(s) to secure the City's goals with respect to timing and nature of the projects to be funded through such means.

CFD / Assessment District Formation Project Management

Coordinate and lead all parties, on the City's behalf, to create the necessary policies, numerical underpinnings / allocations, legal documentation to form the type of district (CFD or Assessment) that can serve as the basis for a bond financing—or on-going maintenance/services revenue—to fund the public amenities, improvements and infrastructure.

Subsidized Loan / Grant Programs

Provide data, research, advice and, when requested, project management services with respect to securing State, Federal and other subsidized loans and grants.

Redevelopment/In-Fill Project Financing (Private or Public Projects)

Work with City staff to identify projects that require funding source. Evaluate options for funding capital project. Make recommendations for alternatives including identified existing funds, projected revenue generation from redevelopment of property and/or community-supported revenue measure analysis. Assist with outside expertise selection (if required). Present recommendations to the City Council or others as requested.

Voter Approved, Pre-Election Assistance

Provide data, research and project management assistance to develop the information necessary to craft a ballot question that can be successfully be put to the voters for the review and approval.

Credit Rating Management / Investor Outreach

Lead and/or provide assistance to develop presentation materials and strategic interactions with credit rating analysts, credit enhancers, banks and other credit market participants to enhance external view of the City's financial position.

Continuing Disclosure Design / Maintenance

Assist in appropriate disclosure for annual financial reporting (including additions to annual Comprehensive Annual Financial Report).

Municipal Advisory

Per SEC rules (and GFOA best practices), all advisory work conducted which relates in any way with existing, or contemplated issuance of new municipal securities shall be performed by a municipal advisor as defined by the SEC.

Bond Types

In the context of Consultant's scope of services in this Agreement, Consultant will assist with structuring of financings (or refinancings) for projects through the issuance of bonds, COPs, bank loans, lines of credit, and state and federal grant loan programs (or other feasible funding mechanisms), providing independent advice that enables the City to finance projects on the most favorable terms, e.g., lowest interest rates, smallest issue size, and greatest flexibility and in compliance with City Council Policies.

Sources of Funds / Security

Such municipal transaction may be secured by a variety of funding sources such as, but not limited to, tax and revenue anticipation, bond issuance anticipation, grant receipt anticipation, general obligation property tax levy, lease revenue, installment sale agreement, redevelopment property tax trust fund revenue, special tax revenue, assessment revenue, water fund revenue, sewer revenue, parking revenue, storm drain fund revenue, sales tax revenue, solid waste fund revenue.

Methods of Debt Placement / Sale

Consultant shall provide research, advice and recommendations with respect to most optimal methods of debt placement including, private placement, public offering or securing alternative methods such as state/federal subsidized loans and grants, public-private partnering, social impact investments or performance-based funding sources.

Consultant will provide research, advice and recommendations, as well as coordinate all aspects of execution, with respect to proper method of sale including competitive bid, negotiated sale or some hybrid deemed as most advantageous to the City.

Transaction Management / Services

Consultant operates with the guiding principal that we will “do what it takes” to ensure that, once entrusted with the responsibility to execute a project and secure our clients’ objectives, we will deploy our firm’s talent and resources to make that happen. Consultant, acting in the municipal advisor role, will act as the project manager and be the City’s “quarterback” to assemble and then constantly coordinate all members of the financing team to stay on track to efficiently and effectively complete the project. Consultant will monitor all aspects of a transaction including legal review, financial analyses, provide or lead efforts to draft staff reports and other memoranda, and generally either assemble the experts to complete tasks where needed or complete that task ourselves.

- Working with the underwriter and members of the City’s financial team. Such tasks shall include independent analysis of all numerical analyses and recommendations.
- Working with disclosure counsel to prepare the draft Official Statement. Such work shall be assistance of data collection, review of same and review of draft official statements to ensure accuracy.
- Interacting with credit rating agencies and credit enhancement providers. Such work shall include coordinating all data collection, managing the construction of the credit presentation document and leading the development of the strategic approach to delivering presentation to credit rating agencies, enhancement providers and potential other users of credit materials.
- In a competitive sale, sending the Notice of Sale and Preliminary Official Statement to potential underwriters and investors.
- In a competitive sale, analyzing, confirming accuracy and making recommendation on underwriting bids.
- In a negotiated sale, providing a “pricing opinion” to the City.
- Identifying appropriate investments for bond proceeds.
- Identifying and facilitating refinancing and refunding of bond issuances including the following tasks:
 - Monitoring the feasibility and opportunities to refinance and restructure the City’s existing debt to reduce costs to meet its financial objectives.
 - Providing as-needed financial advice regarding market conditions and trends, financial products, credit and credit analysis, third party alternative financing.
- Presenting information to rating agencies on behalf of the City as needed.
- When required, preparing, analyzing, summarizing and making recommendations upon Requests for Proposals (RFPS) for additional services needed to facilitate a bond refinancing, call or issuance.
- Attend meetings of the City and its staff on an as-needed basis. Make presentations to City Council or subcommittees of the City Council.
- Coordinating and participating in all aspects of the bond issuance process, from creating and maintaining a schedule, assisting with the preparation of staff reports and resolutions, conducting independent analysis of financing alternatives, reviewing all aspects of negotiated

- pricings, monitoring performance of underwriting teams, to post-issuance analysis and all tasks during the process.
- Upon request, Consultant shall create, maintain and manage all aspects of related projects to a bond issuance. For example, with respect to a Community Facilities District bond financing, Consultant shall prepare and coordinate all parties as to specific tasks relating to formation and due diligence activities related to that bond issuance.
 - Coordinate the timing and process of the bond issuance with bond counsel and other participants.
 - Managing such matters as bond registration, printing, investment of proceeds and other matters related to the settlement and delivery of bonds and notes.
 - Assisting with negotiating financing Agreements with private landowners, developers and their representatives. This assistance shall include, when related to formation of, and financing through a CFD, review of, and understanding of the City's needs with respect to numerous CFD policy questions such as inflators, financing impact fees, tax levy duration, required annual services component, back-up levies for HOA's, total combined tax levy limitations, sequencing of CFD financing public improvements vs. developer construction schedule, vacant land tax terms, and other considerations.
 - Providing other financial services as requested, including:
 - Provide data, research and advice with respect to continuing disclosure matters.
 - Provide Post-Closing Report on all transactions that shall supplement Bond Counsel's Transcript. Such Report shall include relevant aspects of the transaction that are not necessarily found within the Transcript, but which are useful to have as a supplemental record, in consolidated form, within the Finance Department's files. Such Report, may, but not be limited to contain relevant staff reports, RFP/Q and recommendations, other supporting memoranda, credit presentations, underwriter bond pricing materials and due diligence record.

Consultant takes a hands-on approach to the planning portion of every project and has developed an internal process that applies the talents of each Consultant member to each step in the financing process. Consultant strives to deliver a level of service that far exceeds what the City has envisioned. The "Bottom Line:" Consultant will go above and beyond the scope provided in a typical municipal advisory role to ensure that the City secures its goals and objectives.

Post-Transaction / Other MA Services

Consultant shall provide other services as requested and required in its role as municipal advisor to the City. Such services may include transaction related research, advice and execution upon tasks related to continuing disclosure, credit rating maintenance, use of bond proceeds, arbitrage / rebate calculation and compliance, compliance with other bond covenants, and investor relations.

Section 4: Additional Consultant Statements & Certifications

NHA, and each of its municipal advisors, are registered with the SEC and MSRB. In addition, NHA is registered with the Secretary of State to conduct business in the State of California.

NO BROKER-DEALER AFFILIATION. NHA has no affiliation, ownership or relationship with any broker-dealer. NHA abides by all the new rules for Independent Registered Municipal Advisors, which includes not allowing for finder's fees, fee splitting, payments to consultants, or other contractual arrangements that present either a real or perceived conflict of interest.

NO LITIGATION STATEMENT. NHA has no pending litigation or investigations from the Justice Department, SEC, FINRA, NASD, MSRB, or other regulatory agencies and is not aware of any pending potential projects subject to litigation or investigations. NHA has no known current potential conflicts with the City or neighboring communities and has never been disqualified from a selection process.

PROFESSIONAL LICENSES IN GOOD STANDING. NHA certifies that neither the firm nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or local department or agency. In addition, NHA has no record of unsatisfactory performance as evidence by complaints filed with the SEC, or any other Federal or State agencies with jurisdiction over the services provided by the firm.

In addition, NHA holds all necessary professional liability and other insurance policies required to do business with the City and can provide a Certificate of Insurance upon request.

ISSUANCE INDEPENDENCE. NHA certifies that the firm will not participate in any activities that directly pertain to the underwriting or, purchasing of any financing debt or bonds issued by the City or its affiliates, while contracted for services as a Municipal Advisor by the City.

EXCLUSION OF AFFILIATES. NHA certifies that while contracted as a Municipal Advisor to the City, all person(s), entities, affiliated companies, subsidiaries, partners, and contracted companies that have an established affiliation to NHA will not be involved in any aspect either directly or indirectly in the legal aspects, purchase, underwriting or financing of any future debt transitions that may be issued by the City.

STATEMENT OF OWNERSHIP. NHA Advisors, LLC is an independently-owned Municipal Advisor/Independent Registered Municipal Advisor structured as a partnership and limited liability company. The partners of NHA are not involved in any business or business activities that are separate from NHA and which may be represented in this proposal. NHA does not have any affiliated, subsidiaries, parent and sister companies.

Section 5: Sample Scope of Service

Consultant will work with City staff and other parties to develop funding strategies, options for project finance and other general advice as needed by City staff. The scope of work will generally include the following tasks:

General Municipal Advisory Financial Assistance

- Work with City staff to review and provide advice on operational budgets
- Develop financial models for funding capital needs
- Assist in appropriate disclosure for annual financial reporting (including additions to annual CAFR)
- Make recommendations on public policy related to capital projects, reserve levels and allocation of funds
- Make presentations to City Council, City staff or other groups as requested
- Develop presentation materials or memos detailing financing information
- Present information in any format as determined by City staff

Financial Modeling/Quantitative Analysis

- Provide modeling and analysis as required to project financial impact on fund balances for capital projects, budget projections or other financial projects as requested by City staff

Strategic Capital Planning

- Review proposed development plans for public infrastructure requirement or other possible financeable components
- Develop initial funding model and tax impact of potential bond financing

Solar/Energy Projects & Programs

- Develop funding options for energy projects (solar, battery storage)
- Review/recommend purchase or power purchase options
- Develop PACE (property assessed clean energy) policy and program recommendations
- Review proposals presented to the City by contractors and vendors

Public-Private Partnerships (P3)

- Work with City staff to identify viable projects for P3 development approach
- Provide strategic recommendation on P3 policies
- Assist in RFP for P3 partners
- Review/evaluate proposals from P3 entities
- Provide comparative analysis for P3 to City-funded solution for projects

New Development Finance

- Review proposed development plans for public infrastructure requirement or other possible financeable components
- Develop initial funding model and tax impact of potential bond financing
- Work with City staff and property owner to understand financial impact of project scoping on future property tax collections
- Develop non-capital (services) funding vehicle if requested by the City
- Work with City staff, consultants and property owner to develop funding agreement

Redevelopment/In-Fill Project Financing (Private or Public Projects)

- Work with City staff to identify projects that require funding source
- Evaluate options for funding capital project
- Make recommendations for alternatives including
- Identified existing funds
- Projected revenue generation from redevelopment of property
- Community-supported revenue measure analysis
- Assist with outside expertise selection (if required)
- Present recommendations to the City Council or others as requested

General Fund Financing

- Review the City's existing general fund obligations
- Calculate feasibility of refinancing any outstanding obligations
- Develop financing options
- Budget and cash flow review and analysis

Section 6: Sample Approach, Scope of Service, Compensation and Expenses

NHA will deliver the highest standard of municipal advisory work product, period. We understand and are mindful that our proposed fees must reflect the value we deliver. NHA approaches each project objectively and with the primary purpose of delivering agnostic options and alternatives. We believe that it is important to have no “vested interest” in advocating for a bond solution to guarantee a financing fee for NHA. By taking the initial work independent of the implementation of a financing solution, NHA can avoid conflicts generated by suggesting a bond financing to secure a financing fee. NHA believes the initial phase of work should be focused on providing alternatives that may or may not include a bond financing. Since this investigative process can be quick or extensive, we recommend it be segregated from the financing scope and subject to hourly efforts. The City controls the time and the process to avoid unforeseen costs.

NHA believes that fee levels are a function of the scope and effort provided by different firms. Many advisors will limit their work to managing the process, coordinating calls, and delegating to other financing team members. NHA takes a comprehensive and active approach whereby we ensure that all aspects of the financing process are completed to the highest standards which directly impacts the credit and best interest rates for the City. Managing the credit rating documents allows NHA and the City to deliver a comprehensive and insightful information package to the rating agencies. This benefits the City, financing and all stakeholders through a higher quality rating presentation, better rating result and lower interest rates.

Sample NHA Scope of Services

General Municipal Advisory Services

- ✓ ✓ **AS THE CITY'S MUNICIPAL ADVISOR AND FIDICIARY, CONDUCT ALL DUE DILIGENCE, ANALYSIS, AND PRESENT ALL OPTIONS TO CONSIDER TO MEET OBJECTIVES**
- ✓ Interview City to establish clear objectives, initiate due diligence process to uncover challenges and opportunities
- ✓ Provide information/updates as requested on economic, capital market conditions
- ✓ Develop options: provide independent research/validate feasibility and practicality of potential financing options
- ✓ Review City's financial status, recommend optimal programs
- ✓ Review client's debt portfolio; provide recommendation on refinancing opportunities

- ✓ Review client's "suite" of financial and operational policies in place, provide recommendations and samples, as required, to ensure best-practices and / or regulatory requirements are met
- ✓ Evaluate, provide recommendations on client's credit rating posture
- ✓ Review, evaluate client's investor disclosure compliance; provide recommendations, as required, for remediation of deficiencies
- ✓ Review and advise, as requested, client's bond's arbitrage reports
- Prepare written memoranda or easy to understand presentation materials outlining options with clear discussion of advantages and disadvantages to each alternative; Typically, there is a "feedback loop" inherent in this process necessitating review and revisions and repeating this process to ensure common understanding and concurrence on option(s) selected to present to elected decision-makers that can meet the goals established
- ✓ Lead discussions with all necessary client stakeholders, including executive staff and elected decision-makers and, as required, community groups, bargaining unit leaders, developers, property owners, etc.
- ✓ As requested, provide formal advice and recommendations on issuance of bonds and project financing programs
- ✓ As directed, prepare (or review) and present (in-person or virtual), all materials, including staff reports and presentations for elected body review and decision-making / approval of financing options

Bond Issuance Municipal Advisory Services

- ✓ ✓ **AS THE CITY'S MUNICIPAL ADVISOR AND FIDICIARY, MANAGE ALL ASPECTS OF, AND REPRESENT CITY'S INTEREST IN, BOND FINANCING PROCESS**
- ✓ Establish and manage finance team distribution listing, financing schedule, due diligence data needs and task list; allocate tasks and duties for efficient and effective project execution
- ✓ Work cooperatively with assembled team (i.e. underwriter or broker-dealer) to develop detailed numerical analysis of financing options; independently verify all numerical options
- ✓ Work cooperatively with assembled team (i.e. bond counsel) to develop bond legal documentation; provide detailed review and commentary
- ✓ Work cooperatively with assembled team (i.e. disclosure counsel) to develop bond investor disclosure documentation (e.g. preliminary official statement); provide detailed review and commentary

- ✓ Lead and manage the development of credit rating strategy, documentation and presentation materials
- ✓ Review, prepare and “coach”, as required, client personnel for credit rating presentation
- ✓ Lead and manage, if applicable, solicitation and negotiation of bond insurance / reserve surety; provide independent cost-benefit analysis of same
- ✓ As directed, prepare, issue, manage RFP process for selection of financing participants (trustee, consultants, verification agents, etc.)
- ✓ For Competitive sale: verify bids, restructure as necessary
- ✓ For Negotiated sale: as directed, manage RFP for Underwriter, negotiate pricing structures, act as liaison and advocate/fiduciary for client’s interests
- ✓ For Negotiated sale and underwriter due diligence questionnaire – discussion, advise and prepare client for accurate and appropriate responses
- ✓ During negotiated bond sale process, provide client independent analysis of comparable transactions and proposed bond structure and interest rates
- ✓ During negotiated bond sale process, in real time as required, provide client with clarification and explanation of bond terminology presented bond numerical analyses
- ✓ During negotiated bond sale process, negotiate and/or advise, on behalf of and in the interests of client, with underwriter on desired improvements to bond structure and interest rates/yields
- ✓ Review, on behalf of client, bond purchase contract for accuracy of bond sale figures and acceptable terms; advise client of our recommendation to sign this document if approved
- ✓ Review final legal, disclosure and closing documents for accuracy prior to client execution
- ✓ Develop and distribute Closing Flow of Funds memorandum guiding all parties as to how bond monies will be transferred—and in what sequence—on the day of closing.
- ✓ As requested, prepare and present to client’s elected governing body, a presentation outlining the results of the financing



APPENDIX H: REQUIRED DISCLOSURES

**Registration**

All NHA municipal advisors are registered with the Municipal Securities Rulemaking Board (“MSRB”) and Securities Exchange Commission (“SEC”) and maintain the Series 50. NHA’s good standing with the MSRB can be found on the MSRB website: <http://msrb.org/MARegistrants.aspx>. Additionally, copies of NHA’s most recent form MA and each most recent form MA-I filed with the SEC may be accessed electronically here:

<https://www.sec.gov/edgar/searchedgar/companysearch.html>.

No Business Relationships with Broker-Dealers or Fee Splitting Arrangements

NHA has no affiliation, ownership or relationship with any broker-dealer. NHA abides by all the new rules for Independent Registered Municipal Advisors, which includes not allowing for finder’s fees, fee splitting, payments to consultants, or other contractual arrangements that present either a real or perceived conflict of interest.

Further, NHA certifies that the firm will not participate in any activities that directly pertain to the underwriting or purchasing of any financing debt or bonds issued by the City or its affiliates, while contracted for services as a Municipal Advisor by the City.

Fiduciary Duty

NHA Advisors is registered as a Municipal Advisor with the SEC and MSRB. As such, NHA Advisors has a fiduciary duty to the City and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- a) exercise due care in performing its municipal advisory activities
- b) possess the degree of knowledge and expertise needed to provide the City with informed advice
- c) make a reasonable inquiry as to the facts that are relevant to the City’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the City; and
- d) undertake a reasonable investigation to determine that NHA Advisors is not forming any recommendation on materially inaccurate or incomplete information; NHA Advisors must have a reasonable basis for:
 - i. any advice provided to or on behalf of the City;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the City, any other party involved in the municipal securities transaction or municipal financial product, or investors in the City securities; and
 - iii. any information provided to the City or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

NHA Advisors must deal honestly and with the utmost good faith with the City and act in the City’s best interests without regard to the financial or other interests of NHA Advisors. NHA Advisors will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). NHA Advisors will not engage in municipal advisory activities with the City as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the City’s best interest.

Conflicts of Interest and Other Matters Requiring Disclosures

- As of this date, there are no actual or potential conflicts of interest that NHA Advisors is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If NHA Advisors becomes aware of any potential conflict of interest that arise after this disclosure, NHA Advisors will disclose the detailed information in writing to the City in a timely manner.
- The fee paid to NHA Advisors increases the cost of investment to the City. The increased cost occurs from compensating NHA Advisors for municipal advisory services provided.

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

- NHA Advisors does not act as principal in any of the transaction(s) related to its role/work on the Project.
- During the term of the municipal advisory relationship, any agreement between the City and NHA Advisors will be promptly amended to reflect any material changes or additions.
- NHA Advisors does not have any affiliate that provides any advice, service, or product to or on behalf of the City that is directly or indirectly related to the municipal advisory activities to be performed by NHA Advisors
- NHA Advisors has not made any payments directly or indirectly to obtain or retain the City's municipal advisory business
- NHA Advisors has not received any payments from third parties to enlist NHA Advisors' recommendation to the City of its services, any municipal securities transaction or any municipal finance product
- NHA Advisors has not engaged in any fee-splitting arrangements involving NHA Advisors and any provider of investments or services to the City;
- NHA Advisors has a conflict of interest from compensation for municipal advisory activities to be performed that are contingent on the size or closing of any transactions as to which NHA Advisors is providing advice
- NHA Advisors does not have any other engagements or relationships that might impair NHA Advisors ability either to render unbiased and competent advice to or on behalf of the City, or to fulfill its fiduciary duty to the City, as applicable; and
- NHA Advisors does not have any legal or disciplinary event that is material to the City's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

Pursuant to MSRB G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- NHA Advisors is currently registered as a Municipal Advisor with the SEC and the MSRB.
- Within the MSRB website at www.msrb.org, the City may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Legal Events and Disciplinary History

NHA Advisors does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The City may electronically access NHA Advisors' most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:

www.sec.gov/edgar/searchedgar/companysearch.html

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Recommendations

If NHA Advisors makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the City and is within the scope of the engagement, NHA Advisors will determine, based on the information obtained through reasonable diligence of NHA Advisors whether a municipal securities transaction or municipal financial product is suitable for the City. In addition, NHA Advisors will inform the City of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation

**PROPOSAL TO PROVIDE FINANCIAL ADVISORY SERVICES: NHA ADVISORS, LLC**

- the basis upon which NHA Advisors reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the City; and
- whether NHA Advisors has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the City objectives.

If the City elects a course of action that is independent of or contrary to the advice provided by NHA Advisors, NHA Advisors is not required on that basis to disengage from the City.

Record Retention

Effective July 1, 2014, pursuant to the SEC record retention regulations, NHA Advisors is required to maintain in writing, all communication and created documents between NHA Advisors and the City for five (5) years.

If there are any questions regarding the above, please do not hesitate to contact NHA Advisors.



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: P
-------------------------------	--------------------------

SUBJECT:

Finance: Authorize the sole source award and execution of a professional services agreement, in an amount not to exceed \$68,000, with SDI Presence LLC (Carmichael, CA) and appropriate said funding from the Computer Replacement Fund (0414) to complete the Tyler Software Implementation.

RECOMMENDATION:

Staff recommends that City Council authorize a sole source award due to time being of essence for implementation of critical City operating systems and execution of a professional services agreement of up to \$68,000 with SDI Presence LLC (Carmichael, CA) and appropriate said funding from the Computer Replacement Fund.

BACKGROUND:

The City is in the midst of several critical system implementations and has been for over three (3) years now. Tyler Munis financial system, Tyler Energov licensing, land management, and permitting system, UKG Payroll/HR and the Tyler Utility Billing system implementations. Implementations of this type require significant time and resources to implement, however, an appropriate level of staffing was never planned as part of the implementation process and as a result, several delays have occurred that make other implementation resources necessary for a more efficient and successful launch. Due to the size and effort required for these implementations, it is clear there is a need to supplement staff resources and bring in outside expertise. After reaching out among municipal contacts throughout the State, SDI was reached, referred to, and staff sought out. SDI has submitted a proposal to assist the City based on the history of the project (outlined below). Reference checks performed by staff have been very positive of this firm's capabilities.

SDI is a management consulting firm, from Carmichael, CA that helps public sector clients enhance their use of technology. SDI focuses on helping public sector clients assess, plan, implement, and manage complex business technology. SDI brings leadership, executive presence, and diverse perspective to their clients' most complex projects. SDI's consultants bring

experience gained from running large IT operations and multimillion-dollar IT projects and having held prior positions with Tier One consultancies. SDI has proposed to analyze the City's specific situation and needs, develop a robust plan to address those needs within the situational boundaries, and deliver solutions that are within specification, on time, and within budget.

Staff recommends authorizing a sole source award due to time being of essence and necessary expertise to implement the City's systems efficiently and effectively with existing staff resources. Should these implementations not occur timely or well, there could be significant customer service impacts.

System Implementation History

On May 1, 2018, the City Council approved a contract with Tyler Technologies for their Enterprise Resource Planning (ERP) software and implementation in the amount of \$912,479. The first software platform in that implementation process was the Munis Financial System. At the time, it had a projected "Go Live" date of January 2020. In December of 2018 it was determined that the City was falling behind in the implementation schedule due to lack of staff and poor development planning, therefore, the City amended the contract and selected what Tyler terms as their "Production Ready" platform. The additional costs for migrating to the "Production Ready" platform for the Munis Financial System was approximately \$21,880. The original go live for Financial system was to be in April of 2019. Moving to the Production Ready version allowed for the completion of the implementation to occur sooner, in July of 2019, but still three (3) months beyond the original implementation date.

The Human Content Management (HCM) software was to be the next phase of the implementation and should have been completed in conjunction with Financials, but it was not, due to improper setup and the staff not having a clear understanding of the data that was needed to build the system. Implementation of HCM was originally scheduled for October 2019, but due to the delays in Financials was then pushed to January 2020. This deadline was not met either due to staffing changes in both HR and Finance. In July 2021, City Council authorized proceeding with another system called UKG, which is anticipated to go live January 2022.

EnerGov was originally set to start in January 2019. At that time, Staff from the various departments that would be utilizing the software, held the initial kick off meeting with Tyler. After the Kick-off meeting, it was determined that staffing was not adequate to perform the implementation and the decision was made to migrate that product to the "Production Ready" version as well. This move, and additional cost, was done to ensure that the City would be able to meet the original timeline for implementation. On February 19, 2019, the City Council approved a contract amendment in the amount of \$110,080 to move to the "Production Ready" version.

The EnerGov software will be utilized by various City Departments to add efficiencies to the operations and provide better interaction and customer service to the public and our Citizens. It will be used for the following purposes:

- Buildings and Planning - Submittal of Applications and Plans and the Issuance/tracking of Permits;

- Code Enforcement - Tracking of complaints and compliance issues;
- Finance - Applications, Issuance and tracking of Business Licenses;
- Public Works - Applications, Issuance and tracking of Encroachment and Transportation Permits; and
- Fire - Application, Issuance and tracking of Fire Permits.

Due to a variety of issues, and absent a solid plan for implementation from the outset of the project, the implementation process has gone on longer than expected. Additionally, due to some internal changes to processes, as well as additional processes done by the City, it has been determined that additional implementation time with Tyler was needed before the software can go live and Council has already approved that additional work. The additional processes that we will be adding to EnerGov will be the issuance/tracking of Burglar Alarm Permits as well as Animal Licensing with the Police Department.

The last remaining platform that will need to be implemented is the Munis Utility Billing (UB) software. The UB software had its initial kick-off call in October 2019. The original go live date was slated for January/February 2021. Due to a switch in Project Managers from the Tyler side and changes to City staff, the implementation has been pushed back to January 2022. At this point we plan to go live in July/August 2022.

Summary of System Costs (Tyler)

Original Contract Amount:	\$912,479
Upgrade to Production Ready Munis	\$21,880
Upgrade to Production Ready EnerGov:	\$110,080
Upgrade of EnerGov platform:	<u>\$81,400</u>
Total Projected Cost/Contract:	<u>\$1,125,839</u>

Summary of System Costs (UKG, Inc.)

\$12,000

Staff must continue day to day operations on top of these implementations which in most cases does not lead to successful implementations. Due to the costs incurred and need for sufficient staff resources needed for these projects, it is recommended to bring SDI on board to assist and supplement staff for these critical system implementations.

FISCAL IMPACT:

Funding of \$68,000 will be appropriated from the Computer Replacement Fund which will allocate charges out to other funds based on resources used. As of the last audit at 6/30/2020 the fund had a balance of approximately \$1.1 million.

ATTACHMENTS:

SDI Advisory and PM Services Proposal - City of Hanford



August 31, 2021

Mr. Chris Tavaréz - Finance Director
 City of Hanford
 315-321 North Douth St.
 Hanford, CA 93230

RE: Advisory and Project Management Services

Dear Mr. Tavaréz:

SDI Presence, LLC (SDI), respectfully submits this proposal to the City of Hanford (City) to provide advisory and project management services for the City's Tyler Munis financial system, Tyler Energov licensing, land management, and permitting system, and the Tyler Utility Billing system implementations.

Since 1999, SDI's West Coast Division, which is headquartered in Sacramento, has worked with more than 180 local government agencies to plan, procure, implement, and operate technology in more efficient and effective ways. SDI has worked with more than 40 similarly sized public agencies to help them assess, procure, select, and implement their Enterprise Resource Planning (ERP) systems. As an example, SDI is currently providing, or has recently completed ERP projects at the following municipalities:

- | | | |
|------------------------|------------------------|--------------------------|
| • City of Benicia | • City of Sunnyvale | • City of Fresno |
| • City of San Ramon | • City of Walnut Creek | • City of Davis |
| • City of Redwood City | • City of Burlingame | • City of Rohnert Park |
| • City of Gilroy | • City of Vacaville | • City of Dublin |
| • City of Merced | • City of Fremont | • City of East Palo Alto |

We look forward to partnering with the City and supporting the various Tyler implementations. If you have any questions regarding this proposal, please do not hesitate to contact me at (530) 598-4915, and via email at ssanders@sdipresence.com.

Sincerely,

A handwritten signature in dark ink that reads "Scott Sanders".

Scott Sanders
 Delivery Executive

SDI Background and Qualifications

SDI is a management consulting firm that helps public sector clients enhance their use of technology. SDI focuses on helping public sector clients assess, plan, implement, and manage complex business technology. SDI brings leadership, executive presence, and diverse perspective to our clients' most complex projects. SDI's consultants bring experience gained from running large IT operations and multimillion-dollar IT projects and having held prior positions with Tier One consultancies. Our consultants include former CIOs, CFOs, Utility General Managers, Community Development Directors, and Assistant City Managers. SDI builds on these gained insights when working with our clients, taking the time to understand a client's specific situation and needs, developing robust plans to address those needs within the situational boundaries, and delivering solutions that are on specification, on time, and within budget.

SDI services are based on industry standards, methodologies, processes, and tools, including those set forth by the Project Management Institute (PMI), Institute of Management Consultants, Software Engineering Institute (SEI), Institute of Electrical and Electronics Engineers (IEEE), and the Information Technology Infrastructure Library (ITIL).

Project Team

SDI's foundation is in talented, high-caliber individuals guided by the personal and professional principles of honesty, integrity, quality, and a commitment to client satisfaction. This foundation and associated ethics help us to attract and retain a veteran staff that inspires confidence in our clients. Our proposed team has extensive hands-on experience in the application of technologies specific to all different types of public agencies, as well as current and proven experience in applying our project management methodology in the development of effective plans.

Figure 1, Project Organization, depicts our project organizational chart. Following the organization chart, we provide a summary of the qualifications and expertise of each team member. Full resumes are available upon request.

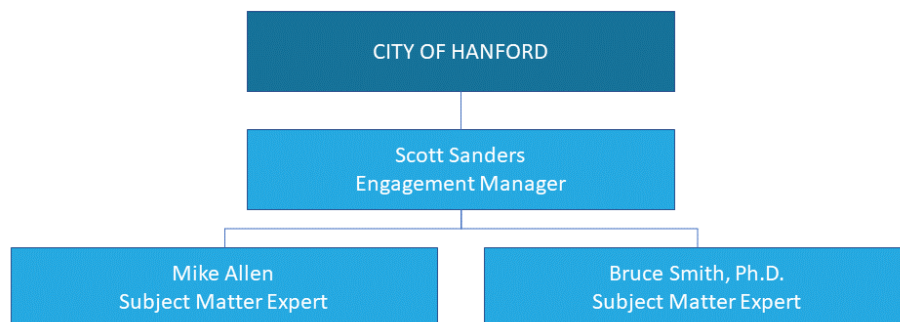


Figure 1, Project Organization

Scott Sanders, CGCIO, ITIL – Engagement Manager

Mr. Sanders is an insightful and results oriented professional with more than thirty-four years of technical leadership experience, including more than twenty years serving in City and County Information Technology departments across the State of California.

With significant experience and proven ability earned while serving in both technical and business leadership roles, Mr. Sanders maintains a strong focus on technology service management, aligned with organizational goals and objectives. In more than twenty years of experience within municipal IT departments, he has served in the capacities of Technology Manager, Network Manager, Operations Manager, IT Director, Deputy Chief Information Officer, and Chief Information Officer. Mr. Sanders has served in executive leadership roles within several municipal organizations across the State of California.

Mr. Sanders holds numerous technology certifications, including CGCIO – Certified Government Chief Information Officer and ITIL Foundations, Service Strategy, Service Design, Operations and Continual Service Improvement. He serves as Delivery Executive for all SDI Presence engagements within the Northern California territory.

Role in the engagement: Mr. Sanders is SDI's Delivery Executive in charge of all Northern California operations. He will ensure the City's expectations are met and see that SDI services are delivered effectively and efficiently.

Mike Allen – Subject Matter Expert

Mr. Allen has over 35 years of information technology experience within the public sector. Starting from a programming background at the City of Roseville and continuing as the IT Manager for the City of Visalia, he has extensive hands-on municipal experience that is broad and deep. As a former MISAC state board member, Mr. Allen has gained effective collaboration, organization, planning, and project skills. His career has focused on helping organizations implement complex technology solutions and effectively utilize technology to solve business problems.

As a subject matter expert, coupled with hands-on project management and implementation experience, Mr. Allen offers strong decision support, analytical, technical, project management, communications, and program management skills to the proposed project.

Role in the engagement: Mr. Allen will function as a subject matter expert and project lead, conducting all day-to-day project activities for the City.

Bruce Smith, Ph.D. – Subject Matter Expert

Dr. Smith is a highly experienced management consultant with expertise in public sector operations, management, and technology. He has over 45 years of experience as a manager within the public sector or as a consultant supporting the public sector. His consulting strengths include project management, operations improvement, including problem analysis and recommendations, implementation and change management.

As a former City Manager and Budget Officer, he understands the unique requirements of public sector organizations, and can help facilitate decision making processes.

Role in the engagement: Dr. Smith will serve as a subject matter expert on the project.

Scope of Services

SDI's project approach is built on our experience in delivering ERP selection, procurement, and implementation services to city, county, and special district agencies for over 20 years. We understand that the City has already begun implementing Tyler Munis, Energov, and Tyler Utility Billing and is seeking assistance with advisory and project management services to complete key tasks and finish initial implementation activities.

Phase 1 – Discovery (28 hours)

SDI will undertake discovery activities to ensure a common and mutual understanding of the current status of the City's Tyler implementation projects. SDI will submit a request for Information and documentation regarding the status of the various Tyler projects, review that documentation, and will provide an analysis of the project activities to date. SDI will also provide best practice guidelines associated with implementing the ERP, land management, and utility billing systems, discuss gaps with the current approach, and make specific recommendations to improve the current process.

Phase 2 – Implementation Plan (80 hours)

For each Tyler application (ERP, Energov, and Utility Billing), SDI will develop a detailed implementation plan to guide the City's planning and budgeting activities. These plans will include project scope, project approach, level of effort, tasks, activities, resources, schedule, budget, deliverables, and major milestones.

SDI will review these implementation plans with the Tyler project team and will incorporate feedback from both Tyler and the City's Project Steering Committee as appropriate.

Phase 3 – Project Management (280 hours)

The key to successful system implementations is to ensure the project is effectively managed by experienced personnel using a structured project methodology. SDI will oversee each system implementation by:

- Monitoring the project execution using all the plans, schedules, procedures, and standards prepared for the project. This will include ensuring that regular status reports are provided and discussed at project review meetings with the Project Sponsor and appropriate participants. These reviews will include performance measures for the completion of tasks and activities, and Deliverable Acceptance Reports, in accordance with the project plan, communication plan, risk management plan, and quality assurance plan.
- Assisting in defining conversion and testing requirements for items that must be converted into the new system, including data from the existing system and in house developed applications (if any).

- Assisting the City in developing a test/training environment which will allow for separate testing of release software by City staff prior to production installation.
- Assisting the City in identifying training requirements and creating schedules for both users and technical personnel. Training should be sufficiently detailed and comprehensive to ensure that City staff will be able to effectively use the system and support the system after implementation.
- Reviewing the vendor's testing requirements and schedule, in addition to verifying and validating acceptance test results for the new system.
- Defining a Change Order process in the Project Plan. Providing guidance and leadership for system changes during implementation and managing the change order process.
- Overseeing implementation of the new system, and ensuring the vendor aids with system administration, helpdesk, and on-site user support for each module during the implementation phase.

References

The following project references are provided for the City's review.

City of Rohnert Park

Name of Organization	City of Rohnert Park	
Length of Time as Client	October 2018 – Present	
Location	130 Avram Ave., Rohnert Park, CA 94928	
Name of Contact	Don Schwartz, Assistant City Manager	
Contact Information	(707) 588-2242	
Description of Project	SDI has provided services to the City of Rohnert Park since 2018, including IT Strategic Plans, Project Management, ERP System Selection, Procurement, and Implementation.	

City of Dublin

Name of Organization	City of Dublin	
Length of Time as Client	November 2018 – Present	
Location	100 Civic Plaza Dublin, California 94568	
Name of Contact	Jay Baksa, Assistant Director of Administrative Services	
Contact Information	(925) 833-6650	
Description of Project	SDI assisted with requirements definition, RFP development, system selection, contract negotiation, procurement, and is now providing implementation support and advisory services.	

City of Fremont

Name of Organization	City of Fremont, CA	
Project Type	ERP Implementation Support	
Length of Time as Client	2015 - 2018	
Location	3300 Capitol Ave. Fremont, CA 94538	
Name of Contact	Mary Bradley	
Contact Information	408-981-4021 MBradley@fremont.gov	
Description of Project	SDI provided services to support the Tyler Munis implementation including project management advisory and data conversion support.	

City of Merced

Name of Organization	City of Merced	
Length of Time as Client	2016 – Present	
Location	678 West 18 th St., Merced, CA 95340	
Name of Contact	Jeff Bennyhoff, IT Manager	
Contact Information	209-385-6829 bennyhoffj@cityofmerced.org	
Description of Project	SDI assisted the City with the procurement of a new Enterprise Resource Planning System. SDI is currently providing advisory and project management services for implementation of the selected system.	

Project Pricing

All staff being proposed for this engagement will be billed at the discounted hourly rate of \$175, on a time and materials basis. Project activities are estimated to be 388 hours. SDI anticipates a not-to-exceed cost of \$67,900 for the proposed scope of work. If the City desires, SDI can also provide additional project management services for any remaining Tyler product implementations which are not covered by this proposed Scope of Work, at the same, discounted hourly rate.

SDI is prepared to deliver these services either remotely, or on site, based on the City's preference. SDI will perform these services while following all pandemic response protocols stipulated by the City.

SDI will invoice monthly for the prior month's project activities. Invoices will provide the number of hours worked by each SDI resource, along with a description of the project activities performed.



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: A
-------------------------------	--------------------------

SUBJECT:

City Attorney: Adoption of Resolution of Necessity 21-36-R for APN 001-040-015 (the “Property”) authorizing the City Attorney to take the steps necessary to finalize the acquisition of the property (Arthur Delgado Eminent Domain) for the widening of 12th avenue by the City (the “Project”).

RECOMMENDATION:

Our recommendation is to adopt the Resolution of Necessity 21-36-R for APN 001-040-015 (the “Property”) authorizing the City Attorney to take the steps necessary to finalize the acquisition of the property for the widening of 12th avenue by the City (the “Project”).

BACKGROUND:

The City Attorney set the September 7, 2021 meeting as the date for consideration of the Resolution of Necessity in connection with the Project.

The City desires to widen 12th Avenue to account for expansion to the South with future development and the widening of 12th Avenue would be a necessary safety improvement. The City desires to acquire a portion of the Property for this widening.

In preparation for the acquisition of the needed properties, the City did prepare two appraisals for the Property and made statutory offers to the affected property owners. These steps were taken to ensure compliance with all applicable laws.

It is important to note that this hearing, by law, is not conducted to discuss or in any way address the compensation for the land that will be needed for completion of the Project. This hearing is held to have the Council make the necessary findings and establish by resolution the public necessity for the Project and consequently for the identified parcels needed to complete the project. Any public testimony or council discussion regarding the value of the properties would be inappropriate.

The attached Resolution of Necessity must be passed by 2/3 vote of council (or 4 of 5 in favor) and would authorize the City Attorney to initiate an Eminent Domain process, if necessary, to secure the parcels for the desired parking lot. Such process would require a complaint to be filed in Superior Court along with a deposit equal to the fair market value appraisal obtained by the City for the subject property. The total fair market value for the Property is \$15,400.00. City would also request an order of immediate possession from the court, which would provide the City with the ability to take possession of the Property before the Eminent Domain court proceedings have been completed.

FISCAL IMPACT:

Fair market value as identified in the appraisal would be offered for the property.

ATTACHMENTS:

Resolution of Necessity

FISCAL IMPACT:

ATTACHMENTS:

Delgado Resolution 21-36-R

RESOLUTION 21-36-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HANFORD APPROVING THE ACQUISITION OF AN
INTEREST IN PROPERTY FOR THE 12th AVENUE
WIDENING PROJECT

THE CITY COUNCIL OF THE CITY OF HANFORD (the “Council”), by vote of two thirds or more of its members, FINDS, DETERMINES, DECLARES AND RESOLVES as follows:

WHEREAS, the City of Hanford (the “City”) has adopted a project to widen and improve 12th Avenue south of Springcrest Street. The project will result in an additional travel lane, new curb, gutter, sidewalk, and street lighting improvements providing greater safety and convenience for the public (the “Project”); and

WHEREAS, the City intends to carry out and make effective the principal purpose pursuant to Code of Civil Procedure §1240.120(a), and in connection with the Project, acquire interest in certain real property more specifically described in Exhibit A to this resolution. The stated public use is a function of the City; and

WHEREAS, the City is authorized to acquire the interests in the property described in Exhibit A herein and exercise the power of eminent domain for the public use set forth herein in accordance with the California Constitution and the California Eminent Domain Law, Code of Civil Procedure §1230.010 et. seq. and pursuant to California Government Code §37350.5 and §38730 and Code of Civil Procedure §1240.125; and

WHEREAS, the interest in the property to be acquired consists of fee simple. The property to be acquired is described and shown in Exhibit A, attached hereto and incorporated herein by reference, together a map thereof; and,

WHEREAS, on August __, 2021, there was mailed a “Notice of Intent” regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain (“Notice of Intent”) of the interest in the real property described in Exhibit A herein, which Notice of Intent is attached hereto

as Exhibit B and is incorporated herein by this reference. Said Notice of Intent was mailed to all persons whose names appear on the last equalized County Assessment Roll. Said Notice of Intent advised said persons of their right to be heard on the matter referred to therein on the date and at the time and place stated therein; and,

WHEREAS, the hearing set out in said Notice of Intent was held on September 7, 2021 at the time and place stated herein, and all interested parties were given an opportunity to be heard following which the hearing was closed.

NOW, THEREFORE, based upon the evidence presented, this Council by vote of two-thirds or more of its members, further FINDS, DETERMINES, DECLARES AND RESOLVES each of the following:

1. The public interest and necessity to require the Project.
2. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The property described herein in Exhibit A is necessary for the Project.
4. The offer required by §7267.2(a) of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record, which offer and accompanying statement/summary were in a form and contained all of the factual disclosures provided by Government Code §7267.2(a).
5. All conditions and statutory requirements necessary to exercise the power of eminent domain (“the right to take”) to acquire the interest in the property described herein have been complied with by the City.
6. The City Attorney is hereby AUTHORIZED and EMPOWERED:
 - a. To acquire in the name of the City, by condemnation, the interest in the property described in Exhibit A, attached hereto and incorporated herein by this reference, in accordance with the provisions of the California Eminent Domain Law and the Constitution of California.
 - b. To acquire the property in fee simple absolute unless a lesser estate is described in Exhibit A herein.

- c. To prepare or have prepared and to prosecute or to retain counsel to prosecute in the name of the City such proceedings in the proper court as are necessary for such acquisition.
- d. To deposit the probable amount of compensation, based on an appraisal, and if needed to apply to said court for an order permitting the City to take immediate possession and use of said property for said public uses and purposes.

I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the Council of the City of Hanford at a special meeting thereof held on September 7, 2021, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

FRANCISCO RAMIREZ
MAYOR OF THE CITY OF HANFORD

ATTEST:

NATALIE CORRAL
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I, Natalie Corral, City Clerk of the City of Hanford, do hereby certify the foregoing Resolution was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the 7th day of September, 2021.

Date: _____

City Clerk

Attachment: Delgado Resolution 21-36-R (City Att: Arthur Delgado Eminent Domain)



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: B
-------------------------------	--------------------------

SUBJECT:

City Attorney: Adoption of Resolution of Necessity 21-37-R for APN 007-360-016 (the “Property”) authorizing the City Attorney to take the steps necessary to finalize the acquisition of the property (Paul Singh Eminent Domain) for the City’s expansion of the Tank Site 6 and repair of Well 41 at that site.

RECOMMENDATION:

Our recommendation is to adopt the Resolution of Necessity 21-37-R for APN 007-360-016 (the “Property”) authorizing the City Attorney to take the steps necessary to finalize the acquisition of the property for the City’s expansion of the Tank Site 6 and repair of Well 41 at that site (the “Project”).

BACKGROUND:

The City Attorney set the September 7, 2021 meeting as the date for consideration of the Resolution of Necessity in connection with the Project.

The City desires to acquire a portion of the Property for the expansion and Tank Site 6 to account for the growing needs of water of the City residents. The City is in need of an additional well which will be constructed on the Property to avoid a severe health crisis. The City desires to acquire a portion of the Property to address the water needs of City residents.

In preparation for the acquisition of the needed properties, the City did prepare two appraisals for the Property and made statutory offers to the affected property owners. These steps were taken to ensure compliance with all applicable laws.

It is important to note that this hearing, by law, is not conducted to discuss or in any way address the compensation for the land that will be needed for completion of the Project. This hearing is held to have the Council make the necessary findings and establish by resolution the public necessity for the Project and consequently for the identified parcels needed to complete the

project. Any public testimony or council discussion regarding the value of the properties would be inappropriate.

The attached Resolution of Necessity must be passed by 2/3 vote of council (or 4 of 5 in favor) and would authorize the City Attorney to initiate an Eminent Domain process, if necessary, to secure the parcels for the desired parking lot. Such process would require a complaint to be filed in Superior Court along with a deposit equal to the fair market value appraisal obtained by the City for the subject property. The total fair market value for the Property is \$66,400.00. City would also request an order of immediate possession from the court, which would provide the City with the ability to take possession of the Property before the Eminent Domain court proceedings have been completed.

FISCAL IMPACT:

Fair market value as identified in the appraisal would be offered for the property.

ATTACHMENTS:

Resolution of Necessity

FISCAL IMPACT:

ATTACHMENTS:

Singh Resolution 21-37-R

RESOLUTION 21-37-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HANFORD APPROVING THE ACQUISITION OF AN
INTEREST IN PROPERTY FOR THE TANK 6 SITE
EXPANSION PROJECT

THE CITY COUNCIL OF THE CITY OF HANFORD (the “Council”), by vote of two thirds or more of its members, FINDS, DETERMINES, DECLARES AND RESOLVES as follows:

WHEREAS, the City of Hanford (the “City”) has adopted a project to expand Tank 6 Site. The project will result in an expansion of the site to allow a new water well to be installed which would provide greater safety and convenience for the public (the “Project”); and

WHEREAS, the City intends to carry out and make effective the principal purpose pursuant to Code of Civil Procedure §1240.120(a), and in connection with the Project, acquire interest in certain real property more specifically described in Exhibit A to this resolution. The stated public use is a function of the City; and

WHEREAS, the City is authorized to acquire the interests in the property described in Exhibit A herein and exercise the power of eminent domain for the public use set forth herein in accordance with the California Constitution and the California Eminent Domain Law, Code of Civil Procedure §1230.010 et. seq. and pursuant to California Government Code §37350.5 and §38730 and Code of Civil Procedure §1240.125; and

WHEREAS, the interest in the property to be acquired consists of fee simple. The property to be acquired is described and shown in Exhibit A, attached hereto and incorporated herein by reference, together a map thereof; and,

WHEREAS, on August __, 2021, there was mailed a “Notice of Intent” regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain (“Notice of Intent”) of the interest in the real property described in Exhibit A herein, which Notice of Intent is attached hereto as Exhibit B and is incorporated herein by this reference. Said Notice of Intent was mailed to all

persons whose names appear on the last equalized County Assessment Roll. Said Notice of Intent advised said persons of their right to be heard on the matter referred to therein on the date and at the time and place stated therein; and,

WHEREAS, the hearing set out in said Notice of Intent was held on September 7, 2021 at the time and place stated herein, and all interested parties were given an opportunity to be heard following which the hearing was closed.

NOW, THEREFORE, based upon the evidence presented, this Council by vote of two-thirds or more of its members, further FINDS, DETERMINES, DECLARES AND RESOLVES each of the following:

1. The public interest and necessity require the Project.
2. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The property described herein in Exhibit A is necessary for the Project.
4. The offer required by §7267.2(a) of the Government Code, together with the accompanying statement of and summary of the basis for the amount established as just compensation, was made to the owner or owners of record, which offer and accompanying statement/summary were in a form and contained all of the factual disclosures provided by Government Code §7267.2(a).
5. All conditions and statutory requirements necessary to exercise the power of eminent domain (“the right to take”) to acquire the interest in the property described herein have been complied with by the City.
6. The City Attorney is hereby AUTHORIZED and EMPOWERED:
 - a. To acquire in the name of the City, by condemnation, the interest in the property described in Exhibit A, attached hereto and incorporated herein by this reference, in accordance with the provisions of the California Eminent Domain Law and the Constitution of California.
 - b. To acquire the property in fee simple absolute unless a lesser estate is described in Exhibit A herein.

- c. To prepare or have prepared and to prosecute or to retain counsel to prosecute in the name of the City such proceedings in the proper court as are necessary for such acquisition.
- d. To deposit the probable amount of compensation, based on an appraisal, and if needed to apply to said court for an order permitting the City to take immediate possession and use of said property for said public uses and purposes.

I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the Council of the City of Hanford at a special meeting thereof held on September 7, 2021, by the following vote:

AYES: _____
 NOES: _____
 ABSTAIN: _____
 ABSENT: _____

 FRANCISCO RAMIREZ
 MAYOR OF THE CITY OF HANFORD

ATTEST:

 NATALIE CORRAL
 CITY CLERK

STATE OF CALIFORNIA)
 COUNTY OF KINGS) ss
 CITY OF HANFORD)

I, Natalie Corral, City Clerk of the City of Hanford, do hereby certify the foregoing Resolution was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the 7th day of September, 2021.

Date: _____

 City Clerk



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: A
-------------------------------	--------------------------

SUBJECT:

Finance: American Rescue Plan Act (ARPA) funding information regarding \$13,077,740 from Coronavirus State and Local Fiscal Recovery funding and allocate \$8.2 million of the funding due to reduction of revenue, appropriate \$699,105 for Public Safety Radios, \$30,000 for City Hall Covid Mitigation Improvements and \$40,000 for ARPA Community Outreach and seek initial input on future allocation

RECOMMENDATION:

Staff recommends that the City Council, by motion:

- Approve allocation of \$8.2 million (through December 31, 2020) of ARPA funding for reduction of revenue to use funds to pay for Public Safety salaries and benefits over the next three fiscal years and providing other government services to be identified in future action (Expenditure Category 6.1).
- Appropriate \$699,105 of ARPA funding to be used for the City Council approved Public Safety Radio Project (Expenditure Category 1.8)
- Appropriate \$30,000 of ARPA funding to be used for City Hall COVID-19 Mitigation Improvements (Expenditure Category 1.7)
- Appropriate \$40,000 of ARPA funding to be used for the purpose of community engagement; outreach; and creation of a funding program, and authorize the City Manager to execute a contract for services with the City's Federal Lobbyist for this purpose (Expenditure Category 7.1)
- Authorize the Finance Director to make budget amendments for ARPA funding as approved by City Council

BACKGROUND:

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the

President which established the Coronavirus Local Fiscal Recovery Fund. The funds are intended to provide support to State, local, and Tribal governments in responding to the impact of COVID-19 and their efforts to contain COVID-19 on their communities, residents, and businesses. It is meant to expand the support provided to these governments over the last year.

Congress has allocated \$350 billion in Coronavirus State and Local Fiscal Recovery Funds for state, local, territorial, and Tribal governments. Funding will come directly from the U.S. Department of Treasury funded in two installments.

The City of Hanford has been allocated \$13,077,040 of ARPA funds from the U.S. Department of Treasury Corona Virus Local Fiscal Recovery Fund. Staff has previously submitted all of the required documentation and in July 2021, the City received its first allocation in the amount of \$6,538,870. The final allocation is expected 12 months after the first deposit was received.

Eligible uses include:

- 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.

City's are expressly prohibited from using funds for:

- Direct or indirect offsets of a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.
- Deposits into Pension Funds
- Contributions to rainy day funds or similar reserves
- Pay expenses related to financing, outstanding debt, or settlement agreements

As these are broad categories, on May 11, 2021, The U.S. Department of Treasury released a lengthy "Interim Final Rule." This was created in order to help guide recipients on how funding can be used, reporting requirements, etc. It was released to all agencies for review, questions, and comments. It is expected the U.S. Department of Treasury will make revisions based on the feedback and create "Final Rule" by the end of August (as of date of this report was not released yet). We will continue to monitor the guidance.

In contrast to CARES Act which was intended to be used to meet relatively short-term needs, ARPA is intended to provide fiscal relief over a broader timeline. The City will have until December 31, 2024 to spend and/or obligate the funds and until December 31, 2026 to fully expend the funds. The City can use the funds to cover costs incurred beginning March 3, 2021. This limitation applies to costs incurred by the City. However, the City may use ARPA funds to aid households, businesses, and individuals within the eligible uses prior to March 3, 2021 if the City had not already incurred or paid for the programs. Any funding not obligated and/or expended will need to be returned to the U.S. Department of Treasury.

Public Health and Economic Impacts (Expenditure Categories 1-3)

In order to assess whether a program or service is included as a public health and economic impact eligible use the City Council and staff should 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 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.

In order to insure continued City utility services and mitigate COVID-19 spread, \$30,000 is requested to be appropriated from ARPA to make mitigation improvements to City Hall. This will make permanent glass at the utility services front counter and cubicle dividers in between staff and the public. This will help to insure continuity of customer service for essential City provided utility services.

Premium Pay (Expenditure Category 4)

ARPA funds may be used 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. “Essential workers” are those in critical infrastructure sectors who regularly perform in person work, interact with others at work, or physically handle items handled by others. “Critical infrastructure sectors” include healthcare, education, childcare, transportation, sanitation, grocery and food production, and public health and safety. Premium pay is an amount up to \$13 per hour in addition to wages already received. If by adding premium pay it increases 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 or the county’s average annual wage, whichever is higher, then additional justification and reporting.

Investments in Infrastructure (Expenditure Category 5)

The Treasury is allowing ARPA funds to assist in meeting the critical needs for investments and improvements to existing infrastructure in water, sewer, and broadband. Projects could be to 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. To provide public transparency on whether projects are using practices that promote on-time and no-budget delivery, Treasury will seek information from the City on plans and practices related to any of these projects undertaken with ARPA funds. Additional reporting will also be required.

Reduction in Revenue Expenditure Category 6)

The City can use ARPA funds for government services to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency as of four points of time: 12/31/2020; 12/31/2021; 12/31/2022; and 12/31/2023. Reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency, which would be Fiscal Year 2018/19. The Treasury provides a very specific and somewhat complex methodology for purposes of calculating revenue loss. In its most basic form the City would need to include revenue received per year determined to be “General Revenue” and sum them across all revenue streams then compare it to the FY 2018/19 actual plus a growth factor of 4.1% or the average increase over a three-year period, whichever is greater (currently estimated at 4.95%).

This calculation initially estimates a \$8.2 million loss of revenue which could change as guidelines may be amended. The City could allocate these funds now and will need to justify that this revenue is to be used for government services, such as public safety salaries and other essential services. It is important to note, this is subject to change with future guidance. In conjunction with the project specific appropriations outlined above, it is requested that City Council allocate ARPA funds of \$8.2 million in revenue loss to pay for government services over the next several years. It is recommended City Council allocate these funds to be used to pay for Public Safety salaries and benefits over the next three years by a transfer to the General Fund for each of the next 3 years (fiscal years 2021/2022, 2022/2023, 2023/2024).

Other examples of eligible expenditures are infrastructure such as roads, health services and environmental remediation. Other options are not recommended at this time in order to make sure there is little risk of losing this funding. City Council may amend this use in the future.

Administrative (Expenditure Category 7)

The Treasury realizes that the administration of this program could stretch current resources. Therefore, they are allowing ARPA funds to pay for administering the program, including costs of consultants to support effective management and oversight. Part of the recommendation tonight is to appropriate funding of \$40,000 for the City’s Federal Lobbyist to help facilitate community engagement and outreach and/or create and implement programs the City Council ultimately approves.

Reporting Requirements and Future Action

The City will be subject to federal reviews and/or audits and will be required to retain supporting documents for five years after all funds have been expended or returned to the Treasury,

whichever is later.

The City will need to adhere to the following reporting requirements:

1. Interim Report due August 31, 2021 (Completed)

a. This will cover activity from the date of award to July 31, 2021.

2. Quarterly Project and Expenditure Reports due quarterly

a. Initial quarterly report will cover two calendar quarters from date of award to September 30, 2021 and due October 31, 2021.

b. All subsequent reports will cover a one calendar quarter and due 30 days after the end of each calendar quarter.

The purpose of tonight's item is to consider and approve these initial recommended actions provide staff with Council's initial thoughts. Staff will bring back more information to Council in future meetings for action.

FISCAL IMPACT:

Of the \$13,077,740 ARPA funds allocated to the City from the Department of Treasury, this action will have the City set aside \$8.2 million of ARPA funds due to reduction of revenue to pay for Public Safety salaries and benefits over the next 3 fiscal years, appropriate \$699,105 for Public Safety Radios, appropriate \$30,000 for Utility Service Continuation Improvements and appropriate \$40,000 for Community Outreach Services and Plan Development for the use of the remaining ARPA funds. This action will reduce the burden other City Funds would need to contribute and be available for other necessary uses. The items total \$8,969,105, leaving \$4,108,635 of ARPA not allocated to a specific project.

ATTACHMENTS:

2021-Interim Final Rule

SLFRF-Compliance-and-Reporting-Guidance

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021. **ADDRESSES:** Please submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529-9527.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected

over 32 million and killed over 575,000 Americans.¹ The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.² As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.³ During this time, a significant share of households have faced food and housing insecurity.⁴ Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.⁵ As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.⁶

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of

¹ Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited May 8, 2021).

² U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/UNRATE>, May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNU02000000>, May 3, 2021.

³ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS>, May 7, 2021.

⁴ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis;U.S.CensusBureau,HouseholdPulseSurvey:MeasuringSocialandEconomicImpactsduringtheCoronavirusPandemic,https://www.census.gov/programs-surveys/household-pulse-survey.html> (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, *Morb. Mortal. Wkly. Rep.* 69(45):1675–80 (Nov. 13, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>.

⁵ Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm>.

⁶ Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/>.

COVID-19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID-19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.⁷ Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.⁸ These cuts to State, local, and Tribal government workforces

⁷ Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), <https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities>.

⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.⁹

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,¹⁰ as well as higher rates of unemployment and lack of basic necessities like food and housing.¹¹ Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID-19 health outcomes.¹² Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.¹³ Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.¹⁴ Unfortunately, the pandemic

also has reversed many gains made by communities of color in the prior economic expansion.¹⁵

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.¹⁶ Section 9901 of ARPA amended Title VI of the Social Security Act¹⁷ (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).¹⁸ The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).¹⁹

a lifetime (June 2020), https://webtest.childreainsstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf; Andrew Bacher-Hicks et al., *Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time*, J. of Public Econ. Vol. 193(C) (July 2020), available at <https://www.nber.org/papers/w27555>.

¹⁵ See, e.g., Tyler Atkinson & Alex Richter, *Pandemic Disproportionately Affects Women, Minority Labor Force Participation*, <https://www.dallasfed.org/research/economics/2020/1110> (last visited May 9, 2021); Jared Bernstein & Janelle Jones, *The Impact of the COVID-19 Recession on the Jobs and Incomes of Persons of Color*, https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf (last visited May 9, 2021).

¹⁶ American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term “state” as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term “territory” as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean “the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).” See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term “local governments” as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

¹⁷ 42 U.S.C. 801 *et seq.*

¹⁸ Sections 602, 603 of the Act.

¹⁹ The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include “directly or indirectly offset[ing] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.”

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID-19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

⁹ Tracy Gordon, *State and Local Budgets and the Great Recession*, Brookings Institution (Dec. 31, 2012), <http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession>.

¹⁰ Sebastian D. Romano et al., *Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—United States*, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

¹¹ Center on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and> (last visited May 4, 2021).

¹² Lisa R. Fortuna et al., *Inequity and the Disproportionate Impact of COVID-19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response*, *Psychological Trauma* Vol. 12(5):443–45 (2020), available at <https://psycnet.apa.org/fulltext/2020-37320-001.pdf>.

¹³ Emily Vogles et al., *53% of Americans Say the internet Has Been Essential During the COVID-19 Outbreak* (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

¹⁴ Emma Dorn et al., *COVID-19 and student learning in the United States: The hurt could last*

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID-19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID-19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID-19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION.** Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting

requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID-19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID-19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.²⁰

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID-19 public health emergency. Assessing whether a program or service "responds to" the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

²⁰ Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID-19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID-19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID-19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.²¹ By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.²² This wave brought acute

²¹ Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

²² Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24–April 21, 2021, *MMWR Morb Mortal Wkly Rep* 2021, 69(18):551–56 (May 8, 2021), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm>.

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID-19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.²³ By early May 2021, the United States has experienced over 32 million confirmed COVID-19 cases and over 575,000 deaths.²⁴

Mitigating the impact of COVID-19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID-19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational

needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.²⁵

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with “long COVID,” and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.²⁶ The proportion of children’s emergency department visits related to mental health has also risen noticeably.²⁷ Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.²⁸ Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access

services.²⁹ Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.³⁰

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.³¹ The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.³²

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.³³ Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.³⁴

²⁹ Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid-19, *N. Engl. J. Med.* 383:2302–04 (Dec. 10, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

³⁰ Jeanne M. Santoli et al., Effects of the COVID-19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, *Morb. Mortal. Wkly. Rep.* 69(19):591–93 (May 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm>; Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID-19 Pandemic—New York City, March 1–June 27, 2020, *Morb. Mortal. Wkly. Rep.* 69(30):999–1001 (Jul. 31 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm>.

³¹ Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>.

³² In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. See Romano, *supra* note 10.

³³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁴ The CDC’s Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases

Continued

²³ Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

²⁴ *Id.*

²⁵ Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited May 8, 2021).

²⁶ Panchal, *supra* note 4; Mark E. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

²⁷ Leeb, *supra* note 4.

²⁸ Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 8, 2021).

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.³⁵ Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.³⁶

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.³⁷ Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.³⁸ The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.³⁹

and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

³⁵ Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last visited Apr. 26, 2021).

³⁶ See, e.g., Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html> (last visited Apr. 26, 2021).

³⁷ Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, *JAMA* 324(4):388–90 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2767630>.

³⁸ See, e.g., Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19—34 Jurisdictions, *January–May 2020*, *Morb. Mort. Wkly. Rep.* 70(5):155–61 (Feb. 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm>; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, *Health Affairs Blog* (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/hlbg20200319.757883/full/>.

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

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID-19 public health emergency, including:

- *COVID-19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;⁴⁰ ventilation improvements in

note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, *Morb. Mort. Wkly. Rep.* 69(38):1369–73 (Sept. 25, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm>.

⁴⁰ This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational

congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.⁴¹ They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.⁴²

- *Medical Expenses.* The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.⁴³ Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.⁴⁴ State and local governments may need to continue to provide care and services to address these near- and longer-term needs.⁴⁵

Strategy for K–12 Schools through Phased Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html>.

⁴¹ Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

⁴² Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.

⁴³ Centers for Disease Control and Prevention, *supra* note 24.

⁴⁴ Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited Apr. 26, 2021).

⁴⁵ Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.⁴⁶ Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on

the COVID-19 response. Recipients need not routinely track staff hours.

• *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID-19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),⁴⁷ to families living in QCTs, or when these services are provided by Tribal governments.⁴⁸ Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the

⁴⁷ Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

⁴⁸ U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, <https://www.huduser.gov/portal/datasets/qct.html> (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), <https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf> (last visited Apr. 26, 2021).

specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

- Funding community health workers to help community members access health services and services to address the social determinants of health;⁴⁹
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;
- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.⁵⁰

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

⁴⁹ The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. See, e.g., U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health> (last visited Apr. 26, 2021).

⁵⁰ National Commission on COVID-19 and Criminal Justice, Impact Report: COVID-19 and Crime (Jan. 31, 2021), <https://covid19.counciloncj.org/2021/01/31/impact-report-covid-19-and-crime-3/> (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID-19 pandemic, *Am. J. of Emerg. Med.* 38(12): 2753–55 (Dec. 1, 2020), available at [https://www.ajemjournal.com/article/S0735-6757\(20\)30307-7/fulltext](https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext) (showing a spike in domestic violence).

⁴⁶ In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.⁵¹ Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,⁵² and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.⁵³

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.⁵⁴ Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.⁵⁵ A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.⁵⁶ Over the course of the pandemic,

inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.⁵⁷ Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ and 2.0 percentage points for White women.⁶⁰

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.⁶¹ In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores⁶² and reduced familial and childhood wellbeing.⁶³

Food, Housing, and Employment Hardships, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last visited May 8, 2021).

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

⁵² U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300032> (last visited May 8, 2021).

⁵³ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300031> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/LNS11300029> (last visited May 8, 2021).

⁵⁵ See, e.g., Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), <https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/>.

⁵⁶ Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

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

These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment⁶⁴ and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.⁶⁵ Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.⁶⁶ Sectors with a large share of small business employment have been among those with the most drastic drops in employment.⁶⁷ The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.⁶⁸

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.⁶⁹ In general, small businesses can face greater hurdles in accessing credit,⁷⁰ and many small businesses were already financially fragile at the outset of the pandemic.⁷¹ Non-profits, which provide vital services to communities, have similarly faced

Russell Sage Foundation (Aug. 2016), available at <https://www.russellsage.org/publications/children-great-recession>.

⁶⁴ Board of Governors of the Federal Reserve System, *supra* note 5.

⁶⁵ U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

⁶⁶ Biden, *supra* note 6.

⁶⁷ Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf>.

⁶⁸ U.S. Census Bureau, Small Business Pulse Survey, <https://portal.census.gov/pulse/data/> (last visited May 8, 2021).

⁶⁹ Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), <https://www.nber.org/papers/w28151>.

⁷⁰ See e.g., Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), available at <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>.

⁷¹ Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), available at <https://www.pnas.org/content/117/30/17656>.

⁵¹ U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PAYEMS> (last visited May 8, 2021).

⁵² *Id.*

⁵³ U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CLF16OV> (last visited May 8, 2021).

⁵⁴ U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), <https://www.bls.gov/news.release/empsit.t01.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), <https://www.bls.gov/web/empsit/cpseaa04.htm> (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), <https://www.bls.gov/web/empsit/cpseaa05.htm> (last visited May 8, 2021).

⁵⁵ Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), <https://files.epi.org/pdf/219418.pdf>. See also, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), <https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf>.

⁵⁶ Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on

economic and financial challenges due to the pandemic.⁷²

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.⁷³ These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID-19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,⁷⁴ and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID-19.⁷⁵ Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,⁷⁶ raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor

neighborhoods more than doubling by 2010–2014 relative to 2000.⁷⁷ Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.⁷⁸ Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.⁷⁹ Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.⁸⁰ Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,⁸¹ an

⁷⁷ Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

⁷⁸ David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), available at https://www.frbf.org/community-development/files/cp_fullreport.pdf.

⁷⁹ Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. See, e.g., Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, *PLoS ONE* 13(7) (2018), available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144>; Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, <https://opportunityinsights.org/education/> (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education> (last visited Apr. 26, 2021).

⁸⁰ See, e.g., Bacher-Hicks, *supra* note 14.

⁸¹ A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. See Institute of Education Sciences, Monthly School Survey Dashboard, <https://ies.ed.gov/schoolsurvey/> (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only.

effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.⁸² Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.⁸³

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.⁸⁴ Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.⁸⁵

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

See Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), <https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07> (last visited May 4, 2021).

⁸² HHS, *supra* note 79.

⁸³ Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, *J. of Pediatrics* Vol. 223:188–93 (Aug. 1, 2020), available at [https://www.jpeds.com/article/S0022-3476\(20\)30606-5/abstract](https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract).

⁸⁴ Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey." Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. <https://doi.org/10.18128/D030.V8.0>; see also Donna Feir & Charles Golding, Native Employment During COVID-19: Hard hit in April but Starting to Rebound? (Aug. 5, 2020), <https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound>.

⁸⁵ Moreno & Sobrepena, *supra* note 73.

⁷² Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), <https://www.frbf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf>.

⁷³ Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), <https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances>.

⁷⁴ Kim Parker et al., Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>; Gould, *supra* note 55.

⁷⁵ See *infra* Section II.B of this Supplementary Information.

⁷⁶ Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), <https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/>.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.⁸⁶ A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must “respond to” the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and/or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began

and remain so due to the negative economic impacts of the pandemic.

- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic’s negative economic impacts on unemployed workers.

- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker’s occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative

economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor’s benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.

- *Small Businesses and Non-profits.*

As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical

⁸⁶ In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and

- Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.⁸⁷

- *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.⁸⁸ Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the

pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID-19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID-19 public health emergency.⁸⁹ Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including

tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID-19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID-19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.⁹⁰ Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

- *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID-19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.⁹¹

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

⁸⁷ See Federal Reserve Bank of Cleveland, An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx> (discussing the impact of COVID-19 on minority owned businesses).

⁸⁸ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited May 8, 2021).

⁸⁹ From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. See U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/USLAH> (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (e.g. revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. See Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.

Services in this category alleviate the immediate economic impacts of the COVID-19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.⁹² Eligible services include:

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.⁹³

- *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other

persistent-urban-inequality-and-concentrated-poverty/.

⁹² U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11> (last visited Apr. 26, 2021).

⁹³ The Opportunity Atlas, <https://www.opportunityatlas.org/> (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), available at <https://opportunityinsights.org/paper/neighborhoodsi/>.

extended learning and enrichment programs; and

- Evidence-based practices to address the social, emotional, and mental health needs of students;

- *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.⁹⁴ Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

- New or expanded high-quality childcare to provide safe and supportive care for children;

- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and

- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

⁹⁴ See *supra* notes 52 and 84.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (e.g., affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. See Section II.D of this **SUPPLEMENTARY INFORMATION**. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. See Section II.C of this **SUPPLEMENTARY INFORMATION**.

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID-19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID-19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID-19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response, and therefore reimbursable, in an easily-administrable manner?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries"

affected by the COVID-19 public health emergency?

Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID-19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.⁹⁵ These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have

contracted or died of COVID-19.⁹⁶ Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.⁹⁷ In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.⁹⁸ Furthermore, many essential workers are people of color or low-wage workers.⁹⁹ These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.¹⁰⁰

⁹⁶ See, e.g., Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, <https://covid.cdc.gov/covid-data-tracker/#health-care-personnel> (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID-19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, <https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff> (last visited May 4, 2021).

⁹⁷ See, e.g., The Lancet, The plight of essential workers during the COVID-19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)2931200-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)2931200-9/fulltext).

⁹⁸ *Id.*

⁹⁹ Joanna Gaitens et al., Covid-19 and essential workers: A narrative review of health outcomes and moral injury, *Int'l J. of Envtl. Research and Pub. Health* 18(4):1446 (Feb. 4, 2021), available at <https://pubmed.ncbi.nlm.nih.gov/33557075/>; Tiana N. Rogers et al., Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States, *World Med. & Health policy* 12(3):311–27 (Aug. 5, 2020), available at <https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358> (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

¹⁰⁰ Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), <https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/>.

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

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.¹⁰¹ A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.¹⁰² The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID-19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean “those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.”¹⁰³ The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.¹⁰⁴ These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others

as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would “respond to” to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to \$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker’s total pay above 150 percent of their residing state’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, or their residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.¹⁰⁵

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.¹⁰⁶ For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID-19, it must be entirely additive to a worker’s regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker’s normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID-19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.¹⁰⁷ Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_links.htm (last visited May 1, 2021).

¹⁰⁶ Treasury performed this analysis with data from the U.S. Census Bureau’s 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

¹⁰⁷ However, such compensation must be “in addition to” remuneration or wages already received. That is, employers may not reduce such workers’ current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

¹⁰¹ McCormack, *supra* note 37.

¹⁰² *Id.*

¹⁰³ Sections 602(g)(2), 603(g)(2) of the Act.

¹⁰⁴ The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

¹⁰⁵ County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. See U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrcst.htm> (last visited May 1, 2021); U.S. Bureau

months. Essential workers who have already earned premium pay for essential work performed during the COVID-19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. See Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency.¹⁰⁸ Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same

period 2019.¹⁰⁹ At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.¹¹⁰ Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.¹¹¹ These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.¹¹² Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,¹¹³ while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID-19 public health emergency began.¹¹⁴

¹⁰⁹ Major sources include personal income tax, corporate income tax, sales tax, and property tax. See Lucy Dadayan, States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.

¹¹⁰ National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.

¹¹¹ Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. See Moreno & Sobrepna, *supra* note 73.

¹¹² See, e.g., Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), <https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html>; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at <https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf>; Gordon, *supra* note 9.

¹¹³ State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

¹¹⁴ U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001],

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of “general revenue” for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID-19 public health emergency.

General Revenue. The interim final rule adopts a definition of “general revenue” based largely on the components reported under “General Revenue from Own Sources” in the Census Bureau’s Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.¹¹⁵ By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term “general revenue” to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.¹¹⁶ In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/CES9092000001> and <https://fred.stlouisfed.org/series/CES9093000001> (last visited Apr. 27, 2021).

¹¹⁵ U.S. Census Bureau, Annual Survey of State and Local Government Finances, <https://www.census.gov/programs-surveys/gov-finances.html> (last visited Apr. 30, 2021).

¹¹⁶ The interim final rule would define tax revenue in a manner consistent with the Census Bureau’s definition of tax revenue, with certain changes (*i.e.*, inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as “charges imposed for providing current services or for the sale of products in connection with general government activities.” It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.*, other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

¹⁰⁸ ARPA, *supra* note 16.

the COVID-19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.¹¹⁷

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.¹¹⁸ For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in

intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.¹¹⁹ For purposes of measuring loss in general revenue due to the COVID-19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.¹²⁰

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID-19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID-19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.¹²¹ Although revenue may decline for

reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.¹²² This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- **Step 1:** Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.*, last full fiscal year before January 27, 2020), called the *base year revenue*.

- **Step 2:** Estimate *counterfactual revenue*, which is equal to *base year revenue* * $[(1 + \text{growth adjustment})^{(n/12)}]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

¹¹⁹ U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), <https://www2.census.gov/govs/class/classfull.pdf>.

¹²⁰ For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), <https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html>.

¹²¹ For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. See U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/graph/?g=r3YI> (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

¹¹⁷ Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. See Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

¹¹⁸ *Supra* note 116.

¹²² Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. See U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), <https://www.census.gov/programs-surveys/gov-finances/data/datasets.html>.

years prior to the COVID–19 public health emergency.

- *Step 3:* Identify *actual revenue*, which equals revenues collected over the past twelve months as of the calculation date.

- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual*

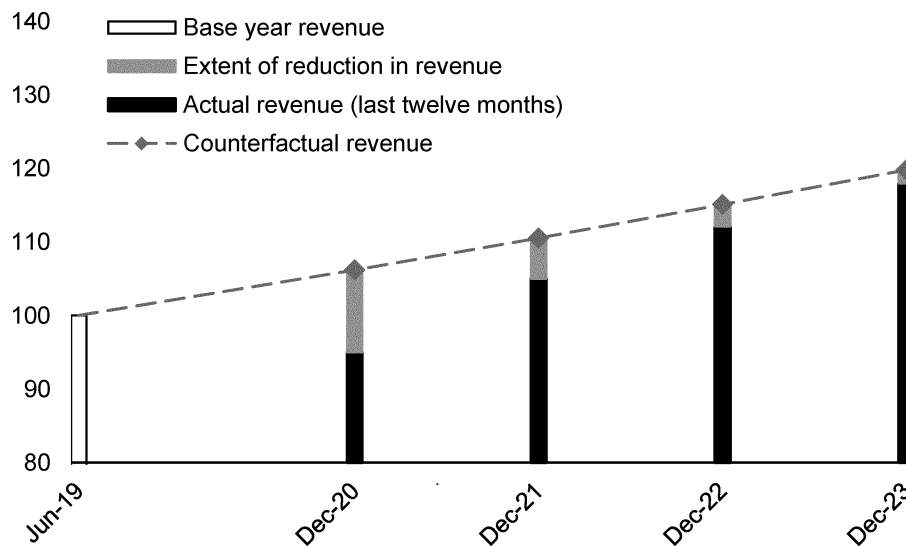
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1

percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue:</i>	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building¹²³ of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for

borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would

not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of "general revenue" for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID–

¹²³ Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID-19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury do to support these recipients through its implementation of the program?

Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.¹²⁴

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to

ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.¹²⁵ By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).¹²⁶

¹²⁵ Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

¹²⁶ Environmental Protection Agency, Drinking Water State Revolving fund, <https://www.epa.gov/dwsrf> (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf> (last visited Apr. 30, 2021).

Established by the 1987 amendments¹²⁷ to the Clean Water Act (CWA),¹²⁸ the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.¹²⁹ Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.¹³⁰

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),¹³¹ with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.¹³² Like the CWSRF,

¹²⁷ Water Quality Act of 1987, Public Law 100-4.

¹²⁸ Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111-5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113-121. The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115-270.

¹²⁹ See Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA-816-R-00-023 (Nov. 2000), <https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF>; See also Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Apr. 30, 2021).

¹³⁰ 33 U.S.C. 1383(c). See also Environmental Protection Agency, *Overview of Clean Water State Revolving Fund Eligibilities* (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, *Clean Water Act: A Summary of the Law*, Congressional Research Service (Oct. 18, 2016), <https://fas.org/sgp/crs/misc/RL30030.pdf>; Jonathan L. Ramseur, *Wastewater Infrastructure: Overview, Funding, and Legislative Developments*, Congressional Research Service (May 22, 2018), <https://fas.org/sgp/crs/misc/R44963.pdf>.

¹³¹ 42 U.S.C. 300j-12.

¹³² Environmental Protection Agency, *Drinking Water State Revolving Fund Eligibility Handbook*, (June 2017), https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf; Environmental Protection Agency, *Drinking Water*

¹²⁴ Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

the DWSRF provides States with the flexibility to meet the needs of their populations.¹³³ The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.¹³⁴ In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.¹³⁵

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.¹³⁶ The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can be deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID-19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.¹³⁷ Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to “assist systems most in need on a per household basis according to state affordability criteria” would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.¹³⁸

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also

support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, underserved, or rural communities? How do these projects differ from DWSRF and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible

Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 42 U.S.C. 300j–12(b)(3)(A).

¹³⁶ Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

¹³⁷ House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), <https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief>.

¹³⁸ Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf; Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, <https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations> (last visited Apr. 30, 2020).

infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.¹³⁹ With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.¹⁴⁰ By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure

exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).¹⁴¹ There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.¹⁴² Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.¹⁴³

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to

a minimum of 100 Mbps symmetrical for download and upload speeds.¹⁴⁴ In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.¹⁴⁵ In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017¹⁴⁶ and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,¹⁴⁷ attributable, in part to a shift to using broadband and the internet by individuals and businesses

¹³⁹ See, e.g., <https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show>; <https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show>; and generally, <https://www.ntia.gov/data/digital-nation-data-explorer>.

¹⁴⁰ As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, <https://broadbandmap.fcc.gov/#/> (last visited May 9, 2021).

¹⁴¹ How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, available at <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹⁴² See, e.g., Federal Communications Commission, Fourteenth Broadband Deployment Report, available at <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

¹⁴³ See, e.g., Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), <https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx>; Kansas Office of Broadband Development, Broadband Acceleration Grant, <https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf> (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), [https://www.nysac.org/files/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf).

¹⁴⁴ This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

¹⁴⁵ Federal Communications Commission, Broadband Speed Guide, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 30, 2021).

¹⁴⁶ Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, available at <https://ecfsapi.fcc.gov/file/101030085118517/FCC%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

¹⁴⁸ *Id.*

¹⁴⁹ One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

¹⁵⁰ See, e.g., Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

¹⁵¹ By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org: What is Symmetrical internet?* (March 2020).

gigabytes.¹⁵² OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.¹⁵³ According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.¹⁵⁴

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the “above baseline” performance tier set by the FCC.¹⁵⁵ The Broadband Infrastructure Program (BBIP)¹⁵⁶ of the Department of Commerce, which provides Federal funding to deploy broadband

¹⁵² OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), available at <https://openvault.com/ovbi-covid-19-drove-15-increase-in-broadband-traffic-in-2020>; See OpenVault’s data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4*, Quarterly Advisory (Feb. 10, 2021), available at <https://openvault.com/complimentary-report-4q20/>.

¹⁵³ OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 2020), available at <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/>; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, available at <https://openvault.com/upstream-whitepaper/>.

¹⁵⁴ Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), <https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls> [www.oecd.org/sti/broadband-statistics](https://www.oecd.org/sti/broadband/broadband-statistics).

¹⁵⁵ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), available at <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

¹⁵⁶ The BBIP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.¹⁵⁷

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC’s benchmark for an “advanced telecommunications capability.”¹⁵⁸ This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC’s RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.¹⁵⁹ The Department of Commerce’s BBIP also considers households to be “unserved” generally if they lack access to broadband service

¹⁵⁷ Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

¹⁵⁸ *Deployment Report*, *supra* note 142.

¹⁵⁹ *Rural Digital Opportunity Fund*, *supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These

four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a 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 recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.*, an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is

offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).

- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.

- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:

- State or territory tax changes that would increase any source of general

¹⁶⁰ In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

¹⁶¹ For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

- Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.*, fiscal year 2019 tax revenue adjusted for inflation). This “revenue reduction cap,” together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this

SUPPLEMENTARY INFORMATION.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. See Section IV of this **SUPPLEMENTARY INFORMATION**.

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from “a change in law, regulation, or administrative interpretation.” A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute

or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.¹⁶² This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.¹⁶³

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–

19 public health emergency.¹⁶⁴ This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the “most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency” as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,¹⁶⁵ suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines “reporting year” as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (“in-year” value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term “reporting year” refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of “tax revenue” is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.¹⁶⁶ It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

¹⁶⁴ Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. See section 602(c)(1)(C).

¹⁶⁵ Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), available at <https://www.cbo.gov/publication/56965>.

¹⁶⁶ U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, <https://www.census.gov/programs-surveys/state/about/glossary.html> (last visited Apr. 30, 2021).

¹⁶² See, e.g., Tax Policy Center, How do state earned income tax credits work?, <https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/> (last visited May 9, 2021).

¹⁶³ U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, <https://www.bea.gov/data/prices-inflation/gdp-price-deflator> (last visited May 9, 2021).

revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States

and territories already consider tax changes.¹⁶⁷

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.¹⁶⁸ The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that

such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

¹⁶⁷ See, e.g., Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

¹⁶⁸ Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an

offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to “indirectly” offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.¹⁶⁹ In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by \$1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth \$500 million, it need only pay for the remaining \$500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this

¹⁶⁹ This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.¹⁷⁰

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.¹⁷¹ The

definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID-19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).¹⁷² As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID-19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID-19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing

grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.¹⁷³

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.¹⁷⁴ The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

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.

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.

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:

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

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory

resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of

macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.*

The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the

requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance

with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

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

BILLING CODE 4810-AK-P

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds



June 24, 2021



Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

This guidance provides additional detail and clarification for each recipient’s compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the [SLFRF implementing regulation](#), and other regulatory and statutory requirements, including regulatory requirements under [the Uniform Guidance \(2 CFR Part 200\)](#). Please see the [Assistance Listing](#) in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund (“CRF”) established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients’ compliance responsibilities and the U.S. Department of the Treasury’s (“Treasury”) expectations and recommends best practices where appropriate under the SLFRF Program.

A. Key Principles.....	P. 3
B. Statutory Eligible Uses.....	P. 3
C. Treasury’s Rulemaking.....	P. 4
D. Uniform Guidance (2 CFR Part 200).....	P. 6
E. Award Terms and Conditions.....	P. 10

Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

A. Interim Report.....	P. 13
B. Project and Expenditure Report.....	P. 15
C. Recovery Plan Performance Report.....	P. 23
Appendix 1: Expenditure Categories.....	P. 31
Appendix 2: Evidenced-Based Intervention Additional Information.....	P. 33



Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in [Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per [Memorandum M-21-20](#) and [Memorandum M-20-21](#).

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.



Treasury adopted an [Interim Final Rule](#) to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.¹ It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's [Interim Final Rule](#) details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

- 1. Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

- A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
- Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
- A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
- A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and
- A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative

¹ Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule.
<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>



interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a “rainy day” fund. Recipients should refer to Treasury’s Interim Final Rule for more information on these restrictions.

- 2. Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury’s Interim Final Rule.

Recipients may use SLFRF award funds to provide assistance to households, businesses, and individuals within the eligible use categories described in Treasury’s Interim Final Rule for costs that those households, businesses and individuals incurred prior to March 3, 2021. For example,

- a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
- b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
- c. Revenue Loss: Treasury’s Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred after March 3, 2021.

Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors. For the purposes of determining expenditure eligibility, Treasury’s Interim Final Rule provides that “incurred” has the same meaning given to “financial obligation” in 2 CFR § 200.1.

- 3. Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury’s Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.



Assistance Listing

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number (“ALN”), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, [2 CFR Part 200](#) (the “Uniform Guidance”). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization’s use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization’s compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the [2020 OMB Compliance Supplement Part 3. Compliance Requirements \(issued August 18, 2020\)](#). Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

- 1. Allowable Activities.** Each recipient should review program requirements, including Treasury’s Interim Final Rule and the recipient’s Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.
- 2. Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.



SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.²

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed, or not in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. **Administrative costs:** Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.³ Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.⁴⁵ Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).
 - b. **Salaries and Expenses:** In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's Interim Final Rule for details.
3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9).
- As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.
4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and record retention, to determine and monitor implementation of criteria for

² See 42 CFR 433.51 and 45 CFR 75.306.

³ Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).

⁴ 2 CFR 200.413 Direct Costs.

⁵ 2 CFR 200.414 Indirect Costs.



determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.
6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.
7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.
8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.⁶ Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.
9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds

⁶ 2 CFR 200.320(c)(1)-(3) and (5)



should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

- 10. Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

- 11. Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as defined under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

- 12. Special Tests and Provisions.** Treasury has set a deadline of July 16, 2021, for receipt of public comment on its Interim Final Rule and will adopt a final rule responding to these comments. In addition, Treasury may add clarifications to the implementing guidance.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and example of each best practice.

**Table 1: Internal controls best practices**

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury's Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

- 1. SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.⁷
- 2. Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").
- 3. Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.⁸ Recipients and subrecipients may also refer to the [Office of](#)

⁷ See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.

⁸ For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, the PRAC and the Treasury's OIG.



[Management and Budget \(OMB\) Compliance Supplements for audits of federal funds and related guidance](#) and the [Federal Audit Clearinghouse](#) to see examples and single audit submissions.

4. **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, [Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42](#), provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.



Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. [See Section A, page 13.](#)
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over \$50,000, and other information. [See Section B, page 15.](#)
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the “Recovery Plan”) will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. [See Section C, page 23.](#)

Table 2: Reporting requirements by recipient type

Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then 30 days after the end of each quarter thereafter ⁹	By August 31, 2021, and annually thereafter by July 31 ¹⁰
Metropolitan cities and counties with a population below 250,000 residents which received more than \$5 million in SLFRF funding			Not required
Tribal Governments			
Metropolitan cities and counties with a population below 250,000 residents which received less than \$5 million in SLFRF funding		By October 31, 2021, and then annually thereafter ¹¹	
NEUs	Not required		

The remainder of this document describes these reporting requirements. A users’ guide will be provided with additional information on how and where to submit required reports.

⁹ Interim Final Rule Page 111

¹⁰ Interim Final Rule page 112

¹¹ Interim Final Rule Page 111



Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Changes from CRF to SLFRF include:

- **Project, Expenditure, and Subaward Reporting:** The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports:** CRF reports were due within 10 days of each calendar quarter. SLFRF quarterly reporting will be due 30 days from quarter end.
- **Program and Performance Reporting:** The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures¹² by Expenditure Category from the date of award to July 31, 2021. The recipient will be required to enter obligations¹³ and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

- Revenue replacement (EC 6.1¹⁴):** Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
 - Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
 - Fiscal year end date
 - Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
 - Actual general revenue as of the twelve months ended December 31, 2020
 - Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
 - An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions and/or template to be provided in users' guide)

¹² For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).

¹³ For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.

¹⁴ See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.



In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for law enforcement operating expenses and \$50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

- b. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
- NEU name
 - NEU DUNS number
 - NEU Taxpayer Identification Number (TIN)
 - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
 - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
 - NEU authorized representative name and email address
 - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
 - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)



- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States, U.S. territories, and Tribal governments
- Metropolitan cities and counties that received more than \$5 million in SLFRF funding

For these recipients, the initial quarterly Project and Expenditure Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 and 3	Award Date – September 30	October 31, 2021
2	2021	4	October 1 – December 31	January 31, 2022
3	2022	1	January 1 – March 31	April 30, 2022
4	2022	2	April 1 – June 30	July 31, 2022
5	2022	3	July 1 – September 30	October 31, 2022
6	2022	4	October 1 – December 31	January 31, 2023
7	2023	1	January 1 – March 31	April 30, 2023
8	2023	2	April 1 – June 30	July 31, 2023
9	2023	3	July 1 – September 30	October 31, 2023
10	2023	4	October 1 – December 31	January 31, 2024
11	2024	1	January 1 – March 31	April 30, 2024
12	2024	2	April 1 – June 30	July 31, 2024
13	2024	3	July 1 – September 30	October 31, 2024
14	2024	4	October 1 – December 31	January 31, 2025
15	2025	1	January 1 – March 31	April 30, 2025
16	2025	2	April 1 – June 30	July 31, 2025
17	2025	3	July 1 – September 30	October 31, 2025
18	2025	4	October 1 – December 31	January 31, 2026
19	2026	1	January 1 – March 31	April 30, 2026
20	2026	2	April 1 – June 30	July 31, 2026



Report	Year	Quarter	Period Covered	Due Date
21	2026	3	July 1 – September 30	October 31, 2026
22	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Metropolitan cities and counties that received less than \$5 million in SLFRF funding.
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by October 31. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	Award Date – September 30, 2021	October 31, 2021
2	October 1, 2021 – September 30, 2022	October 31, 2022
3	October 1, 2022 – September 30, 2023	October 31, 2023
4	October 1, 2023 – September 30, 2024	October 31, 2024
5	October 1, 2024 – September 30, 2025	October 31, 2025
6	October 1, 2025 – September 30, 2026	October 31, 2026
7	October 1, 2026 – December 31, 2026	March 31, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports:

- Projects:** Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. In particular, recipients should review the Required Programmatic Data described below and define their projects at a sufficient level of granularity to report these metrics for a reasonably specific activity or set of activities in each project.

Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

- Expenditures:** Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
 - Current period obligation
 - Cumulative obligation
 - Current period expenditure
 - Cumulative expenditure



- c. **Project Status:** Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
 - Completed less than 50 percent
 - Completed 50 percent or more
 - Completed
- d. **Project Demographic Distribution:** Recognizing the disproportionate impact of the pandemic-related recession on low-income communities, recipients must report whether certain types of projects¹⁵ are targeted to economically disadvantaged communities, as defined by HUD's [Qualified Census Tract](#).¹⁶ Recipients will be asked to identify whether or not the project is serving an economically disadvantaged community. To minimize the administrative burden on recipients while ensuring that this important aspect of program performance is tracked, recipients may assume that the funds for a project count as being targeted towards economically disadvantaged communities if the project funds are spent on:
- A program or service is provided at a physical location in a Qualified Census Tract (for multi-site projects, if a majority of sites are within Qualified Census Tracts);
 - A program or service where the primary intended beneficiaries live within a Qualified Census Tract;
 - A program or service for which the eligibility criteria are such that the primary intended beneficiaries earn less than 60 percent of the median income for the relevant jurisdiction (e.g., State, county, metropolitan area, or other jurisdiction); or
 - A program or service for which the eligibility criteria are such that over 25 percent of intended beneficiaries are below the federal poverty line.

Recipients may use reasonable estimates to determine if a project meets one of these criteria, including identifying the intended beneficiaries of a program or service in terms of income characteristics, geographic location, or otherwise estimating the beneficiaries of a program based on its eligibility criteria. Recipients do not need to track information on each individual beneficiary to make the determination of whether or not the project is serving an economically disadvantaged community. If a recipient is unable to measure economic characteristics of the primary intended beneficiaries of a program or service due to data limitations or for other reasons, that program or service may not be counted as targeted to economically disadvantaged communities. Treasury recognizes that in some circumstances, recipients may fund eligible programs or services that benefit economically disadvantaged communities but may lack adequate data to assess conclusively that such a program or service is targeted to economically disadvantaged communities based on the criteria described above.

- e. **Subawards:** Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than or equal to \$50,000.

¹⁵ Specifically recipients must report this information for projects in the Expenditure Categories that are marked with “^” in the expenditure category listing in Appendix 1 of this guidance

¹⁶ HUD defines as a QCT as having “50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more.” To view median income area for their jurisdiction, recipients may visit the U.S. Census [website](#) on median incomes and select the geography for their jurisdiction and relevant unit of measurement (household or individual) for the project.



Recipients do not also need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the \$50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than or equal to \$50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below \$50,000. This information will be accounted for by expenditure category at the project level.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and received \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF Recipients are governmental entities with executive salaries that are already disclosed, so no additional information must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

- f. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.



- g. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.
1. Payroll for Public Health and Safety Employees (EC 1.9):
 - Number of government FTEs responding to COVID-19 supported under this authority
 2. Household Assistance (EC 2.1-2.5):
 - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
 - Number of individuals served (by program if recipient establishes multiple separate household assistance programs)
 - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule
 3. Small Business Economic Assistance (EC 2.9):
 - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
 - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
 - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule
 4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12):
 - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
 - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic
 - For each subaward:
 - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
 - Purpose of funds (e.g., payroll support, safety measure implementation)
 5. Rehiring Public Sector Staff (EC 2.14):
 - Number of FTEs rehired by governments under this authority
 6. Education Assistance (EC 3.1-3.5):
 - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.¹⁷

¹⁷ For more information on NCES identification numbers see <https://nces.ed.gov/ccd/districtsearch/> (districts) and <https://nces.ed.gov/ccd/schoolsearch/> (schools).

7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2):

- List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
- Number of workers to be served
- Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
- For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's¹⁸ average annual wage, whichever is higher, on an annual basis:
 - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy.

8. Revenue replacement (EC 6.1):

Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:

- General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021);
- Calculated revenue loss due to the Covid-19 public health emergency; and
- An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

- h. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

¹⁸ *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.

1. All infrastructure projects (EC 5):

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)
- For projects over \$10 million:
 - a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
 - The number of employees of contractors and sub-contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing.¹⁹
 Recipients must maintain sufficient records to substantiate this information upon request.
 - b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
 - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
 - c. Whether the project prioritizes local hires.
 - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

¹⁹ As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

2. Water and sewer projects (EC 5.1-5.15):

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

3. Broadband projects (EC 5.16-5.17):

- Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
 - Technology to be deployed
 - Miles of fiber
 - Cost per mile
 - Cost per passing
 - Number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload
 - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download
 - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
 - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
 - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
- i. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
- NEU name
 - NEU DUNS number
 - NEU Taxpayer Identification Number (TIN)
 - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
 - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
 - NEU authorized representative name and email address
 - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
 - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)
 - Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
 - Payment amount(s)
 - Payment date(s)



For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the [Guidance on Distributions of Funds to Non-Entitlement Units of Local Government](#).

States with “weak” minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

- j. **NEU Documentation (NEUs only):** Each NEU will also be asked to provide the following information with their first report submitted by October 31, 2021:
- Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
 - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
 - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report (“Recovery Plan”). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027



The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

- a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
- b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
- c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
- d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
- e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
- f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as the Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

- a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
- b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
- c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?



- d. **Outcomes:** Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

- a. **Negative Economic Impacts (EC 2):** assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
- b. **Services to Disproportionately Impacted Communities (EC 3):** services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is defined in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.



6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions²⁰ and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.²¹

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's [What Works Clearinghouse](#), the U.S. Department of Labor's [CLEAR](#), and the [Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness](#) clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).²² Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.²³

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

²⁰As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

²¹ Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.

²² For more information on the required standards for program evaluation, see [OMB M-20-12](#).

²³ For more information on learning agendas, please see [OMB M-19-23](#)

**7. Table of Expenses by Expenditure Category**

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models²⁴ to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the

²⁴ A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.



section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

- a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
 - Number of people or households receiving eviction prevention services (including legal representation)
 - Number of affordable housing units preserved or developed
- b. Negative Economic Impacts (EC 2):
 - Number of workers enrolled in sectoral job training programs
 - Number of workers completing sectoral job training programs
 - Number of people participating in summer youth employment programs
- c. Education Assistance (EC 3.1-3.5):
 - Number of students participating in evidence-based tutoring programs²⁵
- d. Healthy Childhood Environments (EC 3.6-3.9):
 - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
 - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)

The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision 31 CFR 35.8, as detailed below. As indicated in the Interim Final Rule, Treasury is seeking comment on reporting requirements related to the Tax Offset Provision, including ways to better rely on information already produced by States and territories and to minimize burden.

The terms “reporting year,” “baseline,” “covered change,” “net reduction in total spending,” and “tax revenue” are defined in the Interim Final Rule, 31 CFR 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3. Similarly, for purposes of calculating baseline, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3.

For purposes of reporting actual tax revenue and calculating tax revenue for the fiscal year ending 2019,²⁶ (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating

²⁵ For more information on evidence-based tutoring programs, refer to the U.S. Department of Education’s [2021 ED COVID-19 Handbook \(Volume 2\)](#), which summarizes research on evidence-based tutoring programs (see the bottom of page 20).

²⁶ Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient’s baseline.



a net reduction in total spending, recipients should report data using audited financials where available.

a. Revenue-reducing Covered Changes:

For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

b. Baseline Revenue:

Baseline has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

Whether the revenue-reducing covered changes are in excess of the *de minimis*. Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue.

c. Actual Tax Revenue:

Actual tax revenue means the actual tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

d. Reduction in Net Tax Revenue:

The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

e. Any revenue-increasing covered changes:

A recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes.



Recipients should maintain records regarding revenue-reducing covered changes and estimates of such changes.

f. Net reduction in total spending, and tables of specific spending cuts:

Recipients must report on spending cuts. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As in the Interim Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States. If that subtraction yields a positive value, there has been a net reduction; if it yields zero or a negative value, there has not been a net reduction. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit," as defined below. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit, and (3) the amount by which the reduction in spending exceeds the Fiscal Recovery funds spent in the reporting unit. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in aggregate spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate of spending cuts.

To align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Recipients may also choose to report at a more granular sub-department level. Recipients are encouraged to define and report spending in departments, sub-departments (e.g., bureaus), agencies, or authorities (each a "reporting unit") in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. For example, if a State health department maintains separate budgets for different units (e.g., medical and public health units), those units may be reported and considered separately. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts. As discussed in the Interim Final Rule, in order to help ensure governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. Evasions of the Tax Offset Provision may be subject to recoupment.



Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term “Expenditure Category” refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^



3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure²⁷	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: “Last Mile” projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)

²⁷ Definitions for water and sewer Expenditure Categories can be found in the EPA’s handbooks. For “clean water” expenditure category definitions, please see: <https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf>. For “drinking water” expenditure category definitions, please see: <https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports>.



Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?

For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means the evidence base that can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

**Revision Log**

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	• Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. • Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.





AGENDA STAFF REPORT

MEETING DATE: 9/7/2021

AGENDA SECTION: B

SUBJECT:

Public Works: Adoption of Emergency Resolution No. 21-39-R, approving the emergency repair of Well No. 45 and Well No. 49 by Valley Pump and Dairy Systems of Armona, CA, for a not to exceed price of \$250,000, and approve an additional appropriation of \$250,000 from Water Capital Reserves.

RECOMMENDATION:

That the City Council, by motion,

1. Adopt the attached Emergency Resolution No. 21-39-R approving the emergency repair of Well No. 45 and Well No. 49 by Valley Pump and Dairy Systems of Armona, CA for a not to exceed price of \$250,000.
2. Approve an additional appropriation of \$250,000 from Water Capital Reserves.

BACKGROUND:

In August 2021, Water Well No. 45 began pumping a large amount of sand. Staff attempted unsuccessfully to flush the well. In order to return the well to production as quickly as possible, Valley Pump was called in to evaluate and correct the problem. After several attempts, the well pipe was finally removed and the casing was inspected utilizing a video camera. It was determined that the well casing had breaks at 400 feet and 720 feet. In addition, the bowls of the pump were stuck at about the 600 foot level. In order to return the well to service, the casing breaks need to be repaired, the bowls removed, and new bowls re-installed.

A few days after the well No. 45 failure, well No. 49 had a packing failure and began spraying water. In addition, the line shaft began shaking violently. Again, Valley Pump was called in order to correct the problems and to return the well to production. Several attempts were made to temporarily replace the packing, but because of the violent shaking of the line shaft, the attempts were unsuccessful. Valley Pump then removed about 450 feet of column pipe and a video inspection revealed a break between 450 and 500 feet down. It was determined that the shaking was the result of numerous (approximately 50) spider gear failures which essentially

support the line shaft and keep it centered in the well casing. In addition, the bowls of this well have separated from the shaft and fallen into the well and could be as deep as 1500 feet down.

There is a slight possibility that one or both wells may not be repairable, but since the cost to develop a new well is approximately \$1,500,000 and we are still in a high demand water season, staff feels that an attempt should be made to quickly repair the wells.

The loss of one well during the summer months is a serious condition; the loss of two is an emergency. As such, work has already begun to repair both of the wells. The estimated cost of \$250,000 is based on past experience with similar type work.

FISCAL IMPACT:

This project is an emergency repair and was therefore not a budgeted item. An additional appropriation of \$250,000 from Water Capital Reserves is required to fund this repair. The Water Capital Reserve account has a projected unencumbered FY22 end balance of \$2,294,000.

ATTACHMENTS:

Resolution, well 45 and 49 repair, 090721

RESOLUTION NO. 21-39-R**EMERGENCY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HANFORD APPROVING EXPENDITURE OF FUNDS FOR REPAIR OF WATER
WELLS NO. 45 AND NO. 49.**

At a regular meeting of the City Council of the City of Hanford, duly called and held on September 7, 2021 at 7:00 P.M., and upon a motion by Council Member _____ and seconded by Council Member _____ and duly carried, the following resolution was adopted:

WHEREAS, the City operates a municipal water supply system that includes the wells known as Water Well No. 45 (“Well 45”) and Water Well No. 49 (Well 49); and

WHEREAS, Well 45 has been taken out of service due to excessive sand being pumped and upon further investigation, damage to the casing requires significant repair; and

WHEREAS, Well 49 has been taken out of service due to failure of the packing material and violent shaking of the line shaft and upon further investigation, damage to the casing requires significant repair; and

WHEREAS, efforts by City crews to repair each of the two wells to bring them back into production have been unsuccessful; and

WHEREAS, the City’s Municipal Water System has sufficient reserve capacity to have one well out of commission at a time, but having two wells out of service simultaneously can result in low system pressures and poor performance in specific areas of the water system; and

WHEREAS, water demand within the City of Hanford water system necessitates that the wells be returned to service as quickly as possible; and

WHEREAS, work that costs \$5,000.00 or more which relates to public facilities must normally be put out to bid in accordance with the California Public Contract Code; and

Attachment: Resolution, well 45 and 49 repair, 090721 (PW: Emergency repair of Wells No. 45 and No. 49.)

WHEREAS, the cost to effectuate the necessary repairs at Well 45 and Well 49 is expected to exceed \$5,000.00; and

WHEREAS, the Public Contract Code allows the City to forego the formal bidding process if the City Council of the City of Hanford makes required findings regarding emergency circumstances.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hanford, as follows:

Section 1: The City Council of the City of Hanford hereby finds that an emergency exists for the purposes of Section 1102 of the Public Contract Code since there are multiple water wells out of service simultaneously which can result in low system pressures and poor performance.

Section 2: The City Council of the City of Hanford further determines that public interest and necessity require the immediate expenditure of funds to address the current emergency conditions and to ensure adequate and quality water deliveries to residential, commercial, and industrial customers.

Section 3: The City Council of the City of Hanford also finds that the emergency requires immediate action and will not allow for the delay in delivery that competitive bidding would cause.

Section 4: City staff is hereby authorized to expend up to \$250,000 for the equipment, materials, and labor necessary to repair Well 45 and Well 49.

Passed and adopted at a regular meeting of the City Council of the City of Hanford duly called and held on the 7th day of September, 2021, by the following vote:

I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the Council of the City of Hanford at a regular meeting thereof held on September 7, 2021 by the following vote:

COUNCIL MEMBERS RAMIREZ, SHARP, SALTRAY, MORROW, BRIENO

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

FRANCISCO RAMIREZ
MAYOR of the City of Hanford

Attest;

NATALIE CORRAL
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I, Natalie Corral, City Clerk of the City of Hanford, do hereby certify the foregoing Resolution was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the 7th day of September, 2021.

Date: _____

Attachment: Resolution, well 45 and 49 repair, 090721 (PW: Emergency repair of Wells No. 45 and No. 49.)



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: C
-------------------------------	--------------------------

SUBJECT:

Police: Approval of the Annual Agreement between the City of Hanford and the Hanford Joint Union High School District for providing School Resource Officers.

RECOMMENDATION:

That the City Council, by motion, approve the Agreement with the Hanford Joint Union High School District for four (4) School Resource Officers and authorize the Police Chief and the City Manager to execute the Agreement.

BACKGROUND:

The City of Hanford has had a partnership with the HJUHS for over 25 years to provide School Resource officers. This partnership has increased the safety, Security and well being of the students and faculty. It has also helped the police department to provide a higher level of service to HJUHS that is mutually beneficial. The HJUHS has always been a valued partner with the Hanford Police Department and this partnership has resulted in a better learning environment for the students it serves.

This new contract has been reviewed by our City Attorney. Their were minor changes made to the non-discrimination section; consistent with applicable state and local requirements.

Additionally, the amount paid by the school district has been increased consistent with other schools contracted rates, and the increased staff costs. This will result in an increase of \$68,000.00 in contracted to revenue to assist the City in covering the costs of providing the officers. The SRO program consists of eight (8) sworn positions. The average cost per officer for the City is \$131,446. With the District now paying \$92,000 per officer, that leaves the City's portion of the total cost of the program at \$315,568 per year.

FISCAL IMPACT:

The new contract will result in an increase in program revenue of \$68,000.00 but that still leaves the City's portion of the total cost of the program at \$315,568 per year.

ATTACHMENTS:

2021.08.25 SRO Contract HJUHSD 2021

**HANFORD JOINT UNION HIGH SCHOOL DISTRICT
SCHOOL RESOURCE OFFICER PROGRAM
STARTING FISCAL YEAR 2021**

This Agreement is made by and between the Hanford Joint Union High School District (“District”) and the City of Hanford, a municipal corporation (“City”), and replaces all prior agreements and understandings between the District and the City on the subject of school resource officers (“SRO”) as is dated for reference purposes as of Fiscal year 2021-2022.

Recitals

- A. The District and City desire to set forth the duties and responsibilities of the parties with respect to the SRO program.
- B. The District and City desire to create an atmosphere of cooperation toward the common goals of providing a safe learning environment for students and staff.
- C. The District and City desire to promote positive relationships between the school, police, and the community.

The District and City agree as follows:

- 1. **Term of Agreement.** This Agreement shall be effective upon ratification by the District’s Superintendent and approval by the Hanford City Council, and shall remain in effect until modified by mutual written agreement or terminated by either party with thirty (30) days advance written notice.
- 2. **Scope of Service.** The City agrees to assign four full time sworn police officers to serve as the SRO’s at the Districts schools during the school year. The SRO will be assigned to primarily work at Hanford High, Hanford West, Sierra Pacific and Alternative Educations sites or any other District locations as directed by the District Superintendent. The SRO will wear the regulation police uniform and operate a marked police patrol vehicle while on duty, unless otherwise authorized by a supervisor for a specific purpose. The SRO’s duties shall include but not be limited to:
 - 2.1. SRO will provide law enforcement expertise to assist the school staff in maintaining safety at school sites.
 - 2.2. The SRO’s investigation and questioning of students at school shall be limited to offenses related to the operation of the school or occurring at the school, except in situations where a delay in investigation or questioning may result in danger to any person, flight from the jurisdiction by the person suspected of a crime, or destruction of evidence.

- 2.3. The SRO shall notify the school principal as soon as practical of any significant law enforcement actions taken by an SRO or other officer.
- 2.4. The SRO shall not become involved in school administrative searches unless specifically requested by the principal in order to provide security or to handle contraband. School administrative searches will be at the direction and control of the school principal and will be based upon reasonable suspicion.
- 2.5. The SRO shall be responsible for monitoring the social and cultural environment around District schools to identify existing or emerging youth gangs. Gang prevention and early intervention strategies shall be coordinated between the City and the District.
- 2.6. The SRO may become involved, through the school principal, with the school's curriculum and provide instructional presentations that enhance the students' understanding of the police mission and the responsibilities of citizenship.
- 2.7. The SRO will work to prevent juvenile delinquency and campus violence through close contact and positive relationships with students. The SRO will serve as a positive role model to students.
- 2.8. At the request of the school principal, the SRO shall attend suspension and expulsion hearings. The SRO shall be prepared to provide testimony on any actions taken by the officer and on any personally observed conduct witnessed by the officer. The SRO shall also make available at expulsion hearings any physical evidence that has been seized by law enforcement and is held by the Hanford Police Department.
- 2.9. The SRO shall disseminate to school administrators and staff information on crime trends and changes in laws to assist them in establishing and maintaining safe school environments.
- 2.10. The SRO will work to establish and maintain a collaborative partnership with the school administration to provide a safe school environment. The SRO will regularly communicate with the school administration in an effort to share information and discuss issues and concerns of mutual interest.
- 2.11. The SRO will work to increase communication between law enforcement, students, school staff, and the community. The SRO will work to build positive working relationships with the school staff and parents.

3. **Student Discipline.** The certificated administrators of each school shall be responsible for student discipline and shall make all decisions regarding the imposition of discipline for students enrolled at their campus.
4. **Hours of Employment.** The SRO will work full time during the school year, except for annual leave allowances, during the normal school year schedule.
5. **Selection of Law Enforcement Personnel.** The City will be responsible for selecting which Hanford Police Department employee will serve as the SRO, or the acting SRO for days when the designated SRO may be on leave, absent for training, or otherwise not available. The District may provide input regarding the selection of the SRO.
6. **Program Criteria.** The District and City will work collaboratively to be responsive to evolving school and law enforcement requirements.
7. **Training and Supervision.** The SRO shall receive SRO's work assignments from the Hanford Police Department and shall be supervised in the performance of SRO's duties by the Chief of the Hanford Police Department or designee. The City shall be responsible for training the SRO according to applicable law enforcement standards. The Superintendent of the District or designee will provide the Chief of the Hanford Police Department with information to assist in evaluating the SRO. Any disciplinary problems or alleged improprieties involving the SRO shall be brought to the attention of the Chief of the Hanford Police Department or designee. The School Resource Officers will be released to attend 40 hours of formal training related to investigator orientation and juvenile law enforcement each fiscal year. The City will be responsible for the officers' travel, lodging and meals.
8. **Employment.** The SRO is an employee of the City, and is not an employee or agent of the District. The SRO shall be subject to the administration, supervision, and control of the City. The SRO shall be subject to all personnel policies and practices of the City.
9. **Student Records.**
 - 9.1. The parties agree that the SRO shall be deemed to be a "school official" for the performance on SRO's duties on behalf of District. The SRO shall therefore be allowed access to student records but the District is in direct control of the use, maintenance, and disclosure of student records in accordance with Education Code section 49076 and other applicable provisions of law. School officials shall allow the SRO to inspect and copy any student records maintained by the school for which the SRO has a "legitimate educational interest" within the scope of the SRO's service under this Agreement. This includes access to student directory information to the extent permitted by District policy, classroom

assignments, attendance records, and discipline files. However, the SRO may not inspect or copy confidential student records outside the scope of the SRO's service, except as allowed by law.

- 9.2. If confidential student record information is needed in an emergency to protect the health or safety of a student or others, the District may disclose to the SRO information that is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety, the need of the information to meet the emergency situation, and the extent to which time is of the essence.
 - 9.3. If confidential student record information is needed by the SRO but no emergency situation exists, unless section 9.4 applies, the information may be released only upon the issuance of a subpoena, a court order or written authorization of the parent/guardian.
 - 9.4. Pursuant to Education Code section 48902, the principal or designee shall notify the SRO of any acts of a student that may violate specified provisions of the Penal Code and Education Code. This may require the disclosure of the student's name or other identifying information to the SRO, along with information related to the underlying offence.
10. **Law Enforcement Records and Juvenile Case File Information.** Pursuant to Welfare and Institutions Code sections 827, 828.1 and 828.3, certain law enforcement records, probation reports and juvenile case file information may be provided to the District Superintendent or his/her designee. In addition to providing such information directly to the District Superintendent, the SRO may provide such information to the Principal of the school in which a minor student is enrolled and the Principal shall be a designee of the Superintendent for the receipt of such information.
 11. **Costs.** In exchange for the provision of SRO services, the District shall pay City as follows \$92,000.00 annually for each Officer. Overtime expenditures for school related events will be paid for by the City. Contract extensions and inflation increases to the flat rate will be discussed annually in May.
 12. **Feedback and Evaluation.** The District and City agree on the importance of evaluating the SRO program. The District and City will work together to develop and implement procedures to provide periodic feedback and evaluation data for the purpose of measuring the program's effectiveness.
 13. **Nondiscrimination.** SROs shall not discriminate against or treat any person differently on the basis race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information; a

perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

The Superintendent or designee shall periodically report to the Board disaggregated data on student interactions with SROs to evaluate the appropriateness of such interactions and ensure compliance with nondiscrimination policies and practices. Such reports may include the number of arrests and referrals for prosecution, the number of reports provided to the school or district regarding student misconduct, or other actions taken by SROs with respect to individual students or others on campus.

As necessary, the Superintendent or designee shall develop and implement practices to prevent disproportionality of student interactions with SROs based on student characteristics and to minimize the potential for referrals of students into the juvenile justice system.

14. **Indemnification.**

14.1 The District shall indemnify, defend, and hold harmless the City, its officers, agents and employees from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this Agreement, caused in whole by any negligent or willful act or omission of the District, its officers, agents, employees, or anyone directly or indirectly acting on behalf of the District.

14.2 The City shall indemnify, defend, and hold harmless the District, its officers, agents and employees from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this Agreement, caused in whole by any negligent or willful act or omission of the City, its officers, agents, employees, or anyone directly or indirectly acting on behalf of the City.

14.3 It is the intention of the District and City that, where fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, subcontractors, and governing board.

14.4 Each party shall immediately notify the other party of any claims or legal actions arising out of the performance of this Agreement.

15. **Applicable Laws.** City shall provide the services specified in this Agreement in accordance with any applicable federal and state statutes, regulations, and directives.

16. **Amendments.** No modification, amendment or addendum to this Agreement shall be valid unless it is set forth in writing and is signed by the parties.
17. **Entire Agreement.** This Agreement constitutes the entire agreement between the District and City regarding the subject matter of this contract and supersedes all previous SRO agreements.
18. **Severability.** If any term or provision of this Agreement is determined to be unlawful or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected. Each term or provision of the Agreement shall be valid and enforced as written to the fullest extent permitted by law.
19. **Notices.** All notices concerning this Agreement shall be deemed to have been served when delivered via electronic mail to the District Superintendent or Chief of Police.

The parties have executed this Agreement on the date written below.

Hanford Joint Union High School District

By: _____
Victor Rosa
Superintendent

Date: _____

Hanford Police Department

By: _____
Parker Sever, Chief of Police

Date: _____

City of Hanford

By: _____
Mario Cifuentez, City Manager

Date: _____



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: D
-------------------------------	--------------------------

SUBJECT:

Administration: Approval of a contract with BBK Consulting Services for the full redistricting services, at a cost not to exceed \$45,000, including conducting the required public hearings, participation in public outreach meetings, and the online mapping tool, for the 2020 Census Redistricting Process.

RECOMMENDATION:

That the City Council, by motion, approve a contract with Best Best & Krieger LLP (BB&K) to perform Full Redistricting Services necessary for the completion of the 2020 Census Redistricting Process and authorize the City Manager to execute an agreement between BB&K and the City of Hanford.

BACKGROUND:

On June 1, 2021 staff received direction from the Council to establish a Public Process for Redistricting, including the use of outside consultants to assist with the process. The City Clerk's office requested proposals from Consultants interested in providing those services to the City and received just two proposals. After review by City staff and the City Attorney's office, it was decided that the proposal from BB&K was much more comprehensive and provided a scope of work necessary to meet all State and Federal requirements and deliver the best redistricting structure and mapping to the Citizens of Hanford. BBK offered two different levels of Services in their proposal. Staff is recommending that Council approve the Full Redistricting Services option:

Full Redistricting Services and the allocation service responsibility encompass the following:

- Ø Project setup and coordination
 - o BB&K will develop a demographic database including U.S. Census Bureau and California Statewide Database data
 - o 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)

- o BB&K will conduct initial telephonic discussion about data, communities of interest, project schedule, criteria, and special concerns of the jurisdiction
 - o BB&K will attend any virtual/telephonic calls to discuss project progress or answer questions
- Ø Plan development
- o BB&K will draft a memo on population balance and any potential divisions of “protected class” population concentrations in the existing election areas map
 - o BB&K will create two to four initial draft maps
 - o BB&K will analyze and prepare all whole or partial plans submitted by the public for presentation
 - o BB&K will convert all maps and reports to web-friendly versions
 - o BB&K will post all maps online to an interactive review website
 - o BB&K will create any additional or revised maps as requested
 - o BB&K will prepare the required ordinance for adoption of the final map
- Ø Plan implementation
- o BB&K will work with the county registrar of voters to implement the final adopted plan
- Ø Project website
- o BB&K will create, host, and update a dedicated project website such as maphanford2021.org
- Ø Paper and Excel-based map drawing kit
- o 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.
- Ø Online mapping tool
- o BB&K is committed to providing residents with technology to review draft maps and create and submit their own maps. BB&K’s preferred online mapping tool, Districtr, is user friendly and cost effective. The BB&K team will provide the Districtr public online mapping tool and train staff and community members in its use. Staff chose to add this option as 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.

Following the Council's approval and direction, staff will begin the process with a kick-off call

with BB&K's Project Leader, Stephanie Smith to begin the City's redistricting.

During the June meeting, Council also expressed interest in forming an Advisory Committee. The preferred consultant does not recommend the use of an advisory committee as an Advisory Committee will only be able to provide input on maps and not be able to conduct the required public hearings. Additionally, selecting an Advisory Committee at this time will likely delay the process and will result in an increase to the consultant service fees.

FISCAL IMPACT:

BBK will provide full redistricting services, including data analysis and mapping cost as well as the Online Mapping Tool, for a fixed fee of \$42,200, which has been approved as part of the City Clerk's FY 21/22 budget.

ATTACHMENTS:

BBK Proposal to the City of Hanford-c1



BEST BEST & KRIEGER
ATTORNEYS AT LAW

www.BBKlaw.com

INDIAN WELLS
IRVINE
LOS ANGELES
MANHATTAN BEACH
ONTARIO
RIVERSIDE
SACRAMENTO
SAN DIEGO
WALNUT CREEK
WASHINGTON D.C.

Proposal to Provide **Redistricting Consulting Services**

Presented to:

City of Hanford

July 9, 2021

Stephanie Smit
18101 Von Karman Avenue, Suite 100
Irvine, California 92611
(949)263-2611
stephanie.smith@bbklaw.com

Attachment: BBK Proposal to the City of Hanford-c1 (Admin: Approval of BBK Redistricting Consulting Services Proposal)

TABLE OF CONTENTS

Cover Letter1

 A Multi-Dimensional Challenge1

 What Makes Our Team Different1

Proposal3

 Proposed Team3

 Project Understanding.....4

 Scope of Work4

 Relevant Work and References7

 Cost/Fees8

 Conflicts9

APPENDIX A.....RESUMES

Attachment: BBK Proposal to the City of Hanford-c1 (Admin: Approval of BBK Redistricting Consulting Services Proposal)

COVER LETTER

July 9, 2021

EMAIL DELIVERY

Natalie Corral, City Clerk
City of Hanford
315-321 North Douty Street
Hanford, CA 93230
Email: ncorral@cityofhanfordca.com

Re: Proposal for Redistricting Services

Dear Ms. Corral,

Best Best & Krieger LLP (BB&K) is pleased to present this proposal to the City of Hanford (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 Hanford 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 Hanford. 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

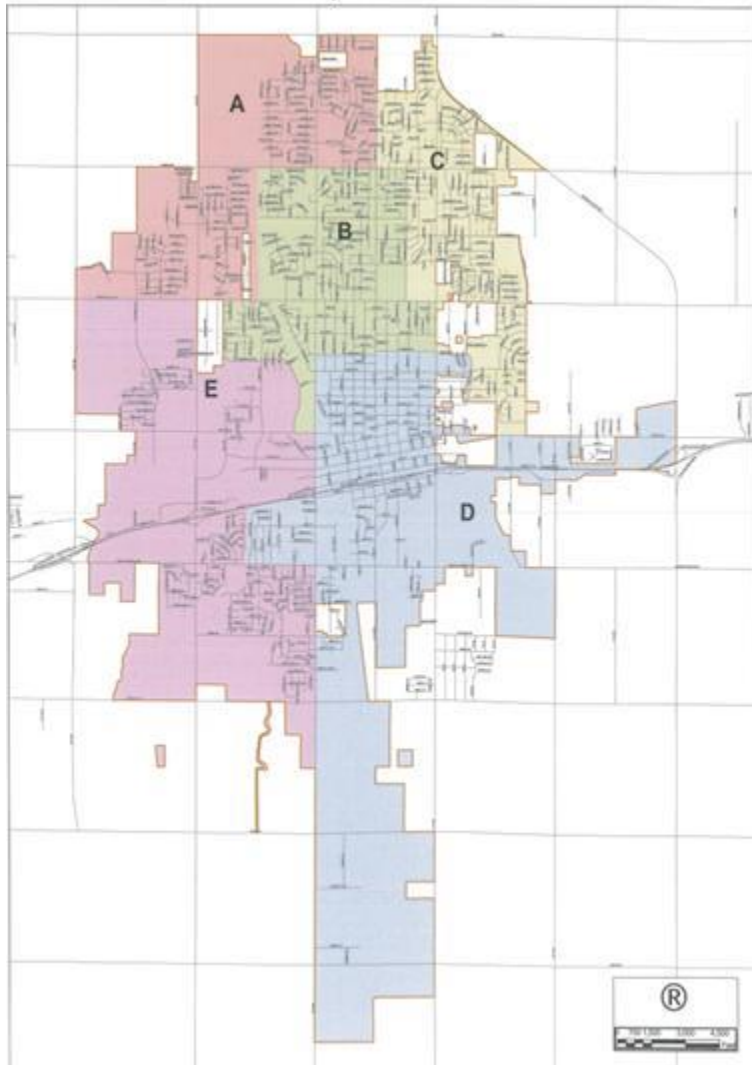
If you choose BB&K as your consultant for redistricting services, Stephanie Smith will serve as project manager and primary contact and ensure that all tasks are completed on time. As director of election services, she supervises BB&K's election services consulting initiative, which includes redistricting 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

The City of Hanford is a general law city which elects the five member City Council by district and last reviewed boundary maps in 2011, following the release of the 2010 decennial census data. The current council district boundary map is as shown below:



BB&K understands that the City desires to complete the redistricting process following release of the 2020 U.S. Census Data as required by Elections Code 21600 *et seq.*

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 Hanford 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 maphanford2021.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. BB&K’s preferred online mapping tool, Districtr, is user friendly and cost effective. If requested, the BB&K team will provide the Districtr public online mapping tool and train staff and 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. If the City's meeting is virtual/telephonic, BB&K will provide Basic Census Services at a fixed fee of \$3,750. 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 \$40,000. 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. If the City's one public outreach meeting is virtual/telephonic, BB&K will provide Full Redistricting Services at a fixed fee of \$38,750.

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. The cost for Districtr is \$2,200.

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 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 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.



AGENDA STAFF REPORT

MEETING DATE: 9/7/2021	AGENDA SECTION: E
-------------------------------	--------------------------

SUBJECT:

Council: Discussion of Annual Conference Resolutions; Approval of the City's position on the resolutions, and Direction to the voting representative to advance the City's position at the League of California Cities Annual Conference.

RECOMMENDATION:

That the City Council, by motion, Discuss the Annual Conference Resolutions; Approve the City's position on the resolutions, and Direct to the voting representative to advance the City's position at the League of California Cities Annual Conference.

BACKGROUND:

The League's 2021 Annual Conference is scheduled for September 22-24, 2021 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (during the General Assembly), scheduled on Friday, September 24 at the SAFE Credit Union Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, the City Council has already designated Mayor Ramirez as the voting delegate and Councilmembers Morrow and Saltray as alternates, in the event that the designated voting delegate is unable to serve in that capacity.

The policy issues to be voted on at this year's conference are:

1. Resolution in Support of Online Sales Tax Equity; and
 2. Resolution in Support of Securing Funding for Railroad Property Maintenance within City Boundaries
-
1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT
PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY

BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

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

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

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

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

This change has created a situation where most cities in California - more than 90%, in fact - are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers. This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

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

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

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

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

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

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

whether rail operators are properly managing the right-of-way itself.

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

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

The State of California has record revenues to provide CPUC with funding not only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.

FISCAL IMPACT:

ATTACHMENTS:

2021 Resolutions Packet



Annual Conference Resolutions Packet

2021 Annual Conference Resolutions



September 22 - 24, 2021

INFORMATION AND PROCEDURES

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

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

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

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

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

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

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

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

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

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

Guidelines for Annual Conference Resolutions

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

KEY TO ACTIONS TAKEN ON RESOLUTIONS

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

Number Key Word Index Reviewing Body Action

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

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

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS (*Continued*)

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

KEY TO REVIEWING BODIES

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

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

KEY TO ACTIONS TAKEN

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

Procedural Note:

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

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

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

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

Referred to: Revenue and Taxation Policy Committee

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

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

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

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

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

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

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

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

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

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

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

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

Background Information to Resolution

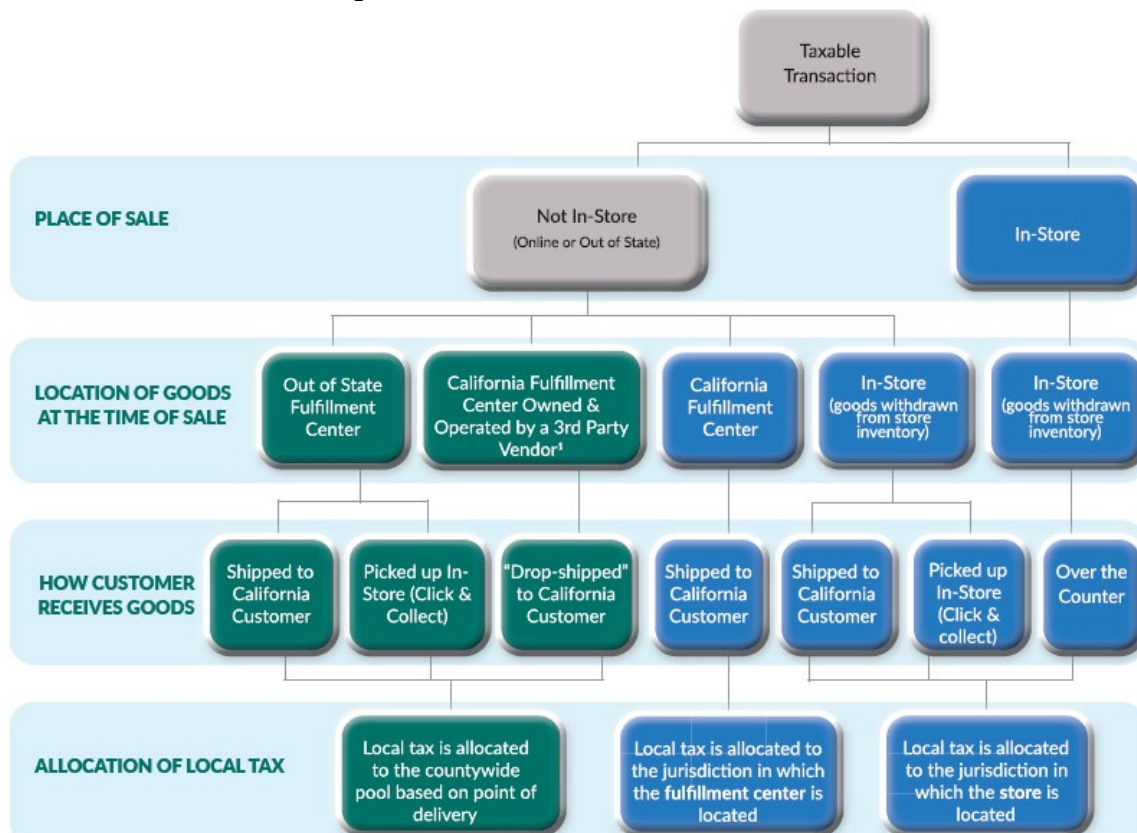
Source: City of Rancho Cucamonga

Background:

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

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

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



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

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

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

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

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

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

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

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

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

LETTERS OF CONCURRENCE

Resolution No. 1



July 19, 2021

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

Dear President Walker:

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

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

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

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)

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

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

Sincerely,



Curt Emick
Mayor



July 21, 2021

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

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

Dear President Walker:

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

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

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

City of El Cerrito
Re: Letter of Support – RC League Resolution
Page 2 of 2

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

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

Sincerely,



Paul Fadelli, Mayor
City of El Cerrito

cc: El Cerrito City Council
City of Rancho Cucamonga

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



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

July 14, 2021

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

Dear President Walker:

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

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

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

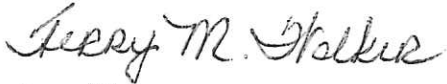
The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably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

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

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

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

Sincerely,



Terry Walker
Mayor



CITY OF LA VERNE CITY HALL

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

July 19, 2021

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

Dear President Walker:

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

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

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



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

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

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

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

Sincerely,



Bob Russi
City Manager
City of La Verne

Steve Croft
Vice Mayor

Ariel Pe
Council Member



Jeff Wood
Mayor

Vicki L. Stuckey
Council Member

Todd Rogers
Council Member

July 15, 2021

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

Dear President Walker:

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

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

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

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

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

Sincerely,

Jeff Wood
Mayor

Lakewood



CITY OF MOORPARK

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

July 14, 2021

TRANSMITTED ELECTRONICALLY

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

Dear President Walker:

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

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

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)

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

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

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

Sincerely,



Janice S. Parvin
Mayor

cc: City Council
City Manager

The People are the City



Mayor
CRAIG S. GREEN

Mayor Pro Tem
CHAD P. WANKE

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

City Clerk:
ROBERT S. MCKINNELL

City Treasurer
KEVIN A. LARSON

City Administrator
DAMIEN R. ARRULA

401 East Chapman Avenue – Placentia, California 92870

July 14, 2021

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

Dear President Walker:

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

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

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

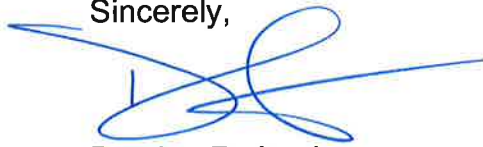
The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably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

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

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

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

Sincerely,



Damien R. Arrula
City Administrator

City of
SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager

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

July 19, 2021

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

Dear President Walker:

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

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

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

City of
SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager

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

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

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

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

Sincerely,



Leyne Milstein (Jul 19, 2021 14:48 PDT)

Leyne Milstein
Assistant City Manager

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:

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

Background:

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

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

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

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

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

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

Sales and Use Tax in California

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

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

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

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

Generally, allocations are based on the following rules:

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

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

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

Online Sales and Countywide Pools

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

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

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

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

Concentration of Online Sales Tax Revenue and Modernization

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

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

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

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

State Auditor Recommendations

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

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

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

The Auditor's report makes the following recommendation:

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

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

Cal Cities Revenue and Taxation Committee and City Manager Working Group

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

Cal Cities City Manager Sales Tax Working Group Recommendations

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

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

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

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

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

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

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

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

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

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

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

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

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

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

Staff Comments:

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

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

More Data is Needed to Achieve Equity Based Approach

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

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

Impact of Goods Movement Must Be Considered

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

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

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

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

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

Clarifying Amendments

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

Fiscal Impact:

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

Existing Cal Cities Policy:

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

Support:

The following letters of concurrence were received:

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

City of Moorpark
City of Placentia
City of Sacramento

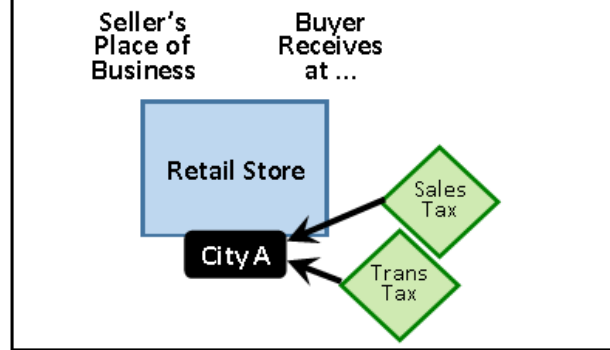
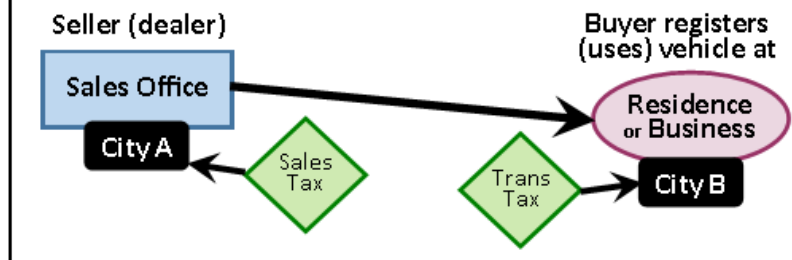
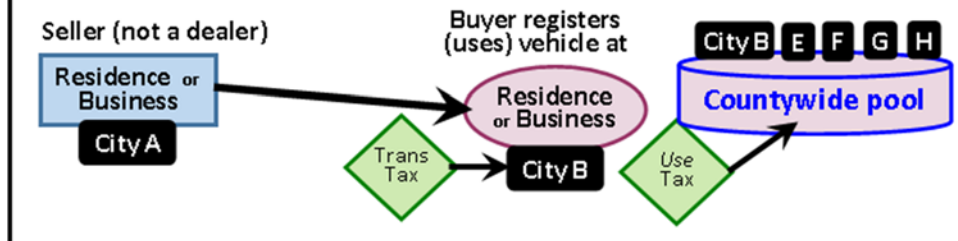
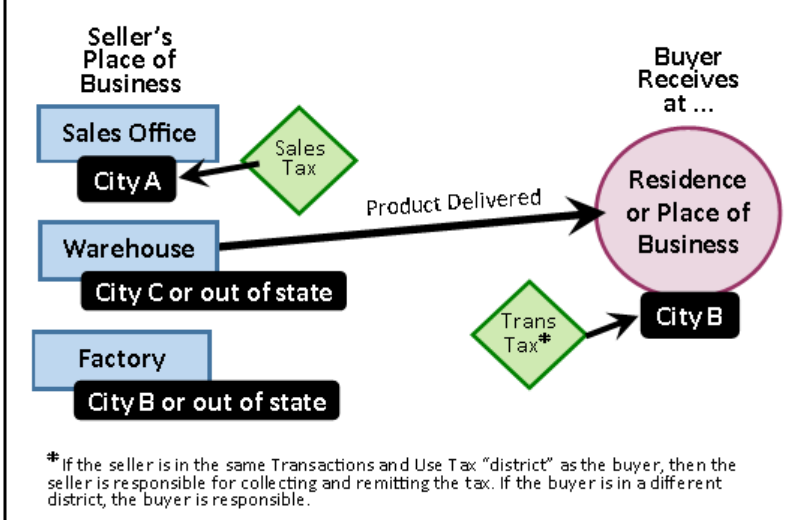
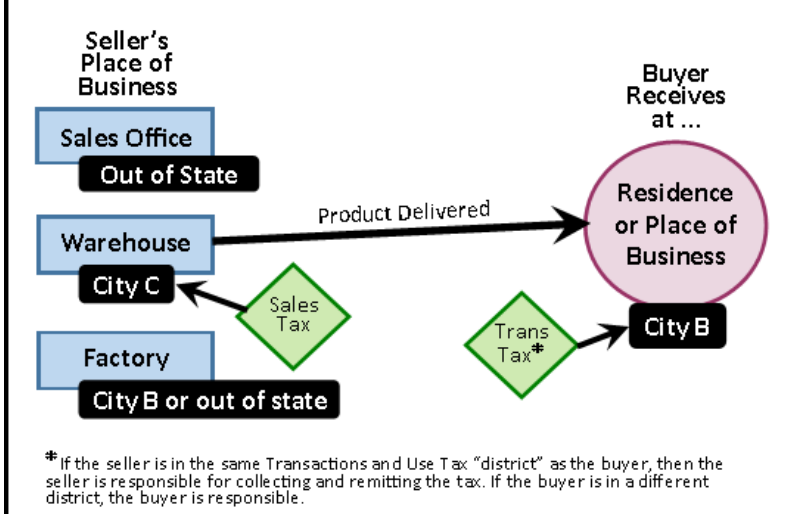
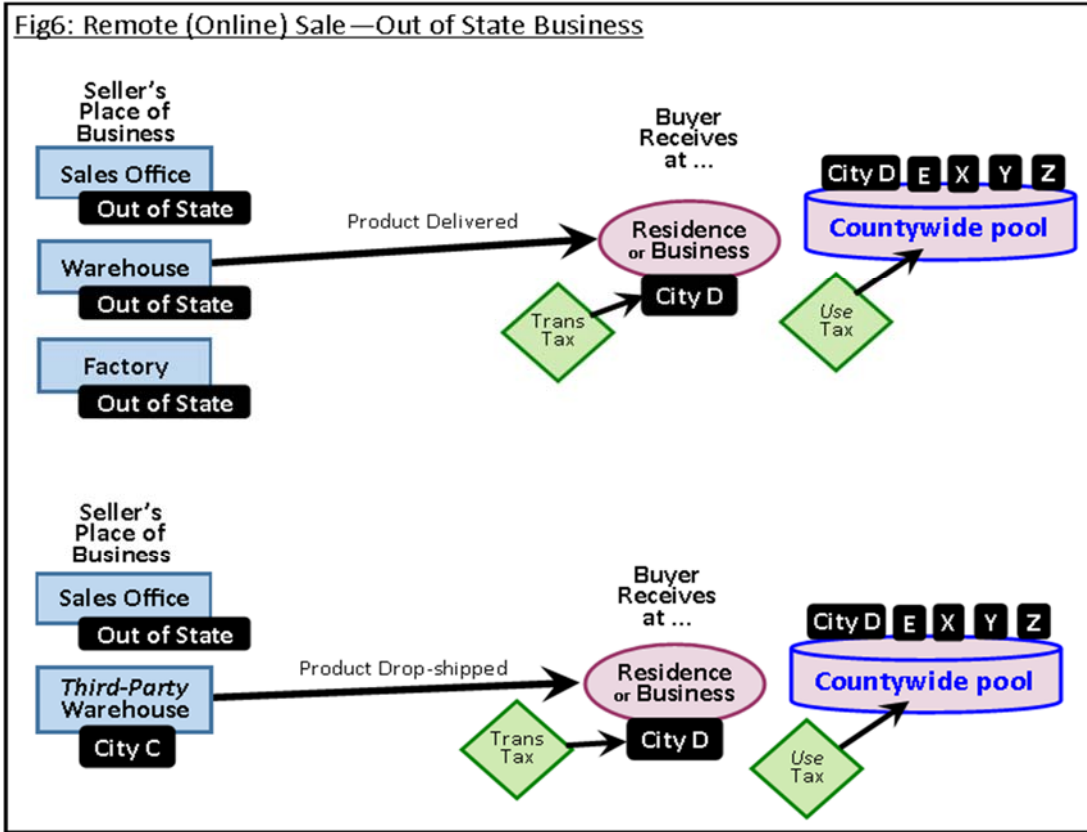
Fig1: Typical "Over the Counter" TransactionFig2: Dealership Automobile SaleFig3: Private Party Automobile Sale

Fig4: Remote (Online) Sale — In-State Business Office**Fig5: Remote (Online) Sale — In-State Warehouse, Out-of-State Sales Office**



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

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

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

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

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

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

The Source of Origin Based Sourcing Problems

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

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

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

Moving to Destination Sourcing: The Concept⁷

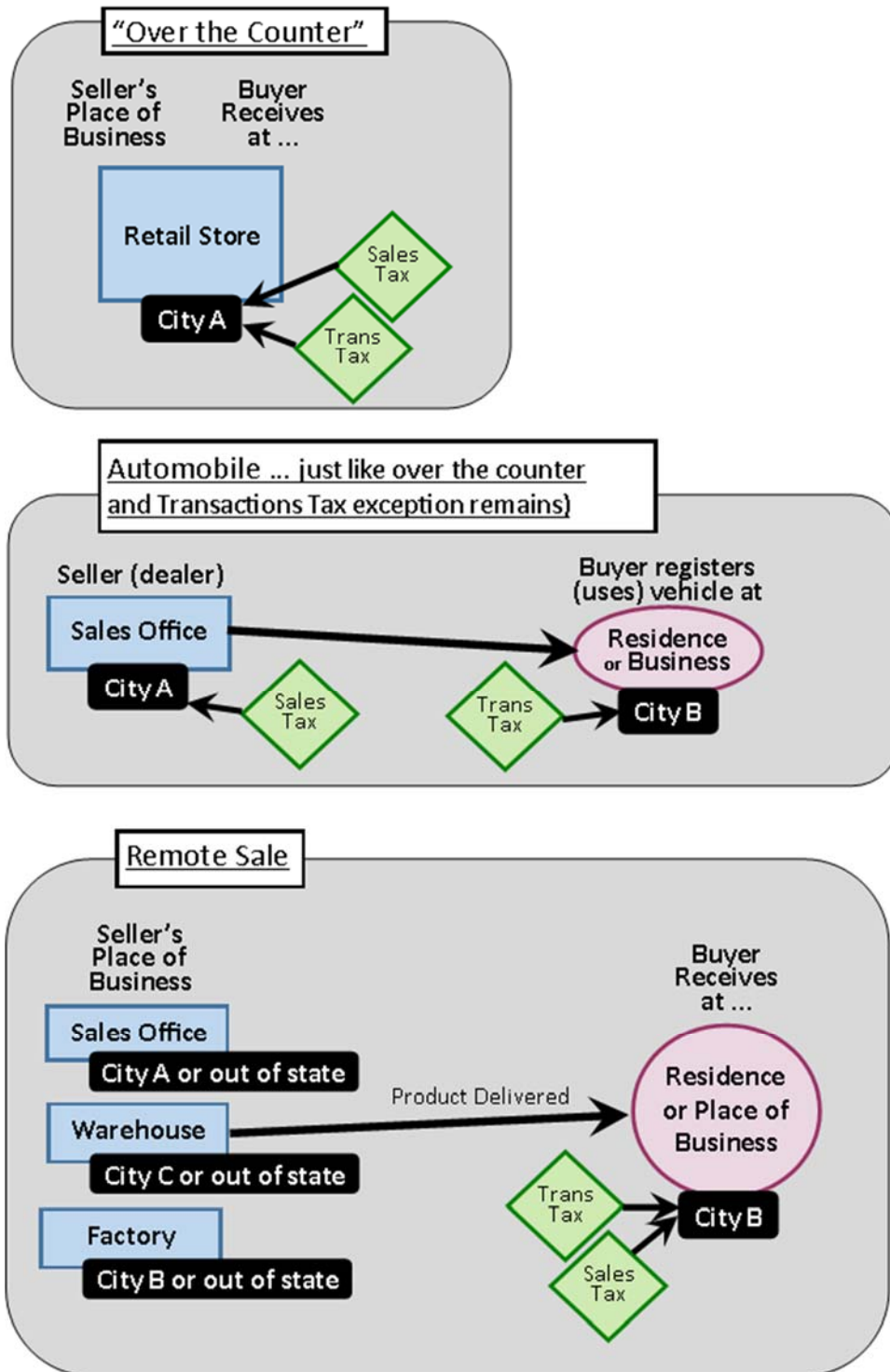
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

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

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

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

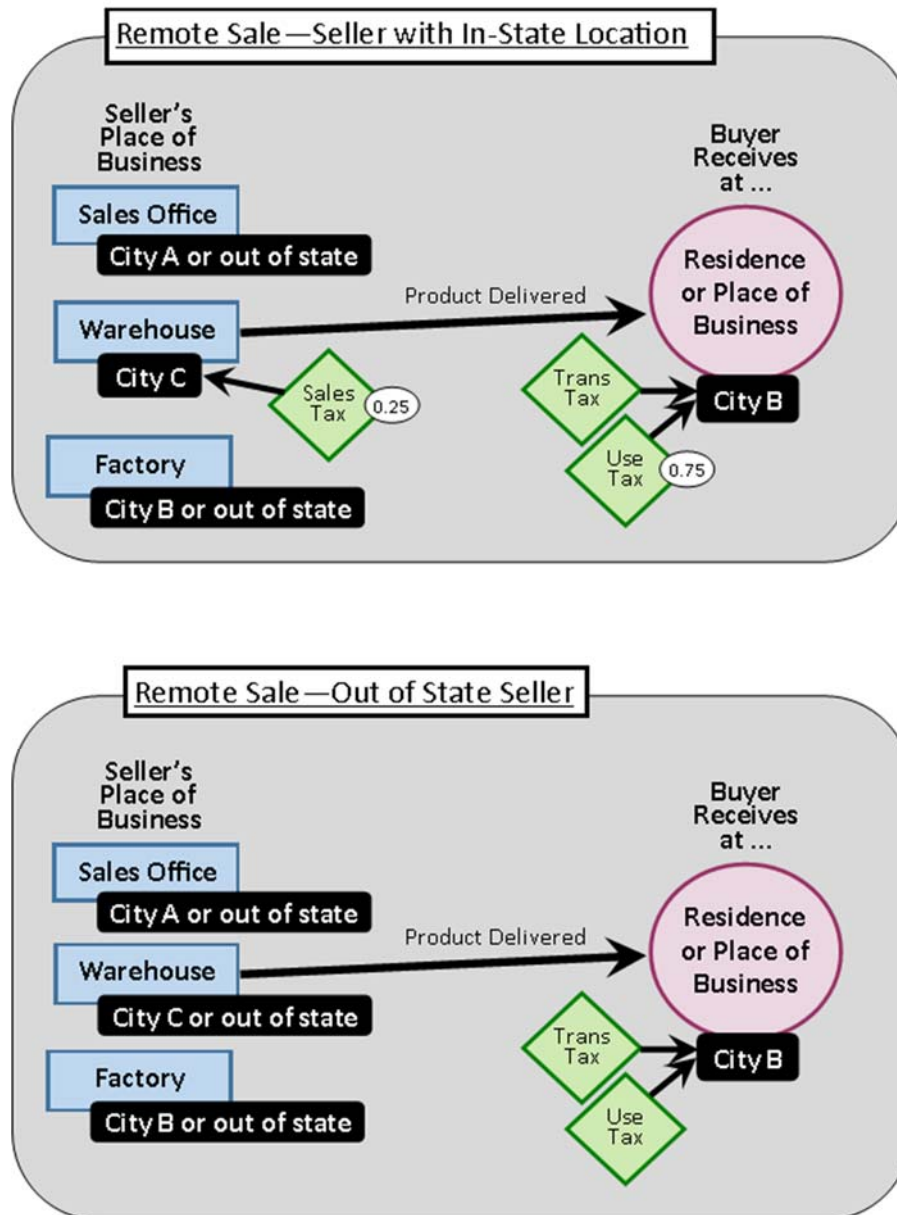
Destination Sourcing Scenario 1: Full-On



CaliforniaCityFinance.com

Destination Sourcing Scenario 2: Split Source

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



mjgc

CaliforniaCityFinance.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: City of South Gate

Concurrence of five or more cities/city officials:

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

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

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

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

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

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

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

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

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

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

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

Background Information to Resolution

Source: City of South Gate

Background:

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

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

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

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

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

LETTERS OF CONCURRENCE

Resolution No. 2



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

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

RE: City of South Gate Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

Marco Barcena
Mayor

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



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

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

RE: City of South Gate Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

Lisseth Flores

Lisseth Flores
Councilwoman

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



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

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

RE: City of South Gate Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

Alicia Romero
Mayor

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



CITY OF COMMERCE

July 20, 2021

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

RE: Railroad Oversight Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

Mayor Leonard Mendoza

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

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

July 21, 2021

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

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

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

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

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

Sincerely,



Jose Gonzalez
Mayor

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



City of El Segundo

Office of the Mayor

July 16, 2021

Elected Officials:

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

Appointed Officials:

Scott Mitnick,
City Manager
Mark D. Hensley,
City Attorney

Department Directors:

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

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

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

RE: City of South Gate Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

Drew Boyles
Mayor of El Segundo

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

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



CITY OF GLENDORA CITY HALL

(626) 914-8200

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

July 14, 2021

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

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

Dear President Walker:

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

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

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

Sincerely,

Karen K. Davis
 Mayor

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

PRIDE OF THE FOOTHILLS



Office of the Mayor

July 21, 2021

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

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

President Walker:

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

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

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

Sincerely,

Graciela Ortiz
Mayor, City of Huntington Park

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

Enclosure(s)

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



CITY OF LA MIRADA

DEDICATED TO SERVICE

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

July 19, 2021

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

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

President Walker:

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

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

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

Sincerely,

CITY OF LA MIRADA

Ed Eng
Mayor

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

Ed Eng, EdD
Mayor

Anthony A. Otero, DPPD
Mayor Pro Tem

Steve De Ruse, D. Min.
Councilmember 55

John Lewis, Esq.
Councilmember

Andrew Sarega
Councilmember

Jeff Boynton

July 22, 2021

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

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

Dear President Walker,

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

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

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

Sincerely,



THOMAS B. MODICA
City Manager

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





OFFICE OF THE
MAYOR
MARISELA SANTANA

City of
LYNWOOD

Incorporated 1921

11330 Bullis Road, Lynwood, CA 90262
(310) 603-0220 x 200



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

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

RE: City of South Gate Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

Marisela Santana, Mayor

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



July 19, 2021

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

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

President Walker:

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

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

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

Sincerely,

Kimberly Cobos-Cawthorne
Mayor, City of Montebello

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



BRENDA OLMOS
Mayor

VILMA CUELLAR STALLINGS
Vice Mayor

ISABEL AGUAYO
Councilmember

LAURIE GUILLEN
Councilmember

PEGGY LEMONS
Councilmember

July 19, 2021

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

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

President Walker:

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

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

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)



Steve Carmona
City Manager

City of Pico Rivera
OFFICE OF THE CITY MANAGER

6615 Passons Boulevard · Pico Rivera, California 90660

(562) 801-4371

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

City Council

Raul Elias

Mayor

Dr. Monica Sánchez

Mayor Pro Tem

Gustavo V. Camacho

Councilmember

Andrew C. Lara

Councilmember

Erik Lutz

Councilmember

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 14, 2021

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

RE: City of South Gate Annual Conference Resolution

President Walker:

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

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

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

Sincerely,

City Manager
City of Pico Rivera

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

Attachment: 2021 Resolutions Packet (Admin: Position on Conference Resolutions)

League of California Cities Staff Analysis on Resolution No. 2

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

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

Summary:

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

Background:

California Public Utilities Commission (CPUC) Railroad Oversight

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

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

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

CPUC's Ability to Address Homelessness on Railroads

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

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

[Commission GO 26-D](#), which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California

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

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

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

State Budget Allocations – Homelessness

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

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

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

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

Cities Railroad Authority

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

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

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

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

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

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

Fiscal Impact:

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

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

Existing League Policy:

Public Safety:

Graffiti

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

Transportation, Communications, and Public Works

Transportation

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

Housing, Community, and Economic Development

Housing for Homeless

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

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

Staff Comments:

Clarifying Amendments

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

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

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

Support:

The following letters of concurrence were received:

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

ATTACHMENT A

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

Source: City of South Gate

Concurrence of five or more cities/city officials

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

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

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

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

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

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

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

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

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

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

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



**AGENDA
STAFF REPORT**

MEETING DATE: 9/7/2021	AGENDA SECTION:
-------------------------------	------------------------

SUBJECT:
Council Future Agenda Items

FISCAL IMPACT:

ATTACHMENTS:
Council Future Agenda Items

Council Future Agenda Items				
Originated Date	Item	Originator	Staff Lead	Date Estimate
4/7/20	Discussion of Pay for Parking Options in the Downtown Area	Council Consensus	John Doyel	9/21/2021
9/9/20	Revised Refuse Ordinance	Public Works	Jim Ross	10/5/2021
6/18/20	Discussion of Courthouse improvements and financing options	Council Consensus	Brad Albert	10/5/2021
8/17/2021	Discussion regarding Council support of a Resolution in support of Local Control for Cities and their residents	Council Consensus	Mario Cifuentez	9/21/2021
8/17/2021	Overview of City Code Enforcement and discussion on Blighted Areas and Nuisance issues	Council Consensus	Various Staff	10/5/2021

Attachment: Council Future Agenda Items (Council: Future Agenda Items)