



LYNNWOOD CITY COUNCIL Work Session

This meeting will be held electronically via Zoom. See the City of Lynnwood website for details at

<https://www.lynnwoodwa.gov/Government/City-Council/City-Council-Meetings>

TUESDAY, SEPTEMBER 7, 2021 6:00 PM

-
1. Roll Call
 2. COMMENTS AND QUESTIONS ON MEMO ITEMS
 3. WORK SESSION ITEMS
 - A. Introduce Diversity, Equity, and Inclusion Commission candidate Jeanna Kim
Evan Chinn
[Kim, Jeanna - DEIC_Redacted.pdf](#)
[Jeanna Kim_RESUME__Lynnwood DEI commission 2021_Redacted.pdf](#)
 - B. Introduce Diversity, Equity, and Inclusion Commission candidate Simreet
Dhaliwal.
Evan Chinn
[Dhaliwal, Simreet - DEI - Res_Redacted.pdf](#)
[Dhaliwal_Simreet_Resume_DEI_Redacted.pdf](#)
 - C. Introduce: Parks & Recreation Board Applicant Presley Morrissey
Lynn D. Sordel, Director
[Presley Morrissey Application_Redacted.pdf](#)
 - D. Community Justice Center Project Task Force Update and Presentation
Chief Jim Nelson, Lynnwood Police Department and WA State Representative
Lauren Davis, 32nd District
[Task Force Council Presentation.pdf](#)
 - E. American Rescue Plan Act Funding Immediate Needs Follow-up
Michelle Meyer, Director of Finance; Will Cena, Information Technology Director
[ARPA Presentation for 9.7 WS.pdf](#)
[Memorandum to City Council RE ARPA.pdf](#)
 4. MAYOR COMMENTS
 5. COUNCIL COMMENTS

6. EXECUTIVE SESSION

- A. Executive Session - Potential Real Estate transaction discussion
Lynn Sordel, Parks, Recreation and Cultural Arts Director

ADJOURN

MEMOS FOR FUTURE ACTION

Ordinance: Franchise Agreement with Puget Sound Energy for Operations of Natural Gas Facilities

Les Rubstello, Deputy Public Works Director

[PSE Lynnwood Gas Franchise \(FINAL - 2021.08.05\).pdf](#)

Contract Award - Community Justice Center Construction

James Nelson, Police Chief; Chuck Steichen Deputy Chief; Michelle Meyer, Finance Director; Cathy Robinson, Interim Procurement Manager

[Procurement Report_Revised 081821_Final.pdf](#)

Contract Award - Community Justice Center Special Construction Inspection Consultant Services

Cathy Robinson, Interim Procurement Manager

[Procurement Report_Revised 081821_Final.pdf](#)

Contract Award - Community Justice Center Geotechnical Construction Testing Services

Cathy Robinson, Interim Procurement Manager

[Procurement Report_Final.pdf](#)

MEMOS FOR YOUR INFORMATION

CITY COUNCIL 3.A
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: Introduce Diversity, Equity, and Inclusion Commission candidate Jeanna Kim

DEPARTMENT CONTACT: Evan Chinn, Executive Office

SUMMARY:

Introduce DEIC Candidate Jeanna Kim

PRESENTER:

Evan Chinn

ESTIMATED TIME:

15

BACKGROUND:

Ms. Kim has applied to become a commissioner for the Diversity, Equity, and Inclusion Commission. She has passion for public health and has first-hand experience with growing up the daughter of small-business owners and Korean immigrants. She wants to make Lynnwood a better place for marginalized residents of all backgrounds.

SUGGESTED ACTION:

Meet and hear from candidate Jeanna Kim for suitability as a commissioner on DEIC.

PREVIOUS COUNCIL ACTIONS:

N/a

FUNDING:

N/a

VISIONS AND PRIORITIES ALIGNMENT:

Safe, Welcoming City

DEPARTMENT ATTACHMENTS

Description:

[Kim, Jeanna - DEIC_Redacted.pdf](#)

[Jeanna Kim_RESUME__Lynnwood DEI commission 2021_Redacted.pdf](#)

Board and Commission Application



Submission date: **13 June 2021, 9:35PM**
Receipt number: **76**
Related form version: **2**

All Are Welcome

Name **Jeanna Kim**

Address

Phone

Alternate Phone

Email Address

Are you a registered voter in the City of Lynnwood? **Yes**

Are you a registered voter somewhere else? **No**

Please choose the Board or Commission for which you are applying **Diversity, Equity and Inclusion Commission**

Why are you interested in serving on this board or commission? **I have a passion for social justice, and a desire to help the Lynnwood community become a more diverse and inclusive community.**

What do you perceive as the role of a board or commission member? **From what I understand, it sounds like commission members serve as the voice and perspective of the community, and potentially help advise city officials on how to improve the success of initiatives that will lead to a more diverse, equitable, and inclusive community.**

How would you represent the interests of the community? I grew up in a Korean-American household, with low-income immigrant parents who ran a small drycleaning store. This upbringing has shaped my understanding of the needs and perspectives of immigrants, small business owners, Asian-Americans, and second-generation immigrant struggles. I've also done graduate work in global health policy, for which I wrote a thesis on the determinants of vaccine completion amongst US-based Somali refugees. This training demonstrates that I have an interest in the health and well-being of other groups outside of those within the sphere of my personal experiences, and that I've thought deeply about what it takes for health equity to be achieved for marginalized communities.

List any experiences that may assist you in serving in this role. Although I have not served on a city board or commission in the past, I bring a unique range of perspectives that may broaden the reach of the Diversity, Equity, and Inclusion Commission. My areas of expertise include the following areas: Science, Health, Music/Arts, Social Justice, Communications, Partnerships, Community Engagement, Asian-American issues, immigrant issues, low-income household issues, religious communities, small business owner issues, at-risk youth, and risk-factors for human trafficking. I would be happy to dive deep into any of these topics.

List any other information you would like us to consider.

Optional resume upload



Date

06/13/2021

Jeanna Kim

Professional Summary

- Passionate campaigner for health equity, social justice, and community empowerment initiatives with extensive experience and discernment coordinating the logistic delivery of high-profile projects
- Proven ability to engage with vulnerable populations including at-risk youth, low-income households, immigrants, survivors of human trafficking, and people of color
- Experienced subject-matter translator and mediator with over a decade of experience building bridges between teams as well as experts & lay-people
- Personal experience with social, academic, and employment obstacles as a woman of color from a low-income, blue-collar, immigrant family living in an affluent community

Education

M.Sc. Global Health Policy **London School of Hygiene and Tropical Medicine**

London, UK (distance learning) — current

Thesis Approved: *The Determinants of Vaccine Completion Amongst Somali Refugees in Minnesota, USA (2015 - 2018)*

M.M. Music History **San José State University**

San José, CA — 2018

B.S. Biological Sciences, Molecular and Cellular Biology **University of California at Davis**

Davis, CA — 2011

Work Experience

Associate Project Manager **Bristol Myers Squibb**

Seattle, WA — 8/2020 to current

- **Change Management:** Primary driver for a successful IOCT-wide adoption of SharePoint for team-owned files, despite initial customer resistance to using the platform. Gathered requirements from users, researched comprehensive options with IT experts, identified barriers to adoption, and delivered viable solutions for scientists and business leaders. Partnered with key stakeholders to plan and execute the launch of 29+ team and project sites functioning cohesively as an interconnected network. Actively sustaining user adoption, engagement, and enthusiasm after site launches through ongoing user support.
- **Training:** Identify and resolve user barriers to SharePoint adoption by conducting 1:1, small group, and large-group training sessions to improve fluency with Modern SharePoint, meta-data, and cloud-based Office 365 tools.
- **Communication:** Identified, escalated, and translated scientists' IT pain points to senior business leaders leading to cooperative, systems-level remediation efforts. Established rapport and trust with customer stakeholders including lab-based scientists, project leads, research project managers, senior business leaders.

- **Project Management:** Supporting Director of Alliances with the design, setup, transfer of legacy documents to integrated department SharePoint site. Maintaining a comprehensive list of status and next milestones/inflection points. Managing meeting agendas followed by the writing and distribution of meeting minutes and key actions items. Tracking and follow up with internal leads for collaborations for milestone/deliverable updates.

Graduate Intern, Knowledge Management PATH

Seattle, WA — 6/2018 to 9/2018

- **Project Management:** Collated, organized, and distilled information from a broad range of stakeholders to present department-level changes in knowledge transfer systems for Program Officers
- **Knowledge Management:** Created detailed guidance documents and information management templates to streamline digital knowledge transfer within department

Cancer Research Laboratory Manager Fred Hutchinson Cancer Research Center

Seattle, WA — 2016 to 2018

- **Administrative Management:** Managed internal research operations and administrative partnerships with finance, HR and regulatory departments. Designed and implemented new processes to match the team's 50% growth
- **Information Management and Communications:** Maintained organized files and records with a digital system for tracking, monitoring and prioritizing tasks and projects. Presented technical research updates at weekly team meetings. Co-authored a peer-reviewed research article published in *Nature Cell Biology*

Senior Research Project Manager Stanford University

Stanford, CA — 2010 to 2016

- **Research Project Management:** Defined, mapped, prioritized, and tracked project objectives, timelines, milestones, and deliverables for translational research studies leading to groundbreaking results that generated \$5.5 million dollars in continuing research grants, a novel diagnostic strategy, and a licensed drug patent for both therapeutic and prophylactic use
- **Data:** Developed data management systems to collect and report key research metrics across 3, full-cycle medical research projects. Trusted with studying confidential health information from 250 patient medical records.
- **Writing and Communications:** Generated reports for grant applications. Presented technical data at team meetings. Co-authored 4 published research articles in journals including *Science Translational Medicine*
- **Administrative Management:** Managed core administrative research operations in partnership with all regulatory, finance, HR, IT, EH&S, facilities, and administrative staff. Coordinated scheduling and logistics for team meetings. Collated input and information from senior team members, identified and addressed barriers to progress, and communicated information to project contributors and external collaborators across functional roles

Work
Experience
cont.

Residential Safe-House Staff for Sex and Labor Trafficking Survivors
Freedom House

A San Francisco Bay Area, non-profit, residential safe house for recovering domestic and international survivors of sex and labor human trafficking.

San Francisco Bay Area — 2010 to 2013

- **Community Engagement & Advocacy:** Coordinated monthly community engagement events leading to \$15,000 in cash donations & social enterprise income for survivors. Conducted regular public speaking engagements to educate the community about local and international human trafficking issues, solicited donations, and recruited volunteers. Audience sizes ranged from 20-250.
- **Large Event Planning:** Planned and executed event logistics for 3 annual galas by soliciting >\$2000 in vendor donations, managing up to 20 volunteers, and coordinating the registration of 500 guests leading to a net income of >\$100,000 per event. Duties also included donor communications and prospect research
- **Strategic Partnerships:** Initiated and managed both short and long-term strategic partnerships with business donors, grassroots constituencies, and community agencies.
- **On-call Shelter Administrator:** Managed the evening and weekend on-site operations of the safe house. Calmly intervened and deescalated conflict or crisis situations, identified appropriate responses to emergency situations, and fostered a supportive environment for residential clients

Computer

- Microsoft Office 365 (including Outlook, Word, Excel, PowerPoint, SharePoint, and Teams), Adobe Photoshop, DropBox, BOX, Google Drive, GraphPad Prism, Salesforce, & MS Project.
- Proficient in both Mac and Windows operating systems
- Strong track record of quickly and intuitively mastering new software programs

Additional
Experiences

Administrative Volunteer

San Francisco City Impact

A local community intervention center, serving low-income and homeless residents.

San Francisco, CA — 2014 to 2015

- **Data Migration:** Spearheaded donor & volunteer data migration from paper records to Salesforce database
- **Graphic Design:** Produced and edited printable marketing materials for fundraising and volunteer events

Community Tutor & Education Mentor

The Community College Foundation

Daly City, CA — 2015 to 2016

- **1-on-1 Tutor:** Tutored and mentored 14 low-income, at-risk, elementary and middle school students of color from a broad range of low-income immigrant families. 92% of students showed post-tutoring improvement in Math and English subject test scores by at least one grade level
- **Collaboration:** Worked collaboratively with teachers and guardians to promote a tailored and supportive learning environment for each student. 75% of guardians requested continued tutoring after the program folded

Professional Development:

- **Project Management** – UC Berkeley Extension, BUS ADM X470
- **Change Management** – Stanford University, BUS 119
- Select Courses from The Seneca Training Institute, Oakland, CA
 - **Supervising Youth with Childhood Sexual Trauma**
 - **Compassionate Caregiving: The Developmental Impact of Trauma**
 - **Understanding Child Abuse and Caregiver Reporting Requirements**
 - **Positive Behavioral Interventions**

Languages

Fluent in English (speaking, writing, reading). Conversational Korean, Basic Spanish

Intellectual Property

Tian, Wen, Stanley G. Rockson, Xinguo Jiang, **Jeanna Kim**, and Mark R. Nicolls. LTB4 Inhibition to Prevent and Treat Lymphedema. Patent No. US10,500,178 B2. Issued December 10th, 2019.

Recent Research Publications

Carlson, Patrick*, Arko Dasgupta*, Candice A. Grzelak*, **Jeanna Kim***, Alexander Barrett, Ilsa M. Coleman, Ryann E. Shor, Erica T. Goddard, Jinxiang Dai, Emma M. Schweitzer, Andrea R. Lim, Sarah B. Crist, David A. Cheresh, Peter S. Nelson, Kirk C. Hansen, Cyrus M. Ghajar. "Targeting the perivascular niche sensitizes disseminated tumour cells to chemotherapy." *Nature Cell Biology* (2019).

Kim, Jeanna, "Change and Transformation: The Harp as a Symbol of Liminality in Tchaikovsky's The Nutcracker (1892)" (2018). *Master's Theses*. 4973.

Tian, Wen*, Stanley G. Rockson*, Xinguo Jiang*, **Jeanna Kim***, Adrian Begaye, Eric M. Shuffle, Allen B. Tu, Matthew Cribb, Zhanna Nepiyushchikh, Abdullah H. Feroze, Roham T. Zamanian, Gundeep S. Dhillon, Norbert F. Voelkel, Marc Peters-Golden, Jan Kitajewski, J. Brandon Dixon, Mark R. Nicolls*. "Leukotriene B4 antagonism ameliorates experimental lymphedema." *Science Translational Medicine* (2017).

* Denotes equal contribution

CITY COUNCIL 3.B
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: Introduce Diversity, Equity, and Inclusion Commission candidate Simreet Dhaliwhal.

DEPARTMENT CONTACT: Evan Chinn, Executive Office

SUMMARY:

Introduce DEIC Candidate Simreet Dhaliwhal

PRESENTER:

Evan Chinn

ESTIMATED TIME:

15

BACKGROUND:

Ms. Dhaliwal has applied to become a commissioner for the Diversity, Equity, and Inclusion Commission. She has a passion for public service, good government, and wants to make Lynnwood a better place for the diverse community living here.

SUGGESTED ACTION:

Meet and hear from Ms. Simreet Dhaliwhal for suitability as a commissioner on DEIC.

PREVIOUS COUNCIL ACTIONS:

N/a

FUNDING:

N/a

VISIONS AND PRIORITIES ALIGNMENT:

Safe, Welcoming City

DEPARTMENT ATTACHMENTS

Description:

[Dhaliwal, Simreet - DEI - Res_Redacted.pdf](#)

[Dhaliwal_Simreet_Resume_DEI_Redacted.pdf](#)

Board and Commission Application



Submission date: 27 June 2021, 7:10PM

Receipt number: 78

Related form version: 2

All Are Welcome

Name Simreet Dhaliwal

Address

Phone

Alternate Phone

Email Address

Are you a registered voter in the City of Lynnwood?

No

Are you a registered voter somewhere else?

Yes

Please choose the Board or Commission for which you are applying

Diversity, Equity and Inclusion Commission

Why are you interested in serving on this board or commission?

As a new resident of the city of Lynnwood, I am looking for a way to learn more about and connect with the community. I believe I can offer a much needed perspective to the Diversity, Equity and Inclusion Commission as a young woman of color.

What do you perceive as the role of a board or commission member?

The role of this commission member is to represent the diverse voices of the City of Lynnwood and ensure they are heard by the city officials. It is also to offer advice to the Mayor and City Council in matters that may concern historically underserved populations.

How would you represent the interests of the community? **I would recommend strategies that are both effective and efficient to the government of the city and would help the diverse residents the most. Having frequent discussions with community organizations followed by action will be something I push for.**

List any experiences that may assist you in serving in this role. **-Leadership Snohomish County -Legislative Session Aide in the State Senate -Intern & Fellow at the Alliance for Gun Responsibility -Public Policy Certificate from the University of Chicago**

List any other information you would like us to consider.

Optional resume upload



Date **06/27/2021**

SIMREET DHALI WAL

SUMMARY

Dedicated professional looking to advance in a career in public service. Especially interested in the intersection of social, health, and economic policy as well as acquiring expertise on the role of politics in policy-making. Strong communicational skills from multiple leadership positions, relationship building, and logistical responsibilities. Spearheaded key projects with self-efficiency and detail-orientation.

EDUCATION

University of Washington- BA in Medical Anthropology and Global Health (Minors in Law, Society, & Justice; Human Rights) September 2015- June 2019 | GPA: 3.32 | Major GPA: 3.73

- Presented at Undergraduate Research Symposium | 2019
- Studied abroad in London, UK: Instruction included Lectures on Multi-culturalism, History of Colonialism, and Public Health in the UK | Summer 2018
- Panelist at One of Many Event | UW 2019
- Annual Dean's List | 2018-2019
- Researched and publishing *Understanding the Motivations of Whistleblowers and Workers at the Hanford Nuclear Site*

University of Chicago- Certificate in Data & Public Policy | Summer 2019

- Classes included Quantitative Analysis in Public Policy and Introduction to R Programming
- Capstone Project: Violence and Trauma in Refugee Camps

EXPERIENCE

Executive Assistant for Economic & Workforce Development: Snohomish County | April 1, 2020- Present

- Supported the establishment and work of the Office of Economic Recovery & Resiliency to outline the response, recovery, and resiliency efforts to counteract the economic effects of the COVID-19 pandemic
- Advised in the work and progress of the Economic & Workforce Recovery Task Force including the Report on *Findings & Strategies to Support Economic Recovery During COVID-19*
- Provided administrative support to the Future Workforce Alliance Board of Snohomish County in strategic planning of workforce development in the County
- Connected with small businesses owners that were impacted by the COVID-19 pandemic to find resources

Legislative Session Aide: WA State Senate- Office of Senator Manka Dhingra | January 6, 2020- March 12, 2020

- Led meetings with stakeholders, advocacy groups, and constituents to guide the Senator's legislative agenda.
- Tracked bills as they moved through the legislative process
- Performed diverse office assistance functions as required such as scheduling, organizing, and maintaining office space

Electoral Fellow/ Field Organizer: Alliance for Gun Responsibility | June 17, 2019- December 6, 2019

- Worked individually and with volunteer network to complete canvassing shifts for a Seattle City Council campaign
- Collaborated with AGR staff on various projects such as communication and operations
- Compiled research reports and databases on gun violence prevention efforts

Legislative Session Intern: Alliance for Gun Responsibility | January 10, 2019- May 4, 2019

- Executed lobbying efforts in state legislature, by managing volunteer & legislator interactions
- Conducted solo & group projects that included compiling database of gun violence anniversaries, research reports, & editing of luncheon program

Dalip Singh Saund Fellow: National Sikh Campaign | May 15, 2019- February 15, 2020

- Conducted a solo project where I contacted and interviewed public officials to write an extensive political guide

Administrative Assistant: UW College of Engineering | June 17, 2017- August 1, 2018

- Provided administrative support to College of Engineering advisors and administrators through management of daily operations, schedules, and special projects.

VOLUNTEER EXPERIENCE/ OTHER

- Hanford Challenge Board of Ambassadors
- Leadership Snohomish County: Young Professionals Program
- Washington Immigrant Support Network: Language Justice Committee



CITY COUNCIL 3.C

CITY OF LYNNWOOD CITY COUNCIL

TITLE: Introduce: Parks & Recreation Board Applicant Presley Morrissey

DEPARTMENT CONTACT: Elena Flesher, Parks, Recreation and Cultural Arts

SUMMARY:

Position 7 of the Parks & Recreation Board is currently vacant. The Mayor recommends Presley Morrissey to fill the vacancy.

PRESENTER:

Lynn D. Sordel, Director

ESTIMATED TIME:

10

BACKGROUND:

Presley Morrissey submitted her application on April 23, 2021 and was interviewed by Director Sordel on June 24, 2021. She attended a Board meeting on June 2, 2021. She was interviewed by Mayor Smith on July 21, 2021. Ms. Morrissey lives within Lynnwood City limits.

Members of the Parks & Recreation Board serve for three-year terms, per City ordinance. The present status of the Board is as follows:

Position 1 - Holly Hernandez - Term Expires December 31, 2021

Position 2 - Mike Gladysz - Term Expires December 31, 2021

Position 3 - Katie McKeown - Term Expires December 31, 2022

Position 4 - Baba Darboe - Term Expires December 31, 2022

Position 5 - Whitney Stohr - Term Expires December 31, 2022

Position 6 - Nick Coelho - Term Expires December 31, 2023

Position 7 - Vacant - Term Expires December 31, 2023

SUGGESTED ACTION:

Interview Presley Morrissey, applicant for the Parks & Recreation Board.

FUNDING:

NA.

DEPARTMENT ATTACHMENTS

Description:

[Presley Morrissey Application_Redacted.pdf](#)

Board and Commission Application



Submission date: 23 April 2021, 9:56AM

Receipt number: 71

Related form version: 2

All Are Welcome

Name Presley Morrissey

Address

Phone

Alternate Phone

Email Address

Are you a registered voter in the City of Lynnwood? Yes

Are you a registered voter somewhere else? No

Please choose the Board or Commission for which you are applying Parks and Recreation Board

Why are you interested in serving on this board or commission? I enjoy the City's Park's and have a passion for the outdoor community. I also have a deep desire to serve my community.

What do you perceive as the role of a board or commission member? To review issues, collaborate with other members of the board, hear from and engage the community to make recommendations to the City as it pertains to the City's Park and Recreation facilities and locations.

How would you represent the interests of the community? I would represent the community with integrity and devotion by being prepared for all meetings, being an active listener when a problem arises and collaborating with other members to resolve issues and make recommendations that best serve the community.

List any experiences that may assist you in serving in this role.	U.S. Navy Veteran, Student, Maintenance Professional, Facilities Maintenance Manager with PMP and MBA in Dec 2021.
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List any other information you would like us to consider.	Please see cover letter and resume.
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Optional resume upload	<div></div> <div></div>
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Date	04/23/2021
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CITY COUNCIL 3.D

CITY OF LYNNWOOD CITY COUNCIL

TITLE: Community Justice Center Project Task Force Update and Presentation

DEPARTMENT CONTACT: Julie Moore, Executive Office

SUMMARY:

City Council will hear a presentation from co-chairs of the task force.

PRESENTER:

Chief Jim Nelson, Lynnwood Police Department and WA State Representative Lauren Davis, 32nd District

ESTIMATED TIME:

45

BACKGROUND:

During the August 2, 2021 Special Business Meeting, Council voted to postpone the construction contract award for the Community Justice Center project and to convene a task force to explore expanded medical, behavioral health, and drug/alcohol treatment services that could be incorporated into the CJC project. Mayor Nicola Smith enlisted a group of individuals ranging from service providers, medical professionals, partners from Snohomish County, financial and contracting professionals, building architects, and community representatives.

Chief Jim Nelson and Representative Lauren Davis are leading the task force, which has been meeting on a very condensed timeline to draft a proposal for Council's consideration.

Task Force Members:

- Chief Jim Nelson, Lynnwood Police Department, Co-Chair
- Representative Lauren Davis, 32nd District, Co-Chair
- Lynnwood Council Member Shannon Sessions
- Bill Valdez, KMB Architects
- Monty Hill, McKenzie Project Designer
- Mark Stern, MD, Volunteer consultant, retired corrections physician
- Ashley Dawson, Snohomish County LEAD (Law Enforcement Assisted Diversion)
- Cammy Hart-Anderson, Snohomish County Human Services
- Dan Sigler, Pioneer Human Services
- Joe Valentine, North Sound Behavioral Health Administrative Services Organization
- Rebecca Stradling, Community Health Centers of Snohomish County, Licensed Behavioral Health
- Lisa Uganda Soros, Lynnwood Chief's Community Advisory Committee
- Deputy Chief Chuck Steichen, Lynnwood Police Department
- Michelle Meyers, City of Lynnwood Finance Director

- Doug Raiford, City of Lynnwood Race & Social Justice Coordinator
- Julie Moore, City of Lynnwood Manager of Communications
- Charlotte Janovyak, Legislative Assistant to Representative Lauren Davis
- Cathy Robinson, City of Lynnwood Procurement Manager

SUGGESTED ACTION:

Review

DEPARTMENT ATTACHMENTS

Description:

[Task Force Council Presentation.pdf](#)



OVERALL SITE PLAN

LYNNWOOD COMMUNITY JUSTICE CENTER

09.07.2021

COMMUNITY RECOVERY CENTER
2190259.04



COURT
HOUSE

POLICE

NEW
JAIL

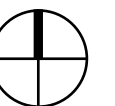
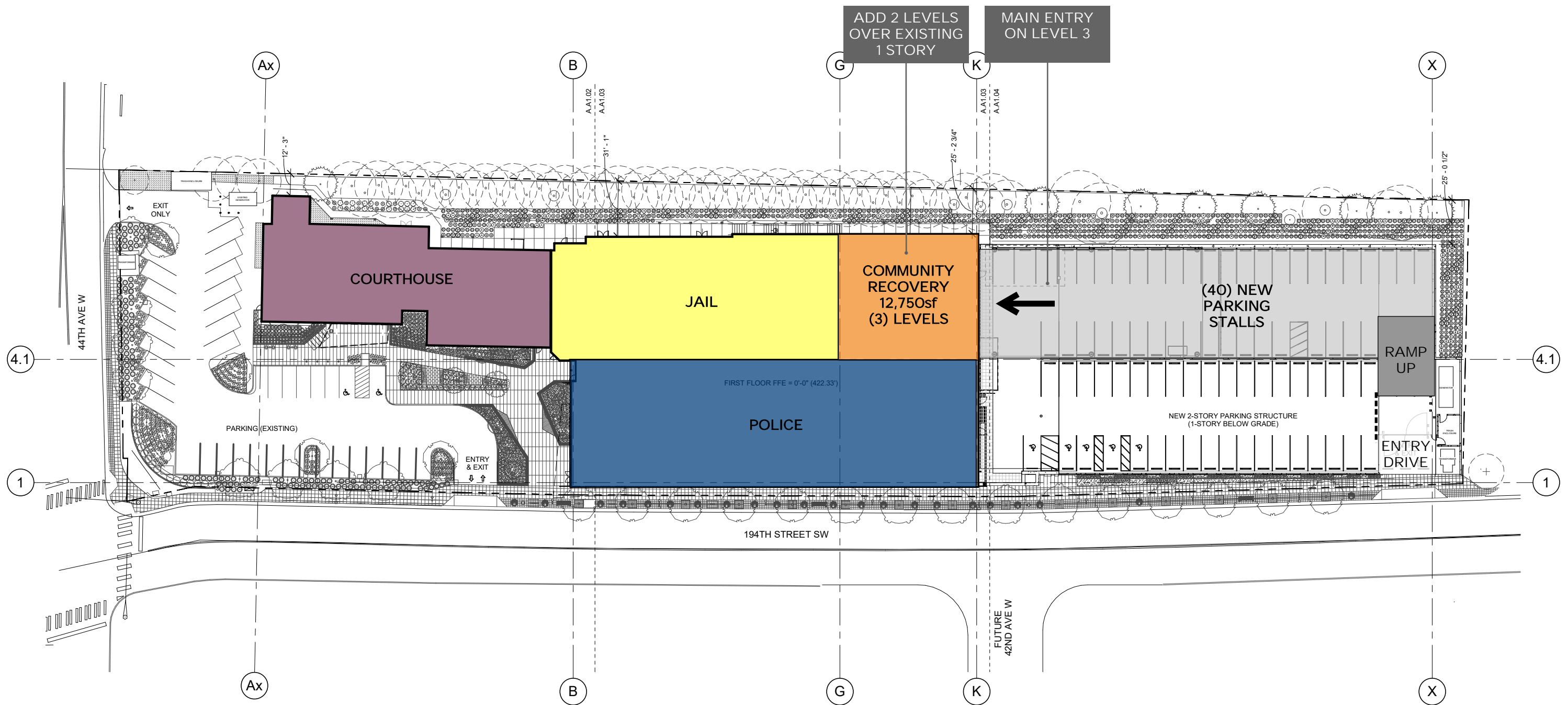
SECURE
PARKING



COMMUNITY
RECOVERY
CENTER

NEW PARKING
DECK
(40) CARS



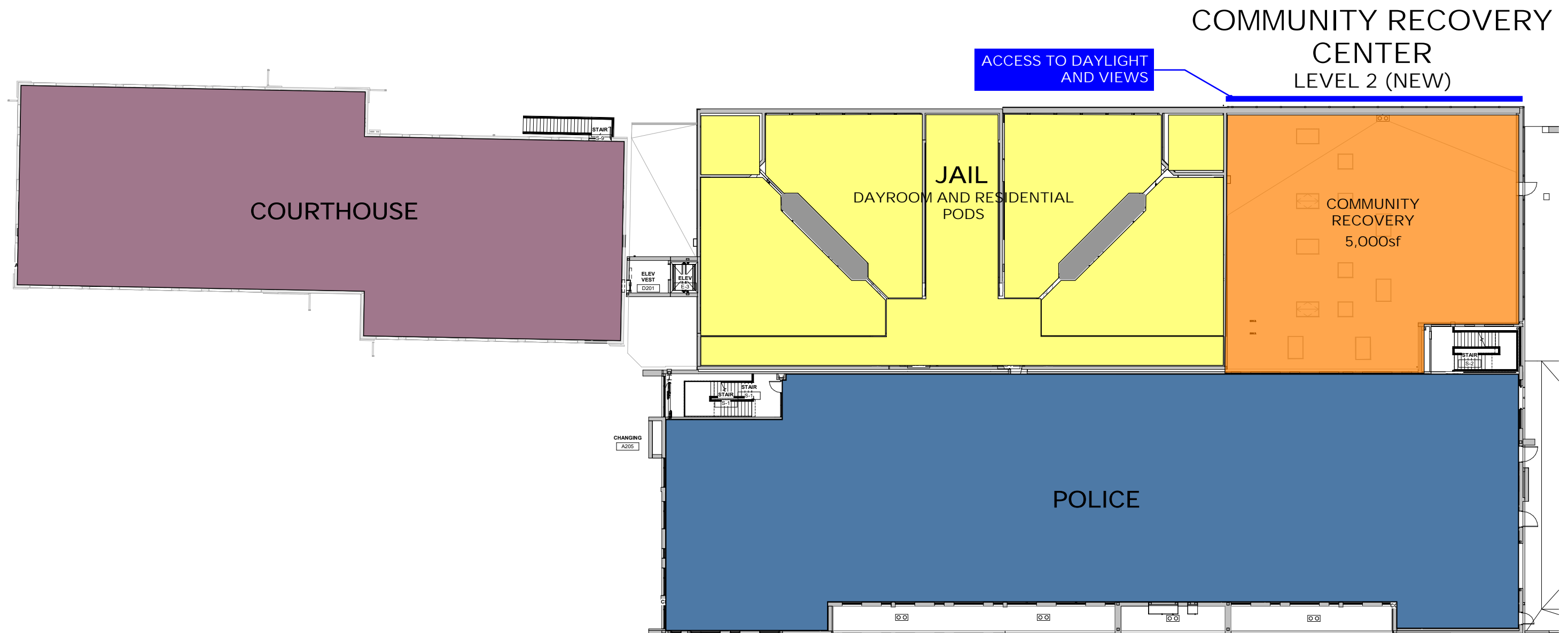


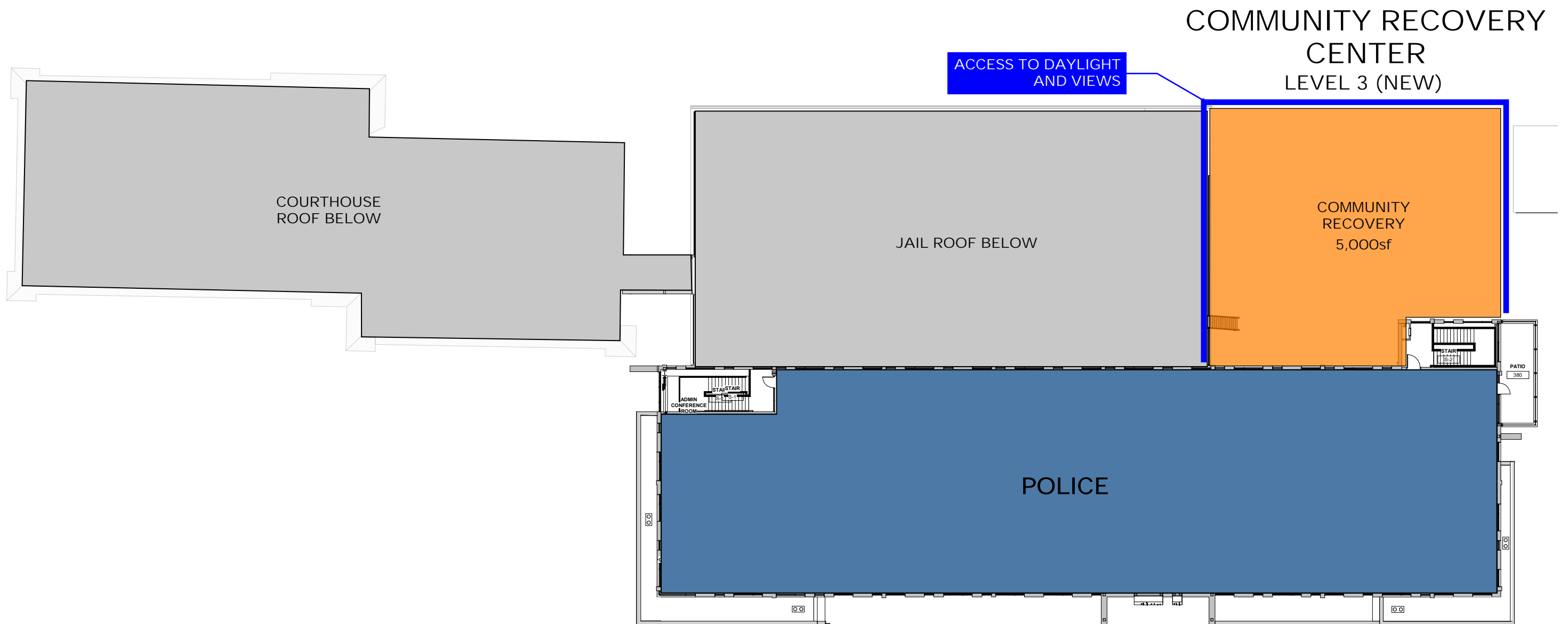
OVERALL SITE PLAN

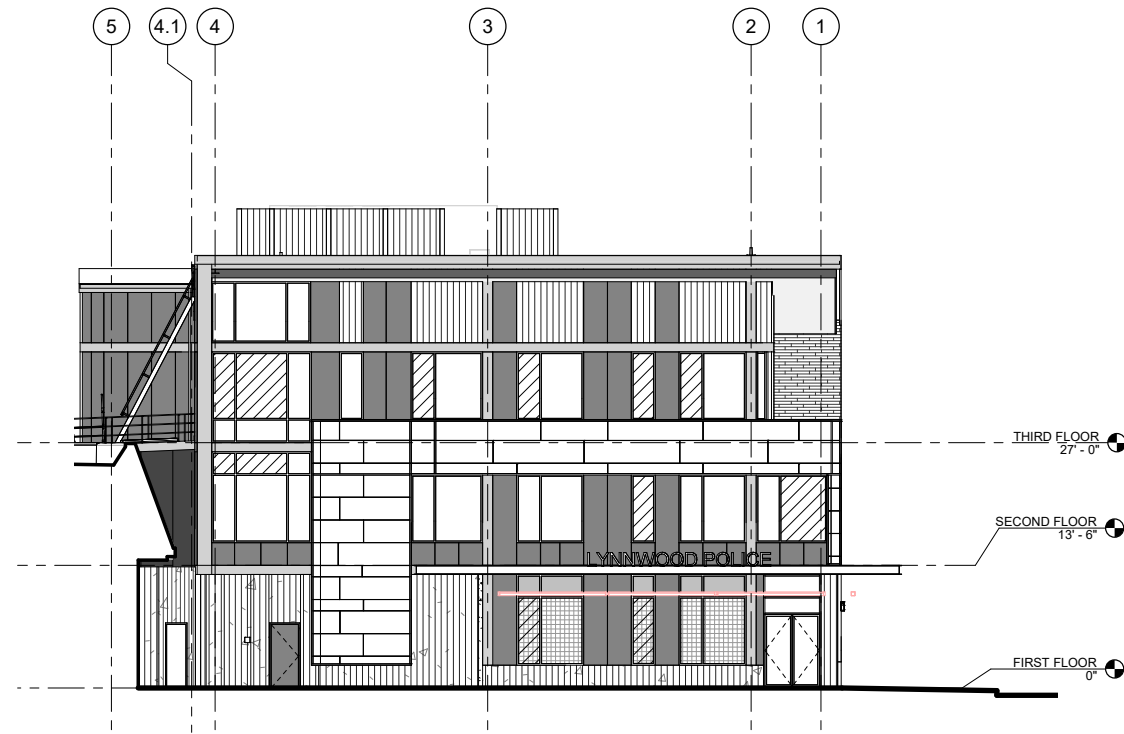
COMMUNITY RECOVERY
CENTER
LEVEL 1 (EXISTING)



OVERALL FIRST FLOOR PLAN

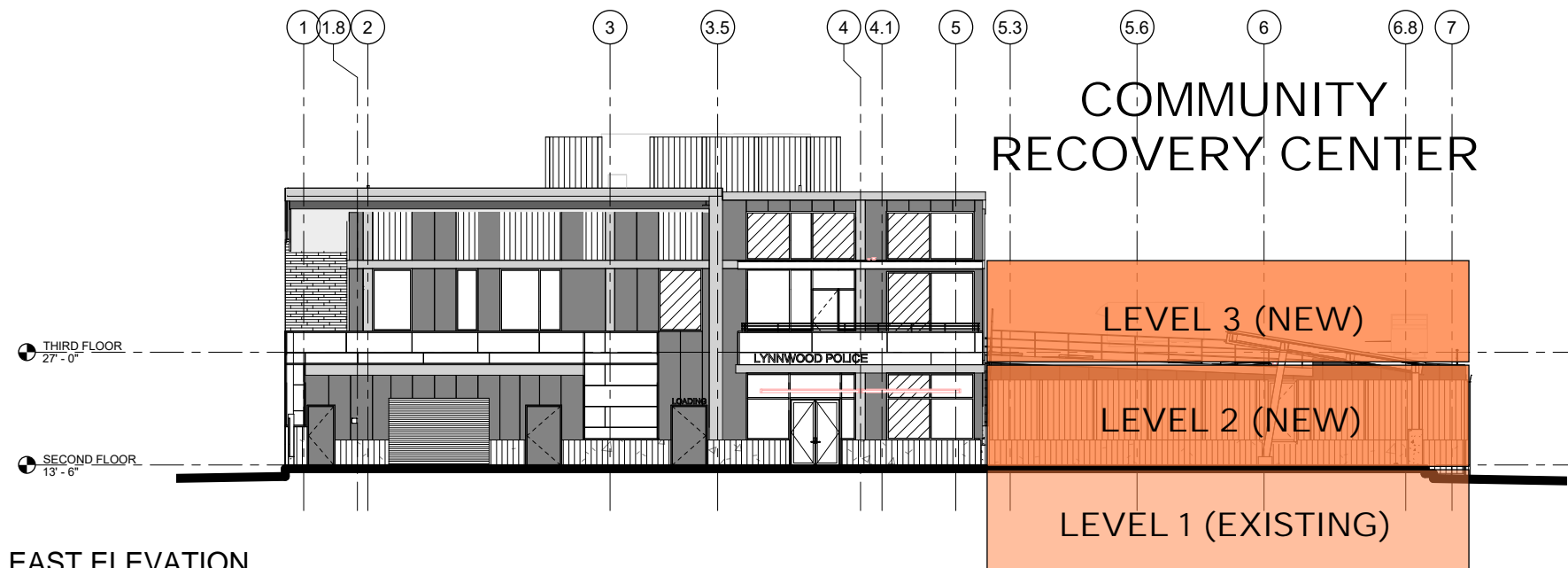






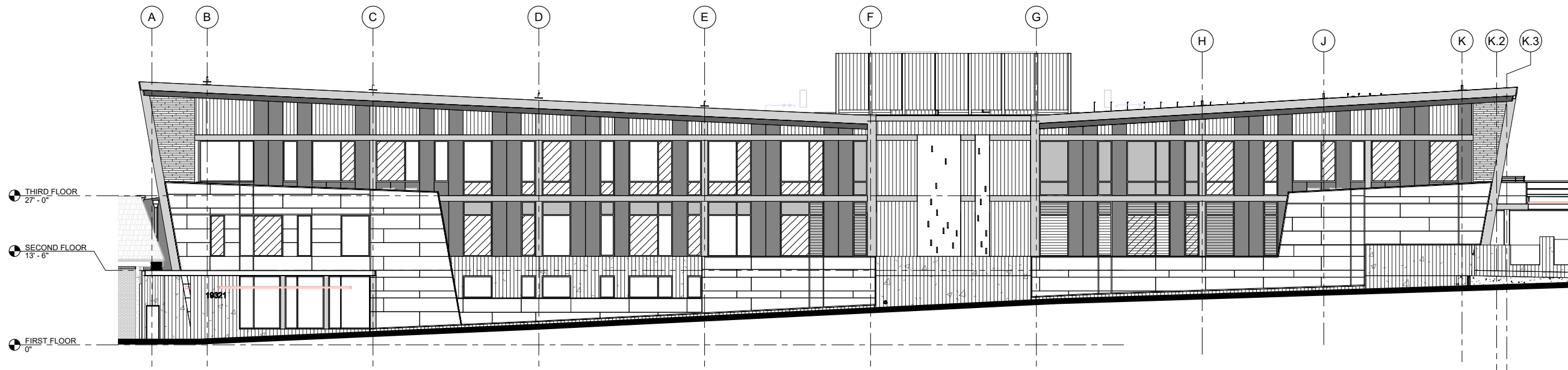
WEST ELEVATION

SCALE: N/A

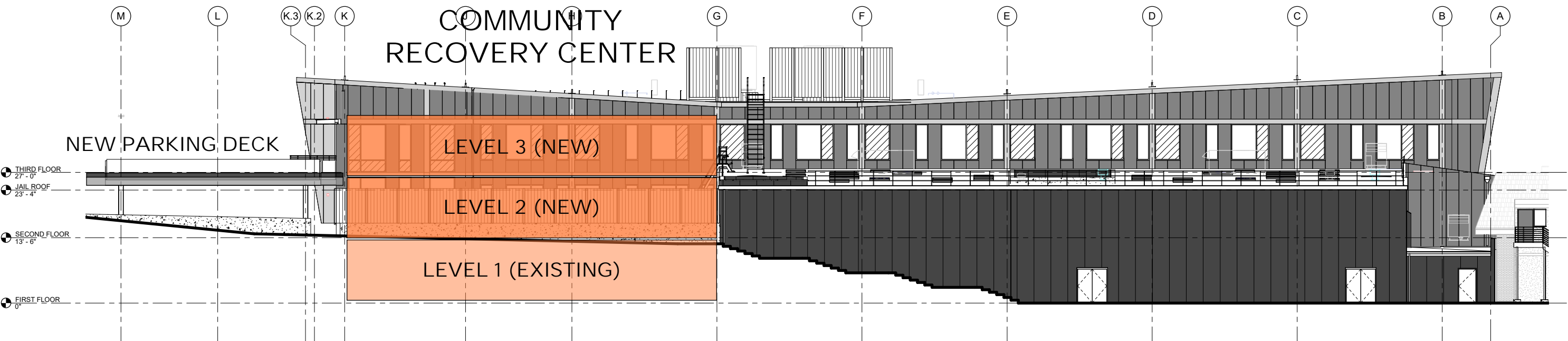


EAST ELEVATION

SCALE: N/A



SOUTH ELEVATION
SCALE: N/A



NORTH ELEVATION
SCALE: N/A

POLICE-JAIL ELEVATIONS

CITY COUNCIL 3.E
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: American Rescue Plan Act Funding Immediate Needs Follow-up

DEPARTMENT CONTACT: Michelle Meyer, Finance

SUMMARY:

Follow-up presentation on the immediate needs for ARPA funding.

PRESENTER:

Michelle Meyer, Director of Finance; Will Cena, Information Technology Director

ESTIMATED TIME:

45

BACKGROUND:

On August 2nd and 9th, staff presented immediate needs funding requests in accordance with the eligible uses of American Rescue Plan Act (ARPA) funding. Items in the initial request were limited to those that could ensure the City's ability to provide necessary direct customer service to community members as operations resume. Funding requests for the identified immediate needs totaled \$1,488,000, of which \$732,000 was approved by Council.

A review of the funded items will be provided along with additional information regarding the proposed Council Chambers IT Improvements Project.

The attached memo dated August 16, 2021 provides additional background information for tonight's discussion.

SUGGESTED ACTION:

Review of American Rescue Plan Act (ARPA) funding immediate needs decisions made at the August 9th meeting and provide additional information regarding the Council Chambers IT Improvements Project.

PREVIOUS COUNCIL ACTIONS:

Finance Committee Meeting ARPA Overview: June 24, 2021;
City Council Work Session ARPA Overview: July 19, 2021;
Finance Committee Work Session ARPA Immediate Needs Review: July 22, 2021;
City Council Work Session ARPA Immediate Needs Review: August 2, 2021;
City Council Business Meeting ARPA Immediate Needs Funding Request: August 9, 2021.

FUNDING:

The City of Lynnwood's total allocation through the State and Local Fiscal Recovery Funds portion of the American Rescue Plan Act (ARPA) is \$10,936,804 of which \$732,000 has been approved to fund identified immediate needs.

DEPARTMENT ATTACHMENTS

Description:

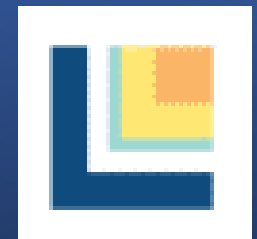
[ARPA Presentation for 9.7 WS.pdf](#)

[Memorandum to City Council RE ARPA.pdf](#)

American Rescue Plan Act Funding Immediate Requests Follow-up

September 7, 2021

City Council Work Session



American Rescue Plan Act Funding

AGENDA

- Review from August 9th meeting
 - Immediate Needs Funding Requests and Approvals
- Council Chambers IT Improvements Project Follow-up
- Restore Public Sector Capacity Follow-up
- Next Steps

American Rescue Plan Eligible Uses

Respond to COVID-19 Public Health Emergency

Restore Public Sector Capacity to Pre-Pandemic Levels

← Immediate Focus

Address Negative Economic Impacts

Replace Lost Revenues and Provide Expanded Services up to Amount of Revenue Loss

Water, Sewer and Broadband Infrastructure

American Rescue Plan Immediate Needs Review

Stabilize and Recover: Short-term

Total Requested: \$1,488,000; Total Approved: \$732,000

Respond to COVID-19 Public Health Emergency

- Council Chambers IT Improvements : \$100,000
- Tabled for additional discussion tonight

Restore Public Sector Capacity to Pre-Pandemic Levels

- Restore 8.2 direct-service positions through 2022: \$858,000
- Partial approval of \$202,000 for 2021

Provide Expanded Services up to Amount of Revenue Loss

- Purchase, implement and staff an officer Body Camera program: \$530,000
- Full approval

American Rescue Plan Immediate Needs Follow-up

Stabilize and Recover: Short-term Respond to COVID-19 Public Health Emergency

Operational and Capital: Council Chamber IT Improvements

- Funding request of \$100,000
- Specialized/expert consultant services
- Facilitate Hybrid In-Person/Remote meetings
- Replace Wiring, Equipment and Screens

Information Technology Director will review proposed vendor plan

American Rescue Plan Immediate Needs Follow-Up

Stabilize and Recover: Short-term

Restore Public Sector Capacity to Pre-Pandemic Levels

Restore previously eliminated/reduced positions needed to serve public for business recovery

Requested to restore 8.2 of 18 FTE positions that were held vacant when COVID reduced operations, necessary for direct service to community members:

- 5.2 FTE in Recreation/Parks to restore pre-pandemic program offerings
 - Mostly Part Time staffing for Aquatics, Parks, Senior Center & Recreation Programs
 - Allow ability to staff revenue-generating functions
- 1 FTE Evidence Officer in Police to ensure timely evidence management
- 1 FTE Legal Specialist I in Court to restore full-service hours
- 1 FTE Custodian in Public Works to ensure facility cleanliness for the public

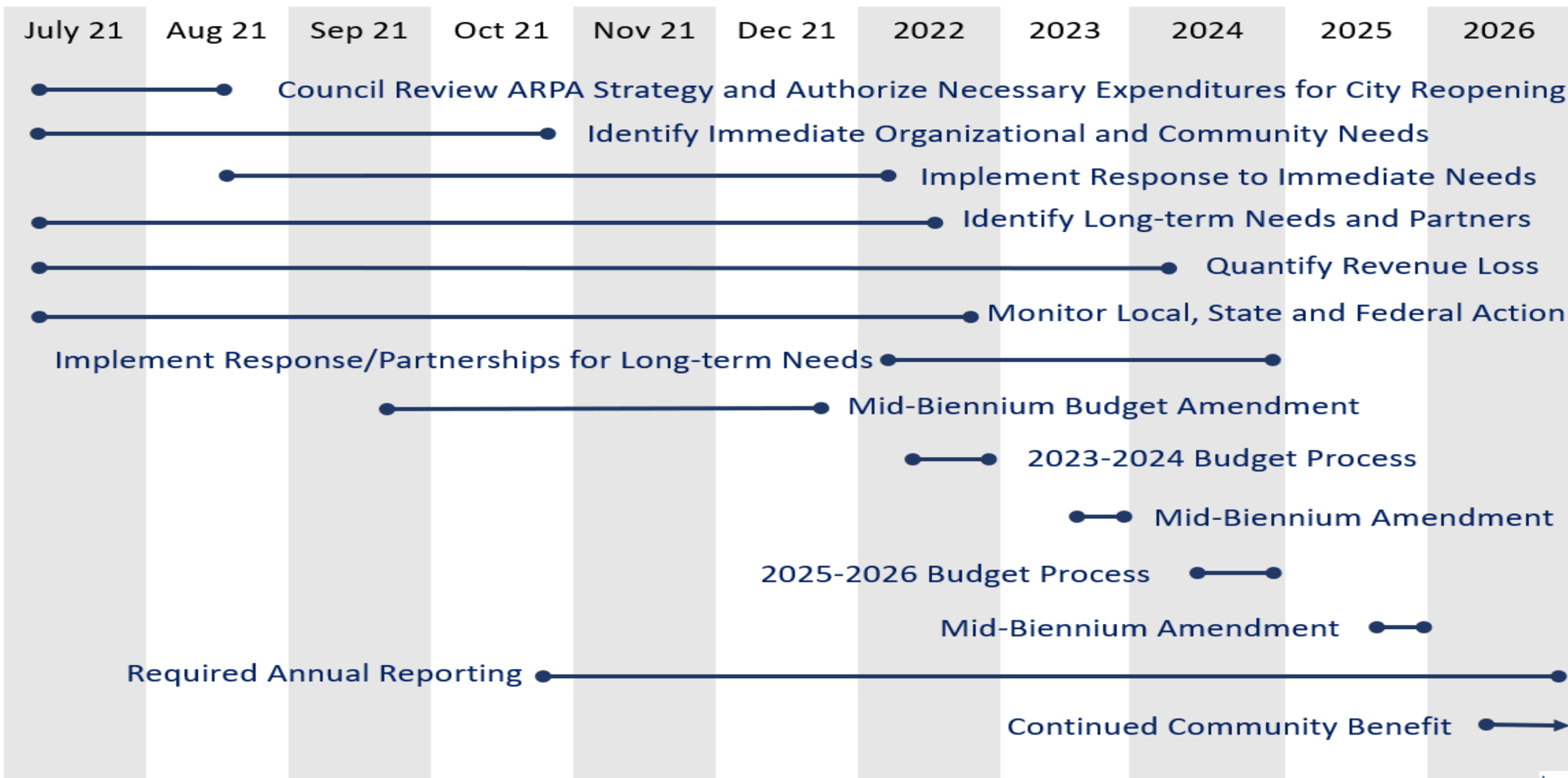
Original funding request of \$858,000 to fill positions Sept. 2021-Dec. 2022

- \$202,000 approved for 2021
- \$656,000 will provide authority to fill through 2022

American Rescue Plan Immediate Needs Follow-Up

Item	2021 Cost Estimate	2022 Cost Estimate	2021-2022 Biennium Total
Respond to COVID-19 Capital or Operational Needs: \$100,000 for 2021			
<i>Council Chamber IT improvements</i>	\$ 100,000		\$ 100,000
Restore Public Sector Capacity to Pre-Pandemic Levels: \$656,000 for 2022			
<i>Recreation Customer Service Lead Clerk (1 FTE)</i>		\$ 95,000	\$ 95,000
<i>Recreation Aquatics Part-Time Staffing (2.1 non-benefitted FTE)</i>		\$ 125,000	\$ 125,000
<i>Recreation Coordinator - Senior Center (.75 FTE)</i>		\$ 80,000	\$ 80,000
<i>Recreation Coordinator - Rec Programs (.25 FTE)</i>		\$ 22,000	\$ 22,000
<i>Recreation Park Part-Time Staffing (2 PT non-benefitted)</i>		\$ 22,000	\$ 22,000
<i>Recreation Service Part-Time Staffing (1.1 non-benefitted FTE)</i>		\$ 65,000	\$ 65,000
<i>Police Evidence Officer (1 FTE)</i>		\$ 107,000	\$ 107,000
<i>Court Legal Specialist 1 (1 FTE)</i>		\$ 80,000	\$ 80,000
<i>Custodian Position (1 FTE)</i>		\$ 60,000	\$ 60,000
TOTAL	\$ 100,000	\$ 656,000	\$ 756,000

American Rescue Plan Action Timeline



Upcoming Dates

September 13, 2021: Business Meeting
Immediate Needs Requests

September 20, 2021: Work Session
Review Non-Immediate Need Categories
Discuss Evaluation Process and Next Steps

Date: August 16, 2021
To: City Council
From: Mayor Nicola Smith
RE: Use of ARPA funds

The unprecedented financial support provided to the City of Lynnwood by the American Rescue Plan Act (ARPA) has generated a question we have never addressed before:

How can the City use \$10.9 million to create the greatest good?

We are fortunate to be facing such an intriguing question! Of course, there will be divergent opinions on which paths we should take. The Council's deliberation on August 9 illustrated how difficult this work is. As follow-up to the August 9 meeting, I want to offer some information and feedback on four topics with the intent of helping the Council and staff serve the Lynnwood community to the best of our ability.

Topic 1. Audio-visual (AV) equipment for the Council Chambers. This matter is scheduled for further discussion on September 7. The Information Technology Department (IT) uses a customer-first service mantra and for this AV project, the City Council and the public are the customers. An expert AV designer is needed to build the configuration and equipment list. On September 7, staff will solicit the Council's ideas and preferences for the functionality of the new AV system. The Council will receive briefings on the system design and budget before final decisions are made. I urge Councilmembers to focus on function and budget and leave the technical details to industry experts.

Topic 2. Eligible uses for ARPA funds. During the August 9 meeting, a Councilmember stated that ARPA is not for the City to spend on the City. This input should be considered as a statement of opinion/preference. Just to clarify, a fundamental purpose of ARPA is to support local governments that have been harmed by the COVID-19 pandemic. For example, fund recipients may restore local funding lost due to COVID and may restore public services discontinued because of COVID. The City Council has the discretion whether to allocate any ARPA proceeds toward direct services that the City provides to the community, or whether to apply 100% of ARPA proceeds to community support services. Attached for your reference is the U.S. Treasury Department's Frequently Asked Questions.

Using 13% of Lynnwood's ARPA funds to address some "immediate needs" was discussed on August 9 (and during previous meetings of the City Council and the Finance Committee) in order to restore important direct services to the community. Staff's "immediate needs" proposal does not fund any internal services (human resources, payroll, etc.).

- The Park's 5.2 FTE (full-time equivalent) positions are needed to maintain City parks and to restore recreation programs reduced or discontinued due to COVID.
- The police evidence technician is essential to effective criminal prosecution and defense.
- As Judge Moore explained in his correspondence of August 12, our Municipal Court is unable to restore its service hours without the requested clerk position.

- The Public Works additional custodian position is needed to ensure City facilities are safe for employees and the public.

The work these positions perform provide direct benefits to the Lynnwood community.

Topic 3. Funding of requested positions only through 2021. On August 9, after considerable discussion, the Council authorized restoring 8.2 FTE vacant positions through 2021. This decision includes directive that funding for these positions for 2022 will be considered during the Mid-Biennium Budget Review process (scheduled for October and November 2021). In the absence of a decision to fund these positions through 2022, the Council's action is unworkable for the following reasons:

A. Considerable time and City resources are needed to recruit, evaluate, hire, and train new employees. The City Council's action authorizes these positions only through December 31, 2021-a timespan of only 145 days. It is not practical or cost-effective to attempt to hire new employees for such a short duration.

B. It is unlikely that talented individuals would accept the City's offer of employment for 145 days.

For these reasons, some of the Departments involved have elected not to undertake the hiring process for these positions. If needed, temporary/seasonal staffing may be retained during 2021 to help restore City services. To remedy this, the City Council could, by motion, consent to fund these positions through 2022 (the remainder of the biennium), with the scope of the discussion during Mid-Biennium Review limited to whether to use General Fund revenues or ARPA funds.

The packet materials for the September 7 Work Session will include additional information regarding the need for these 8.2 FTE positions through 2022.

Topic 4. Collaboration. Both the City Council and staff care deeply about our municipal services. I see that perhaps staff under-estimated the extent of supporting information that the Council needs to make these fiscal decisions. For example, there could have been greater clarification regarding the use of ARPA monies to fund employee positions for a specific period of time, along with staff's intent to fund the positions from the General Fund in the next biennium. There was no intent to use one-time monies to address ongoing needs.

Please remember that Finance Director Meyer described staff's approach to "immediate needs" during the June 24 and July 22 Finance Committee meetings, and the July 19 and August 2 meetings of the City Council. Staff's "immediate needs" proposal to use \$1,488,000 was based in part on Council's feedback during those previous meetings. Put simply, staff did not have forewarning to fully address the concerns and questions of Councilmembers that were raised during the August 9 meeting.

I appreciate the Council's perspectives and concerns about using ARPA funds. Soon, we will begin discussing how to use the remaining \$9.5 million to address longer-term community needs. That work will be hard. Throughout the remainder of this pandemic, it will be important that we remain open, thoughtful, respectful, and transparent. We are "One Lynnwood". We are improving, transforming, and achieving!

Attachment: Coronavirus State and Local Fiscal Recovery Funds FAQ
c: Department directors, Judge Moore

Coronavirus State and Local Fiscal Recovery Funds

Frequently Asked Questions

AS OF JULY 19, 2021

This document contains answers to frequently asked questions regarding the Coronavirus State and Local Fiscal Recovery Funds (CSFRF / CLFRF, or Fiscal Recovery Funds). Treasury will be updating this document periodically in response to questions received from stakeholders. Recipients and stakeholders should consult the [Interim Final Rule](#) for additional information.

- For overall information about the program, including information on requesting funding, please see <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments>
- For general questions about CSFRF / CLFRF, please email SLFRP@treasury.gov
- Treasury is seeking comment on all aspects of the Interim Final Rule. Stakeholders are encouraged to submit comments electronically through the Federal eRulemaking Portal (<https://www.regulations.gov/document/TREAS-DO-2021-0008-0002>) on or before July 16, 2021. Please be advised that comments received will be part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Questions added 5/27/21: 1.5, 1.6, 2.13, 2.14, 2.15, 3.9, 4.5, 4.6, 10.3, 10.4 (noted with “[5/27]”)

Questions added 6/8/21: 2.16, 3.10, 3.11, 3.12, 4.7, 6.7, 8.2, 9.4, 9.5, 10.5 (noted with “[6/8]”)

Questions added 6/17/21: 6.8, 6.9, 6.10, 6.11 (noted with “[6/17]”)

Questions added 6/23/21: 1.7, 2.17, 2.18, 2.19, 2.20, 3.1 (appendix), 3.13, 4.8, 6.12 (noted with “[6/23]”)

Question added 6/24/21: 2.21 (noted with “[6/24]”)

Questions added 7/14/21: 1.8, 3.14, 3.15, 4.9, 4.10, 4.11, 4.12, 6.13, 6.14, 6.15, 6.16, 6.17, 10.3 updated (noted with “[7/14]”)

Answers to frequently asked questions on distribution of funds to non-entitlement units of local government (NEUs) can be found in this [FAQ supplement](#), which is regularly updated.

1. Eligibility and Allocations

1.1. Which governments are eligible for funds?

The following governments are eligible:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities
- Non-entitlement units, or smaller local governments

1.2. Which governments receive funds directly from Treasury?

Treasury will distribute funds directly to each eligible state, territory, metropolitan city, county, or Tribal government. Smaller local governments that are classified as non-entitlement units will receive funds through their applicable state government.

1.3. Are special-purpose units of government eligible to receive funds?

Special-purpose units of local government will not receive funding allocations; however, a state, territory, local, or Tribal government may transfer funds to a special-purpose unit of government. Special-purpose districts perform specific functions in the community, such as fire, water, sewer or mosquito abatement districts.

1.4. How are funds being allocated to Tribal governments, and how will Tribal governments find out their allocation amounts?¹

\$20 billion of Fiscal Recovery Funds was reserved for Tribal governments. The American Rescue Plan Act specifies that \$1 billion will be allocated evenly to all eligible Tribal governments. The remaining \$19 billion will be distributed using an allocation methodology based on enrollment and employment.

There will be two payments to Tribal governments. Each Tribal government's first payment will include (i) an amount in respect of the \$1 billion allocation that is to be divided equally among eligible Tribal governments and (ii) each Tribal government's pro rata share of the Enrollment Allocation. Tribal governments will be notified of their allocation amount and delivery of payment 4-5 days after completing request for funds in the Treasury Submission Portal. The deadline to make the initial request for funds is June 21, 2021.

The second payment will include a Tribal government's pro rata share of the Employment Allocation. There is a \$1,000,000 minimum employment allocation for Tribal governments. In late-June, Tribal governments will receive an email notification to re-enter the Treasury Submission Portal to confirm or amend their 2019 employment numbers that were submitted to the Department of the Treasury for the CARES Act's Coronavirus Relief Fund. To receive an Employment Allocation, including the minimum employment allocation, Tribal governments must confirm employment numbers by July

¹ The answer to this question was updated on July 19, 2021.

23, 2021. Treasury will calculate employment allocations for those Tribal governments that confirmed or submitted amended employment numbers by the deadline. In August, Treasury will communicate to Tribal governments the amount of their portion of the Employment Allocation and the anticipated date for the second payment.

1.5. My county is a unit of general local government with population under 50,000. Will my county receive funds directly from Treasury? [5/27]

Yes. All counties that are units of general local government will receive funds directly from Treasury and should apply via the [online portal](#). The list of county allocations is available [here](#).

1.6. My local government expected to be classified as a non-entitlement unit. Instead, it was classified as a metropolitan city. Why? [5/27]

The American Rescue Plan Act defines, for purposes of the Coronavirus Local Fiscal Recovery Fund (CLFRF), metropolitan cities to include those that are currently metropolitan cities under the Community Development Block Grant (CDBG) program but also those cities that relinquish or defer their status as a metropolitan city for purposes of the CDBG program. This would include, by way of example, cities that are principal cities of their metropolitan statistical area, even if their population is less than 50,000. In other words, a city that is eligible to be a metropolitan city under the CDBG program is eligible as a metropolitan city under the CLFRF, regardless of how that city has elected to participate in the CDBG program.

Unofficial allocation estimates produced by other organizations may have classified certain local governments as non-entitlement units of local government. However, based on the statutory definitions, some of these local governments should have been classified as metropolitan cities.

1.7. In order to receive and use Fiscal Recovery Funds, must a recipient government maintain a declaration of emergency relating to COVID-19? [6/23]

No. Neither the statute establishing the CSFRF/CLFRF nor the Interim Final Rule requires recipients to maintain a local declaration of emergency relating to COVID-19.

1.8. Can non-profit or private organizations receive funds? If so, how? [7/14]

Yes. Under section 602(c)(3) of the Social Security Act, a State, territory, or Tribal government may transfer funds to a “private nonprofit organization . . . , a Tribal organization . . . , a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations). The Interim Final Rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive, and recipients may transfer funds to constituent units of government or private entities beyond those

specified in the statute. A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be considered to be a subrecipient and will be expected to comply with all subrecipient reporting requirements.

The ARPA does not authorize Treasury to provide CSFRF/CLFRF funds directly to non-profit or private organizations. Thus, non-profit or private organizations should seek funds from CSFRF/CLFRF recipient(s) in their jurisdiction (e.g., a State, local, territorial, or Tribal government).

2. Eligible Uses – Responding to the Public Health Emergency / Negative Economic Impacts

2.1. What types of COVID-19 response, mitigation, and prevention activities are eligible?

A broad range of services are needed to contain COVID-19 and are eligible uses, including vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses. Capital investments in public facilities to meet pandemic operational needs are also eligible, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

2.2. If a use of funds was allowable under the Coronavirus Relief Fund (CRF) to respond to the public health emergency, may recipients presume it is also allowable under CSFRF/CLFRF?

Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under CSFRF/CLFRF, with the following two exceptions: (1) the standard for eligibility of public health and safety payrolls has been updated; and (2) expenses related to the issuance of tax-anticipation notes are not an eligible funding use.

2.3. If a use of funds is not explicitly permitted in the Interim Final Rule as a response to the public health emergency and its negative economic impacts, does that mean it is prohibited?

The Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. The Interim Final Rule also provides flexibility for recipients to use Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but which meet the objectives of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts.

2.4. May recipients use funds to respond to the public health emergency and its negative economic impacts by replenishing state unemployment funds?

Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020, or to pay back advances received for the payment of benefits between January 27, 2020 and the date when the Interim Final Rule is published in the Federal Register.

2.5. What types of services are eligible as responses to the negative economic impacts of the pandemic?

Eligible uses in this category include assistance to households; small businesses and non-profits; and aid to impacted industries.

Assistance to households includes, but is not limited to: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training.

Assistance to small business and non-profits includes, but is not limited to:

- loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
- Technical assistance, counseling, or other services to assist with business planning needs

2.6. May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households?

Yes, provided the recipient considers whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. Additionally, cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, state, local, territorial, and Tribal governments may consider and take guidance from the per person amounts previously provided by the federal government in response to the COVID crisis.

2.7. May funds be used to reimburse recipients for costs incurred by state and local governments in responding to the public health emergency and its negative economic impacts prior to passage of the American Rescue Plan?

Use of Fiscal Recovery Funds is generally forward looking. The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021.

2.8. May recipients use funds for general economic development or workforce development?

Generally, not. Recipients must demonstrate that funding uses directly address a negative economic impact of the COVID-19 public health emergency, including funds used for economic or workforce development. For example, job training for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

2.9. How can recipients use funds to assist the travel, tourism, and hospitality industries?

Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel and hospitality industries and to districts that were closed during the COVID-19 public health emergency, as well as aid a planned expansion or upgrade of tourism, travel and hospitality facilities delayed due to the pandemic.

Tribal development districts are considered the commercial centers for tribal hospitality, gaming, tourism and entertainment industries.

2.10. May recipients use funds to assist impacted industries other than travel, tourism, and hospitality?

Yes, provided that recipients consider the extent of the impact in such industries as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, nationwide the leisure and hospitality industry has experienced an

approximately 17 percent decline in employment and 24 percent decline in revenue, on net, due to the COVID-19 public health emergency. Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

Recipients should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

2.11. How does the Interim Final Rule help address the disparate impact of COVID-19 on certain populations and geographies?

In recognition of the disproportionate impacts of the COVID-19 virus on health and economic outcomes in low-income and Native American communities, the Interim Final Rule identifies a broader range of services and programs that are considered to be in response to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services are eligible uses when provided in a Qualified Census Tract (QCT), to families living in QCTs, or when these services are provided by Tribal governments.

Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served.

Eligible services include:

- Addressing health disparities and the social determinants of health, including: community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;
- Building stronger neighborhoods and communities, including: supportive housing and other services for individuals experiencing homelessness, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;
- Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and
- Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

2.12. May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs. See 31 CFR 35.6(b)(1)(i). Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

2.13. May recipients use funds to pay “back to work incentives” (e.g., cash payments for newly employed workers after a certain period of time on the job)? [5/27]

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to unemployed workers. See 31 CFR 35.6(b)(4). This assistance can include job training or other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers.

2.14. The Coronavirus Relief Fund (CRF) included as an eligible use: "Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency." What has changed in CSFRF/CLFRF, and what type of documentation is required under CSFRF/CLFRF? [5/27]

Many of the expenses authorized under the Coronavirus Relief Fund are also eligible uses under the CSFRF/CLFRF. However, in the case of payroll expenses for public safety, public health, health care, human services, and similar employees (hereafter, public health and safety staff), the CSFRF/CLFRF does differ from the CRF. This change reflects the differences between the ARPA and CARES Act and recognizes that the response to the COVID-19 public health emergency has changed and will continue to change over time. In particular, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, including first responders, to the extent that the employee's time that is dedicated to responding to the COVID-19 public health emergency.

For administrative convenience, the recipient may consider a public health and safety employee to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated (e.g., more than half of the employee's time is dedicated) to responding to the COVID-19 public health emergency.

Recipients may use presumptions for assessing whether an employee, division, or operating unit is primarily dedicated to COVID-19 response. The recipient should

maintain records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response. Recipients need not routinely track staff hours. Recipients should periodically reassess their determinations.

2.15. What staff are included in “public safety, public health, health care, human services, and similar employees”? Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff? [5/27]

As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee’s time that is dedicated to responding to the COVID-19 public health emergency.

Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.

2.16. May recipients use funds to establish a public jobs program? [6/8]

Yes. The Interim Final Rule permits a broad range of services to unemployed or underemployed workers and other individuals that suffered negative economic impacts from the pandemic. That can include public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker’s occupation or level of training. The broad range of permitted services can also include other employment supports, such as childcare assistance or assistance with transportation to and from a jobsite or interview.

The Interim Final Rule includes as an eligible use re-hiring public sector staff up to the government’s level of pre-pandemic employment. “Public sector staff” would not include individuals participating in a job training or subsidized employment program administered by the recipient.

2.17. The Interim Final Rule states that “assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.” Are recipients

required to demonstrate that each individual or business experienced a negative economic impact for that individual or business to receive assistance? [6/23]

Not necessarily. The Interim Final Rule allows recipients to demonstrate a negative economic impact on a population or group and to provide assistance to households or businesses that fall within that population or group. In such cases, the recipient need only demonstrate that the household or business is within the population or group that experienced a negative economic impact.

For assistance to households, the Interim Final Rule states, “In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic.” This would allow, for example, an internet access assistance program for all low- or moderate-income households, but would not require the recipient to demonstrate or document that each individual low- or -moderate income household experienced a negative economic impact from the COVID-19 public health emergency apart from being low- or -moderate income.

For assistance to small businesses, the Interim Final Rule states that assistance may be provided to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, to respond to the negative economic impacts of the COVID-19 public health emergency. In providing assistance to small businesses, recipients must design a program that responds to the negative economic impacts of the COVID-19 public health emergency, including by identifying how the program addresses the identified need or impact faced by small businesses. This can include assistance to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency.

As part of program design and to ensure that the program responds to the identified need, recipients may consider additional criteria to target assistance to businesses in need, including to small businesses. Assistance may be targeted to businesses facing financial insecurity, with substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or facing other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. For example, a recipient could find based on local data or research that the smallest businesses faced sharply increased risk of bankruptcy and develop a program to respond; such a program would only need to document a population or group-level negative economic impact, and eligibility criteria to limit access to the program to that population or group (in this case, the smallest businesses).

In addition, recognizing the disproportionate impact of the pandemic on disadvantaged communities, the Interim Final Rule also identifies a set of services that are presumptively eligible when provided in a Qualified Census Tract (QCT); to families and individuals living in QCTs; to other populations, households, or geographic areas

identified by the recipient as disproportionately impacted by the pandemic; or when these services are provided by Tribal governments. For more information on the set of presumptively eligible services, see the Interim Final Rule section on *Building Stronger Communities through Investments in Housing and Neighborhoods* and FAQ 2.11.

2.18. Would investments in improving outdoor spaces (e.g. parks) be an eligible use of funds as a response to the public health emergency and/or its negative economic impacts? [6/23]

There are multiple ways that investments in improving outdoor spaces could qualify as eligible uses; several are highlighted below, though there may be other ways that a specific investment in outdoor spaces would meet eligible use criteria.

First, in recognition of the disproportionate negative economic impacts on certain communities and populations, the Interim Final Rule identifies certain types of services that are eligible uses when provided in a Qualified Census Tract (QCT), to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic.

These programs and services include services designed to build stronger neighborhoods and communities and to address health disparities and the social determinants of health. The Interim Final Rule provides a non-exhaustive list of eligible services to respond to the needs of communities disproportionately impacted by the pandemic, and recipients may identify other uses of funds that do so, consistent with the Rule’s framework. For example, investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments and outdoor recreation and socialization to mitigate the spread of COVID-19.

Second, recipients may provide assistance to small businesses in all communities. Assistance to small businesses could include support to enhance outdoor spaces for COVID-19 mitigation (e.g., restaurant patios) or to improve the built environment of the neighborhood (e.g., façade improvements).

Third, many governments saw significantly increased use of parks during the pandemic that resulted in damage or increased maintenance needs. The Interim Final Rule recognizes that “decrease[s to] a state or local government’s ability to effectively administer services” can constitute a negative economic impact of the pandemic.

2.19. Would expenses to address a COVID-related backlog in court cases be an eligible use of funds as a response to the public health emergency? [6/23]

The Interim Final Rule recognizes that “decrease[s to] a state or local government’s ability to effectively administer services,” such as cuts to public sector staffing levels, can constitute a negative economic impact of the pandemic. During the COVID-19 public

health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from inability of courts to safely operate during the COVID-19 pandemic decreased the government's ability to administer services. Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.

2.20. Can funds be used to assist small business startups as a response to the negative economic impact of COVID-19? [6/23]

As discussed in the Interim Final Rule, recipients may provide assistance to small businesses that responds to the negative economic impacts of COVID-19. The Interim Final Rule provides a non-exclusive list of potential assistance mechanisms, as well as considerations for ensuring that such assistance is responsive to the negative economic impacts of COVID-19.

Treasury acknowledges a range of potential circumstances in which assisting small business startups could be responsive to the negative economic impacts of COVID-19, including for small businesses and individuals seeking to start small businesses after the start of the COVID-19 public health emergency. For example:

- A recipient could assist small business startups with additional costs associated with COVID-19 mitigation tactics (e.g., barriers or partitions; enhanced cleaning; or physical plant changes to enable greater use of outdoor space).
- A recipient could identify and respond to a negative economic impact of COVID-19 on new small business startups; for example, if it could be shown that small business startups in a locality were facing greater difficulty accessing credit than prior to the pandemic, faced increased costs to starting the business due to the pandemic, or that the small business had lost expected startup capital due to the pandemic.
- The Interim Final Rule also discusses eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID-19 public health emergency, including uses that provide job training for unemployed individuals. These initiatives also may support small business startups and individuals seeking to start small businesses.

2.21. Can funds be used for eviction prevention efforts or housing stability services? [6/24]

Yes. Responses to the negative economic impacts of the pandemic include “rent, mortgage, or utility assistance [and] counseling and legal aid to prevent eviction or homelessness.” This includes housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of

domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing.

This also includes legal aid such as legal services or attorney's fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.

Recipients may transfer funds to, or execute grants or contracts with, court systems, non-profits, and a wide range of other organizations to implement these strategies.

3. Eligible Uses – Revenue Loss

3.1. How is revenue defined for the purpose of this provision? [appendix added 6/23]

The Interim Final Rule adopts a definition of “General Revenue” that is based on, but not identical, to the Census Bureau’s concept of “General Revenue from Own Sources” in the Annual Survey of State and Local Government Finances.

General Revenue includes revenue from taxes, current charges, and miscellaneous general revenue. It excludes refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and revenue generated by utilities and insurance trusts. General revenue also includes intergovernmental transfers between state and local governments, but excludes intergovernmental transfers from the Federal government, including Federal transfers made via a state to a locality pursuant to the CRF or the Fiscal Recovery Funds.

Tribal governments may include all revenue from Tribal enterprises and gaming operations in the definition of General Revenue.

Please see the appendix for a diagram of the Interim Final Rule’s definition of General Revenue within the Census Bureau’s revenue classification structure.

3.2. Will revenue be calculated on an entity-wide basis or on a source-by-source basis (e.g. property tax, income tax, sales tax, etc.)?

Recipients should calculate revenue on an entity-wide basis. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the net impact of the COVID- 19 public health emergency on a recipient’s revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.

3.3. Does the definition of revenue include outside concessions that contract with a state or local government?

Recipients should classify revenue sources as they would if responding to the U.S. Census Bureau’s Annual Survey of State and Local Government Finances. According to the Census Bureau’s [Government Finance and Employment Classification manual](#), the following is an example of current charges that would be included in a state or local government’s general revenue from own sources: “Gross revenue of facilities operated by a government (swimming pools, recreational marinas and piers, golf courses, skating rinks, museums, zoos, etc.); auxiliary facilities in public recreation areas (camping areas, refreshment stands, gift shops, etc.); lease or use fees from stadiums, auditoriums, and community and convention centers; and rentals from concessions at such facilities.”

3.4. What is the time period for estimating revenue loss? Will revenue losses experienced prior to the passage of the Act be considered?

Recipients are permitted to calculate the extent of reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. This approach recognizes that some recipients may experience lagged effects of the pandemic on revenues.

Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

3.5. What is the formula for calculating the reduction in revenue?

A reduction in a recipient’s General Revenue equals:

$$\text{Max } \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\left(\frac{n_t}{12}\right)}] - \text{Actual General Revenue}_t ; 0 \}$$

Where:

Base Year Revenue is General Revenue collected in the most recent full fiscal year prior to the COVID-19 public health emergency.

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient’s average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient’s actual general revenue collected during 12-month period ending on each calculation date.

Subscript *t* denotes the calculation date.

3.6. Are recipients expected to demonstrate that reduction in revenue is due to the COVID-19 public health emergency?

In the Interim Final Rule, any diminution in actual revenue calculated using the formula above would be presumed to have been “due to” the COVID-19 public health emergency. This presumption is made for administrative ease and in recognition of the broad-based economic damage that the pandemic has wrought.

3.7. May recipients use pre-pandemic projections as a basis to estimate the reduction in revenue?

No. Treasury is disallowing the use of projections to ensure consistency and comparability across recipients and to streamline verification. However, in estimating the revenue shortfall using the formula above, recipients may incorporate their average annual revenue growth rate in the three full fiscal years prior to the public health emergency.

3.8. Once a recipient has identified a reduction in revenue, are there any restrictions on how recipients use funds up to the amount of the reduction?

The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. Government services can include, but are not limited to, maintenance of infrastructure or pay-go spending for building new infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

However, paying interest or principal on outstanding debt, replenishing rainy day or other reserve funds, or paying settlements or judgments would not be considered provision of a government service, since these uses of funds do not entail direct provision of services to citizens. This restriction on paying interest or principal on any outstanding debt instrument, includes, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt. In addition, the overarching restrictions on all program funds (e.g., restriction on pension deposits, restriction on using funds for non-federal match where barred by regulation or statute) would apply.

3.9. How do I know if a certain type of revenue should be counted for the purpose of computing revenue loss? [5/27]

As discussed in FAQ #3.1, the Interim Final Rule adopts a definition of “General Revenue” that is based on, but not identical, to the Census Bureau’s concept of “General Revenue from Own Sources” in the Annual Survey of State and Local Government Finances.

Recipients should refer to the definition of “General Revenue” included in the Interim Final Rule. See 31 CFR 35.3. If a recipient is unsure whether a particular revenue source is included in the Interim Final Rule’s definition of “General Revenue,” the recipient may consider the classification and instructions used to complete the Census Bureau’s Annual Survey.

For example, parking fees would be classified as a Current Charge for the purpose of the Census Bureau’s Annual Survey, and the Interim Final Rule’s concept of “General Revenue” includes all Current Charges. Therefore, parking fees would be included in the Interim Final Rule’s concept of “General Revenue.”

The Census Bureau’s Government Finance and Employment Classification manual is available [here](#).

3.10. In calculating revenue loss, are recipients required to use audited financials? [6/8]

Where audited data is not available, recipients are not required to obtain audited data. Treasury expects all information submitted to be complete and accurate. See 31 CFR 35.4(c).

3.11. In calculating revenue loss, should recipients use their own data, or Census data? [6/8]

Recipients should use their own data sources to calculate general revenue, and do not need to rely on published revenue data from the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients’ self-reported general revenue figures may differ somewhat from those published by the Census Bureau.

3.12. Should recipients calculate revenue loss on a cash basis or an accrual basis? [6/8]

Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required.

3.13. In identifying intergovernmental revenue for the purpose of calculating General Revenue, should recipients exclude all federal funding, or just federal funding related to the COVID-19 response? How should local governments treat federal funds that are passed through states or other entities, or federal funds that are intermingled with other funds? [6/23]

In calculating General Revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a state to a locality pursuant to the Coronavirus Relief Fund or Fiscal Recovery Funds. To the extent federal funds are passed through states or other entities or intermingled with other funds, recipients should attempt to identify and exclude the

federal portion of those funds from the calculation of General Revenue on a best-efforts basis.

3.14. What entities constitute a government for the purpose of calculating revenue loss? [7/14]

In determining whether a particular entity is part of a recipient's government for purposes of measuring a recipient's government revenue, recipients should identify all the entities included in their government and the general revenue attributable to these entities on a best-efforts basis. Recipients are encouraged to consider how their administrative structure is organized under state and local statutes. In cases in which the autonomy of certain authorities, commissions, boards, districts, or other entities is not readily distinguishable from the recipient's government, recipients may adopt the Census Bureau's criteria for judging whether an entity is independent from, or a constituent of, a given government. For an entity to be independent, it generally meets all four of the following conditions:

- The entity is an organized entity and possesses corporate powers, such as perpetual succession, the right to sue and be sued, having a name, the ability to make contracts, and the ability to acquire and dispose of property.
- The entity has governmental character, meaning that it provides public services, or wields authority through a popularly elected governing body or officers appointed by public officials. A high degree of responsibility to the public, demonstrated by public reporting requirements or by accessibility of records for public inspection, also evidences governmental character.
- The entity has substantial fiscal independence, meaning it can determine its budget without review and modification by other governments. For instance, the entity can determine its own taxes, charges, and debt issuance without another government's supervision.
- The entity has substantial administrative independence, meaning it has a popularly elected governing body, or has a governing body representing two or more governments, or, in the event its governing body is appointed by another government, the entity performs functions that are essentially different from those of, and are not subject to specification by, its creating government.

If an entity does not meet all four of these conditions, a recipient may classify the entity as part of the recipient's government and assign the portion of General Revenue that corresponds to the entity.

To further assist recipients in applying the forgoing criteria, recipients may refer to the Census Bureau's [*Individual State Descriptions: 2017 Census of Governments*](#) publication, which lists specific entities and classes of entities classified as either independent (defined by Census as "special purpose governments") or constituent (defined by Census as "dependent agencies") on a state-by-state basis. Recipients should note that the Census Bureau's lists are not exhaustive and that Census classifications are based on an analysis of state and local statutes as of 2017 and subject to the Census Bureau's judgement. Though not included in the Census Bureau's publication, state

colleges and universities are generally classified as dependent agencies of state governments by the Census Bureau.

If an entity is determined to be part of the recipient's government, the recipient must also determine whether the entity's revenue is covered by the Interim Final Rule's definition of "general revenue." For example, some cash flows may be outside the definition of "general revenue." In addition, note that the definition of general revenue includes Tribal enterprises in the case of Tribal governments. Refer to FAQ 3.1 (and the Appendix) for the components included in General Revenue.

3.15. The Interim Final Rule's definition of General Revenue excludes revenue generated by utilities. Can you please clarify the definition of utility revenue? [7/14]

As noted in FAQs 3.1 and 3.9, the Interim Final Rule adopts a definition of "general revenue" that is based on, but not identical to, the Census Bureau's concept of "General Revenue from Own Sources" in the Annual Survey of State and Local Government Finances. Recipients should refer to the definition of "general revenue" included in the Interim Final Rule. See 31 CFR 35.3. If a recipient is unsure whether a particular revenue source is included in the Interim Final Rule's definition of "general revenue," the recipient may consider the classification and instructions used to complete the Census Bureau's Annual Survey.

According to the Census Bureau's [Government Finance and Employment Classification manual](#), utility revenue is defined as "[g]ross receipts from sale of utility commodities or services to the public or other governments by publicly-owned and controlled utilities." This includes revenue from operations of publicly-owned and controlled water supply systems, electric power systems, gas supply systems, and public mass transit systems (see pages 4-45 and 4-46 of the manual for more detail).

Except for these four types of utilities, revenues from all commercial-type activities of a recipient's government (e.g., airports, educational institutions, lotteries, public hospitals, public housing, parking facilities, port facilities, sewer or solid waste systems, and toll roads and bridges) are covered by the Interim Final Rule's definition of "general revenue." If a recipient is unsure whether a particular entity performing one of these commercial-type activities can be considered part of the recipient's government, please see FAQ 3.14.

4. Eligible Uses – General

4.1. May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds

and similar reserves funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services, since such expenses do not directly relate to the provision of government services.

4.2. May recipients use funds to invest in infrastructure other than water, sewer, and broadband projects (e.g. roads, public facilities)?

Under 602(c)(1)(C) or 603(c)(1)(C), recipients may use funds for maintenance of infrastructure or pay-go spending for building of new infrastructure as part of the general provision of government services, to the extent of the estimated reduction in revenue due to the public health emergency.

Under 602(c)(1)(A) or 603(c)(1)(A), a general infrastructure project typically would not be considered a response to the public health emergency and its negative economic impacts unless the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing in a Qualified Census Tract).

4.3. May recipients use funds to pay interest or principal on outstanding debt?

No. Expenses related to financing, including servicing or redeeming notes, would not address the needs of pandemic response or its negative economic impacts. Such expenses would also not be considered provision of government services, as these financing expenses do not directly provide services or aid to citizens.

This applies to paying interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt.

4.4. May recipients use funds to satisfy nonfederal matching requirements under the Stafford Act? May recipients use funds to satisfy nonfederal matching requirements generally?

Fiscal Recovery Funds are subject to pre-existing limitations in other federal statutes and regulations and may not be used as non-federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, expenses for the state share of Medicaid are not an eligible use. For information on FEMA programs, please [see here](#).

4.5. Are governments required to submit proposed expenditures to Treasury for approval? [5/27]

No. Recipients are not required to submit planned expenditures for prior approval by Treasury. Recipients are subject to the requirements and guidelines for eligible uses contained in the Interim Final Rule.

4.6. How do I know if a specific use is eligible? [5/27]

Fiscal Recovery Funds must be used in one of the four eligible use categories specified in the American Rescue Plan Act and implemented in the Interim Final Rule:

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

Recipients should consult Section II of the Interim Final Rule for additional information on eligible uses. For recipients evaluating potential uses under (a), the Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. See Section II of the Interim Final Rule for additional discussion.

For recipients evaluating potential uses under (c), the Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. See FAQ #3.8 for additional discussion.

For recipients evaluating potential uses under (b) and (d), see Sections 5 and 6.

4.7. Do restrictions on using Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred beginning on March 3, 2021 apply to costs incurred by the recipient (e.g., a State, local, territorial, or Tribal government) or to costs incurred by households, businesses, and individuals benefiting from assistance provided using Coronavirus State and Local Fiscal Recovery Funds? [6/8]

The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021. This limitation applies to costs incurred by the recipient (i.e., the state, local, territorial, or Tribal government receiving funds). However, recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to households, businesses, and individuals within the eligible use categories described in the Interim

Final Rule for economic harms experienced by those households, businesses, and individuals prior to March 3, 2021. For example,

- Public Health/Negative Economic Impacts – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to households – such as rent, mortgage, or utility assistance – for economic harms experienced or costs incurred by the household prior to March 3, 2021 (e.g., rental arrears from preceding months), provided that the cost of providing assistance to the household was not incurred by the recipient prior to March 3, 2021.
- Premium Pay – Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be “in addition to” wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
- Revenue Loss – The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. The calculation of lost revenue begins with the recipient’s revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020. However, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- Investments in Water, Sewer, and Broadband – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to make necessary investments in water, sewer, and broadband. See FAQ Section 6. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the Coronavirus State and Local Fiscal Recovery Funds were incurred after March 3, 2021.

4.8. How can I use CSFRF/CLFRF funds to prevent and respond to crime, and support public safety in my community? [6/23]

Under Treasury’s Interim Final Rule, there are many ways in which the State and Local Fiscal Recovery Funds (“Funds”) under the American Rescue Plan Act can support communities working to reduce and respond to increased violence due to the pandemic. Among the eligible uses of the Funds are restoring of public sector staff to their pre-pandemic levels and responses to the public health crisis and negative economic impacts resulting from the pandemic. The Interim Final Rule provides several ways for recipients to “respond to” this pandemic-related gun violence, ranging from community violence intervention programs to mental health services to hiring of public safety personnel.

Below are some examples of how Fiscal Recovery Funds can be used to address public safety:

- In all communities, recipients may use resources to rehire police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels.

Additionally, Funds can be used for expenses to address COVID-related court backlogs, including hiring above pre-pandemic levels, as a response to the public health emergency. See FAQ 2.19.

- In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic they may use funds to address that harm. This spending may include:
 - Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
 - Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers
 - Additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels
 - Investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic

As discussed in the Interim Final Rule, uses of CSFRF/CLFRF funds that respond to an identified harm must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.

- Recipients may also use funds up to the level of revenue loss for government services, including those outlined above.

Recognizing that the pandemic exacerbated mental health and substance use disorder needs in many communities, eligible public health services include mental health and other behavioral health services, which are a critical component of a holistic public safety approach. This could include:

- Mental health services and substance use disorder services, including for individuals experiencing trauma exacerbated by the pandemic, such as:
 - Community-based mental health and substance use disorder programs that deliver evidence-based psychotherapy, crisis support services, medications for opioid use disorder, and/or recovery support
 - School-based social-emotional support and other mental health services
- Referrals to trauma recovery services for crime victims.

Recipients also may use Funds to respond to the negative economic impacts of the public health emergency, including:

- Assistance programs to households or populations facing negative economic impacts of the public health emergency, including:

- Assistance to support economic security, including for the victims of crime;
 - Housing assistance, including rent, utilities, and relocation assistance;
 - Assistance with food, including Summer EBT and nutrition programs; and
 - Employment or job training services to address negative economic or public health impacts experienced due to a worker's occupation or level of training.
- Assistance to unemployed workers, including:
 - Subsidized jobs, including for young people. Summer youth employment programs directly address the negative economic impacts of the pandemic on young people and their families and communities;
 - Programs that provide paid training and/or work experience targeted primarily to (1) formerly incarcerated individuals, and/or (2) communities experiencing high levels of violence exacerbated by the pandemic;
 - Programs that provide workforce readiness training, apprenticeship or pre-apprenticeship opportunities, skills development, placement services, and/or coaching and mentoring; and
 - Associated wraparound services, including for housing, health care, and food.

Recognizing the disproportionate impact of the pandemic on certain communities, a broader range of services are eligible in those communities than would otherwise be available in communities not experiencing a pandemic-related increase in crime or gun violence. These eligible uses aim to address the pandemic's exacerbation of public health and economic disparities and include services to address health and educational disparities, support neighborhoods and affordable housing, and promote healthy childhood environments. The Interim Final Rule provides a non-exhaustive list of eligible services in these categories.

These services automatically qualify as eligible uses when provided in Qualified Census Tracts (QCTs), low-income areas designated by HUD; to families in QCTs; or by Tribal governments. Outside of these areas, recipient governments can also identify and serve households, populations, and geographic areas disproportionately impacted by the pandemic.

Services under this category could include:

- Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, childhood health and welfare, including:
 - Summer education and enrichment programs in these communities, which include many communities currently struggling with high levels of violence;
 - Programs that address learning loss and keep students productively engaged;
 - Enhanced services for foster youths and home visiting programs; and
 - Summer camps and recreation.
- Programs or services that provide or facilitate access to health and social services and address health disparities exacerbated by the pandemic. This includes Community Violence Intervention (CVI) programs, such as:
 - Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with

- wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and,
- Capacity-building efforts at CVI programs like funding more intervention workers; increasing their pay; providing training and professional development for intervention workers; and hiring and training workers to administer the programs.

Please refer to Treasury's Interim Final Rule for additional information.

4.9. May recipients pool funds for regional projects? [7/14]

Yes, provided that the project is itself an eligible use of funds and that recipients can track the use of funds in line with the reporting and compliance requirements of the CSFRF/CLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another government, recipients would need to comply with the rules on transfers specified in the Interim Final Rule, Section V. A recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the recipient can document that its jurisdiction receives a benefit proportionate to the amount contributed.

4.10. May recipients fund a project with both ARP funds and other sources of funding (e.g., blending, braiding, or other pairing funding sources), including in conjunction with financing provided through a debt issuance? [7/14]

Cost sharing or matching funds are not required under CSFRF/CLFRF. Funds may be used in conjunction with other funding sources, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the CSFRF/CLFRF projects, and with any requirements and restrictions on the use of funds from the supplemental funding sources and the CSFRF/CLFRF program. Specifically,

- All funds provided under the CSFRF/CLFRF program must be used for projects, investments, or services that are eligible under the CSFRF/CLFRF statute, Treasury's Interim Final Rule, and guidance. See 31 CFR 35.6-8; FAQ 4.6. CSFRF/CLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the CSFRF/CLFRF statute, Treasury's Interim Final Rule, and guidance. For example,
 - CSFRF/CLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure, which is eligible under the CSLFRF statute, and Treasury's Interim Final Rule.
 - CSFRF/CLFRF funds could not be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury's Interim Final Rule. However, the recipient could use CSFRF/CLFRF funds only for a smaller component project that does

constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the “project” under this program would be only the eligible use component of the larger project.

- In addition, because CSFRF/CLFRF funds must be obligated by December 31, 2024, and expended by December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of CSFRF/CLFRF funds obligated and expended and when such funds were obligated and expended.

**4.11. May Coronavirus State and Local Fiscal Recovery Funds be used to make loans or other extensions of credit (“loans”), including loans to small businesses and loans to finance necessary investments in water, sewer, and broadband infrastructure?
[7/14]**

Yes. Coronavirus State and Local Fiscal Recovery Funds (“Funds”) may be used to make loans, provided that the loan is an eligible use and the cost of the loan is tracked and reported in accordance with the points below. See 31 CFR 35.6. For example, a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make loans to small businesses. See 31 CFR 35.6(b)(6). In addition, a recipient may use Funds to finance a necessary investment in water, sewer or broadband, as described in the Interim Final Rule. See 31 CFR 35.6(e).

Funds must be used to cover “costs incurred” by the recipient between March 3, 2021, and December 31, 2024, and Funds must be expended by December 31, 2026. See Section III.D of the Interim Final Rule; 31 CFR 35.5. Accordingly, recipients must be able to determine the amount of Funds used to make a loan.

- For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with the approach to loans taken in the Coronavirus Relief Fund.
 - Recipients may use Fiscal Recovery Funds to fund the principal of the loan and in that case must track repayment of principal and interest (i.e., “program income,” as defined under 2 CFR 200).
 - When the loan is made, recipients must report the principal of the loan as an expense.
 - Repayment of principal may be re-used only for eligible uses, and subject to restrictions on timing of use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and IFR. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.
- For loans with maturities longer than December 31, 2026, the recipient may use Fiscal Recovery Funds for only the projected cost of the loan. Recipients may estimate the subsidy cost of the loan, which equals the expected cash flows associated

with the loan discounted at the recipient's cost of funding. A recipient's cost of funding can be determined based on the interest rates of securities with a similar maturity to the cash flow being discounted that were either (i) recently issued by the recipient or (ii) recently issued by a unit of state, local, or Tribal government similar to the recipient. Recipients that have adopted the Current Expected Credit Loss (CECL) standard may also treat the cost of the loan as equal to the CECL-based expected credit losses over the life of the loan. Recipients may measure projected losses either once, at the time the loan is extended, or annually over the covered period.

Under either approach for measuring the amount of funds used to make loans with maturities longer than December 31, 2026, recipients would not be subject to restrictions under 2 CFR 200.307(e)(1) and need not separately track repayment of principal or interest.

Any contribution of Fiscal Recovery Funds to a revolving loan fund must follow the approach described above for loans with maturities longer than December 31, 2026. In other words, a recipient could contribute Fiscal Recovery Funds to a revolving loan fund, provided that the revolving loan fund makes loans that are eligible uses and the Fiscal Recovery Funds contributed represent the projected cost of loans made over the life of the revolving loan fund.

4.12. May funds be used for outreach to increase uptake of federal assistance like the Child Tax Credit or federal programs like SNAP? [7/14]

Yes. Eligible uses to address negative economic impacts include work “to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.” See 31 CFR 35.6(b)(10). Of note, per the CSFRF/CLFRF [Reporting Guidance](#), allowable use of funds for evaluations may also include other types of program evaluations focused on program improvement and evidence building. In addition, recipients may use funds to facilitate access to health and social services in populations and communities disproportionately impacted by the COVID-19 pandemic, including benefits navigators or marketing efforts to increase consumer uptake of federal tax credits, benefits, or assistance programs that respond to negative economic impacts of the pandemic. See 31 CFR 35.6(b)(12).

5. Eligible Uses – Premium Pay

5.1. What criteria should recipients use in identifying essential workers to receive premium pay?

Essential workers are those in critical infrastructure sectors who regularly perform in-person work, interact with others at work, or physically handle items handled by others.

Critical infrastructure sectors include healthcare, education and childcare, transportation, sanitation, grocery and food production, and public health and safety, among others, as provided in the Interim Final Rule. Governments receiving Fiscal Recovery Funds have the discretion to add additional sectors to this list, so long as the sectors are considered critical to protect the health and well-being of residents.

The Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

5.2. What criteria should recipients use in identifying third-party employers to receive grants for the purpose of providing premium pay to essential workers?

Any third-party employers of essential workers are eligible. Third-party contractors who employ essential workers in eligible sectors are also eligible for grants to provide premium pay. Selection of third-party employers and contractors who receive grants is at the discretion of recipients.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided.

5.3. May recipients provide premium pay retroactively for work already performed?

Yes. Treasury encourages recipients to consider providing premium pay retroactively for work performed during the pandemic, recognizing that many essential workers have not yet received additional compensation for their service during the pandemic.

6. Eligible Uses – Water, Sewer, and Broadband Infrastructure

6.1. What types of water and sewer projects are eligible uses of funds?

The Interim Final Rule generally aligns eligible uses of the Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).

Under the DWSRF, categories of [eligible projects](#) include: treatment, transmission and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development.

Under the CWSRF, categories of [eligible projects](#) include: construction of publicly-owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water

conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act.

As mentioned in the Interim Final Rule, eligible projects under the DWSRF and CWSRF support efforts to address climate change, as well as to meet cybersecurity needs to protect water and sewer infrastructure. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury also encourages recipients to consider projects to replace lead service lines.

6.2. May construction on eligible water, sewer, or broadband infrastructure projects continue past December 31, 2024, assuming funds have been obligated prior to that date?

Yes. Treasury is interpreting the requirement that costs be incurred by December 31, 2024 to only require that recipients have obligated the funds by such date. The period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with Fiscal Recovery Funds.

6.3. May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

Recipients may not use funds as a state match for the CWSRF and DWSRF due to prohibitions in utilizing federal funds as a state match in the authorizing statutes and regulations of the CWSRF and DWSRF.

6.4. Does the National Environmental Policy Act (NEPA) apply to eligible infrastructure projects?

NEPA does not apply to Treasury's administration of the Funds. Projects supported with payments from the Funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs.

6.5. What types of broadband projects are eligible?

The Interim Final Rule requires eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

Projects must also be designed to serve unserved or underserved households and businesses, defined as those that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

6.6. For broadband investments, may recipients use funds for related programs such as cybersecurity or digital literacy training?

Yes. Recipients may use funds to provide assistance to households facing negative economic impacts due to Covid-19, including digital literacy training and other programs that promote access to the Internet. Recipients may also use funds for modernization of cybersecurity, including hardware, software, and protection of critical infrastructure, as part of provision of government services up to the amount of revenue lost due to the public health emergency.

6.7. How do I know if a water, sewer, or broadband project is an eligible use of funds? Do I need pre-approval? [6/8]

Recipients do not need approval from Treasury to determine whether an investment in a water, sewer, or broadband project is eligible under CSFRF/CLFRF. Each recipient should review the Interim Final Rule (IFR), along with the preamble to the Interim Final Rule, in order to make its own assessment of whether its intended project meets the eligibility criteria in the IFR. A recipient that makes its own determination that a project meets the eligibility criteria as outlined in the IFR may pursue the project as a CSFRF/CLFRF project without pre-approval from Treasury. Local government recipients similarly do not need state approval to determine that a project is eligible under CSFRF/CLFRF. However, recipients should be cognizant of other federal or state laws or regulations that may apply to construction projects independent of CSFRF/CLFRF funding conditions and that may require pre-approval.

For water and sewer projects, the IFR refers to the EPA [Drinking Water](#) and [Clean Water](#) State Revolving Funds (SRFs) for the categories of projects and activities that are eligible for funding. Recipients should look at the relevant federal statutes, regulations, and guidance issued by the EPA to determine whether a water or sewer project is eligible. Of note, the IFR does not incorporate any other requirements contained in the federal statutes governing the SRFs or any conditions or requirements that individual states may place on their use of SRFs.

6.8. For broadband infrastructure investments, what does the requirement that infrastructure “be designed to” provide service to unserved or underserved households and businesses mean? [6/17]

Designing infrastructure investments to provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. To meet this requirement, states and localities should use funds to deploy broadband infrastructure projects whose objective is to provide service to unserved or underserved households or businesses. These unserved or underserved households or businesses do not need to be the only ones in the service area funded by the project.

6.9. For broadband infrastructure to provide service to “unserved or underserved households or businesses,” must every house or business in the service area be unserved or underserved? [6/17]

No. It suffices that an objective of the project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.

6.10. May recipients use payments from the Funds for “middle mile” broadband projects? [6/17]

Yes. Under the Interim Final Rule, recipients may use payments from the Funds for “middle-mile projects,” but Treasury encourages recipients to focus on projects that will achieve last-mile connections—whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

6.11. For broadband infrastructure investments, what does the requirement to “reliably” meet or exceed a broadband speed threshold mean? [6/17]

In the Interim Final Rule, the term “reliably” is used in two places: to identify areas that are eligible to be the subject of broadband infrastructure investments and to identify expectations for acceptable service levels for broadband investments funded by the Coronavirus State and Local Fiscal Recovery Funds. In particular:

- The IFR defines “unserved or underserved households or businesses” to mean one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speeds and 3 Mbps of upload speeds.
- The IFR provides that a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make investments in broadband infrastructure that are designed to provide service to unserved or underserved households or businesses and that are designed to, upon completion: (i) reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or (ii) in limited cases, reliably meet or exceed 100 Mbps download speed and between 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download and upload speeds.

The use of “reliably” in the IFR provides recipients with significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can actually and consistently meet the specified thresholds of at least 25Mbps/3Mbps—i.e., to consider the actual experience of current

wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises or otherwise claims to offer speeds that meet the 25 Mbps download and 3 Mbps upload speed thresholds is not dispositive.

When making these assessments, recipients may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).

The IFR also provides recipients with significant discretion as to how they will assess whether the project itself has been designed to provide households and businesses with broadband services that meet, or even exceed, the speed thresholds provided in the rule.

6.12. May recipients use Funds for pre-project development for eligible water, sewer, and broadband projects? [6/23]

Yes. To determine whether Funds can be used on pre-project development for an eligible water or sewer project, recipients should consult whether the pre-project development use or cost is eligible under the Drinking Water and Clean Water State Revolving Funds (CWSRF and DWSRF, respectively). Generally, the CWSRF and DWSRF often allow for pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. For example, the DWSRF [allows](#) for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF [allows](#) for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans.

Similarly, pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For example, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project (e.g., broadband mapping for the purposes of finding an eligible area for investment).

All funds must be obligated within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.

6.13. May State and Local Fiscal Recovery Funds be used to support energy or electrification infrastructure that would be used to power new water treatment plants and wastewater systems? [7/14]

The EPA's [Overview of Clean Water State Revolving Fund Eligibilities](#) describes eligible energy-related projects. This includes a "[p]ro rata share of capital costs of offsite clean energy facilities that provide power to a treatment works." Thus, State and Local Fiscal Recovery Funds may be used to finance the generation and delivery of clean power to a wastewater system or a water treatment plant on a pro-rata basis. If the wastewater system or water treatment plant is the sole user of the clean energy, the full cost would be considered an eligible use of funds. If the clean energy provider provides power to other entities, only the proportionate share used by the water treatment plant or wastewater system would be an eligible use of State and Local Fiscal Recovery Funds.

6.14. How should states and local governments assess whether a stormwater management project, such as a culvert replacement, is an eligible project for State and Local Fiscal Recovery Funds? [7/14]

FAQ 6.7 describes the overall approach that recipients may take to evaluate the eligibility of water or sewer projects. For stormwater management projects specifically, as noted in the EPA's [Overview of Clean Water State Revolving Fund Eligibilities](#), "Stormwater projects must have a water quality benefit." Thus, to be eligible under CSFRF/CLFRF, stormwater management projects should be designed to incorporate water quality benefits consistent with the goals of the Clean Water Act. [Summary of the Clean Water Act.](#)

6.15. May recipients use Funds for road repairs and upgrades that occur in connection with an eligible water or sewer project? [7/14]

Yes, recipients may use State and Local Fiscal Recovery Funds for road repairs and upgrades directly related to an eligible water or sewer project. For example, a recipient could use Funds to repair or re-pave a road following eligible sewer repair work beneath it. However, use of Funds for general infrastructure projects is subject to the limitations described in FAQ 4.2. Water and sewer infrastructure projects are often a single component of a broader transportation infrastructure project, for example, the implementation of stormwater infrastructure to meet Clean Water Act established water quality standards. In this example, the components of the infrastructure project that interact directly with the stormwater infrastructure project may be funded by Fiscal Recovery Funds.

6.16. May Funds be used to build or upgrade broadband connections to schools or libraries? [7/14]

As outlined in the IFR, recipients may use Fiscal Recovery Funds to invest in broadband infrastructure that, wherever it is practicable to do so, is designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. Treasury interprets “businesses” in this context broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

6.17. Are eligible infrastructure projects subject to the Davis-Bacon Act? [7/14]

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the CSFRF/CLFRF program, except for CSFRF/CLFRF-funded construction projects undertaken by the District of Columbia. The Davis-Bacon Act specifically applies to the District of Columbia when it uses federal funds (CSFRF/CLFRF funds or otherwise) to enter into contracts over \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Recipients may be otherwise subject to the requirements of the Davis-Bacon Act, when CSFRF/CLFRF award funds are used on a construction project in conjunction with funds from another federal program that requires enforcement of the Davis-Bacon Act. Additionally, corollary state prevailing-wage-in-construction laws (commonly known as “baby Davis-Bacon Acts”) may apply to projects. Please refer to FAQ 4.10 concerning projects funded with both CSFRF/CLFRF funds and other sources of funding.

Treasury has indicated in its Interim Final Rule that it is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects, but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

Treasury has also indicated in its reporting guidance that recipients will need to provide documentation of wages and labor standards for infrastructure projects over \$10 million, and that these requirements can be met with certifications that the project is in compliance with the Davis-Bacon Act (or related state laws, commonly known as “baby Davis-Bacon Acts”) and subject to a project labor agreement. Please refer to the Reporting and Compliance Guidance, page 21, for more detailed information on the reporting requirement.

7. Non-Entitlement Units (NEUs)

Answers to frequently asked questions on distribution of funds to NEUs can be found in this [FAQ supplement](#), which is regularly updated.

8. Ineligible Uses

8.1. What is meant by a pension “deposit”? Can governments use funds for routine pension contributions for employees whose payroll and covered benefits are eligible expenses?

Treasury interprets “deposit” in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both: (1) the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and (2) the payment occurs outside the recipient’s regular timing for making such payments.

Under this interpretation, a “deposit” is distinct from a “payroll contribution,” which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees’ wages and salaries. In general, if an employee’s wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee’s covered benefits as an eligible use of Fiscal Recovery Funds.

8.2. May recipients use Fiscal Recovery Funds to fund Other Post-Employment Benefits (OPEB)? [6/8]

OPEB refers to benefits other than pensions (see, e.g., [Governmental Accounting Standards Board, “Other Post-Employment Benefits”](#)). Treasury has determined that Sections 602(c)(2)(B) and 603(c)(2), which refer only to pensions, do not prohibit CSFRF/CLFRF recipients from funding OPEB. Recipients of either the CSFRF/CLFRF may use funds for eligible uses, and a recipient seeking to use CSFRF/CLFRF funds for OPEB contributions would need to justify those contributions under one of the four eligible use categories.

9. Reporting

On June 17, 2021, Treasury released [Guidance on Recipient Compliance and Reporting Responsibilities for the Coronavirus State and Local Fiscal Recovery Funds](#). Recipients should consult this guidance for additional detail and clarification on recipients’ compliance and reporting responsibilities. A users’ guide will be provided with additional information on how and where to submit required reports.

9.1. What records must be kept by governments receiving funds?

Financial records and supporting documents related to the award must be retained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. This includes those which demonstrate the award funds were used for eligible purposes in accordance with the ARPA, Treasury's regulations implementing those sections, and Treasury's guidance on eligible uses of funds.

9.2. What reporting will be required, and when will the first report be due?

Recipients will be required to submit an interim report, quarterly project and expenditure reports, and annual Recovery Plan Performance Reports as specified below, regarding their utilization of Coronavirus State and Local Fiscal Recovery Funds.

Interim reports: States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report. The interim report will include a recipient's expenditures by category at the summary level and for states, information related to distributions to non-entitlement units of local government must also be included in the interim report. The interim report will cover activity from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Non-entitlement units of local government are not required to submit an interim report.

Quarterly Project and Expenditure reports: State (defined to include the District of Columbia), territorial, metropolitan city, county, and Tribal governments will be required to submit quarterly project and expenditure reports. This report will include financial data, information on contracts and subawards over \$50,000, types of projects funded, and other information regarding a recipient's utilization of award funds. Reports will be required quarterly with the exception of non-entitlement units, which will report annually. An interim report is due on August 31, 2021. The reports will include the same general data as those submitted by recipients of the Coronavirus Relief Fund, with some modifications to expenditure categories and the addition of data elements related to specific eligible uses. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Non-entitlement units of local government will be required to submit the project and expenditure report annually. The initial annual Project and Expenditure report for non-entitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

Recovery Plan Performance Reports: States (defined to include the District of Columbia), territories, metropolitan cities, and counties with a population that exceeds 250,000

residents will also be required to submit an annual Recovery Plan Performance Report to Treasury. This report will include descriptions of the projects funded and information on the performance indicators and objectives of each award, helping local residents understand how their governments are using the substantial resources provided by Coronavirus State and Local Fiscal Recovery Funds program. The initial Recovery Plan Performance Report will cover activity from date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan Performance Reports will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance Report will cover the period from July 1, 2021 to June 30, 2022 and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance Report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and non-entitlement units of local government are not required to develop a Recovery Plan Performance Report.

Please see the [Guidance on Recipient Compliance and Reporting Responsibilities](#) for more information.

9.3. What provisions of the Uniform Guidance for grants apply to these funds? Will the Single Audit requirements apply?

Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Cost Principles and Single Audit Act requirements. Recipients should refer to the Assistance Listing for detail on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing will be available on beta.SAM.gov.

9.4. Once a recipient has identified a reduction in revenue, how will Treasury track use of funds for the provision of government services? [6/8]

The ARPA establishes four categories of eligible uses and further restrictions on the use of funds to ensure that Fiscal Recovery Funds are used within the four eligible use categories. The Interim Final Rule implements these restrictions, including the scope of the eligible use categories and further restrictions on tax cuts and deposits into pensions. Reporting requirements will align with this structure.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of the reduction in revenue, recipients will be required to submit a description of services provided. As discussed in IFR, these services can include a broad range of services but may not be used directly for pension deposits, contributions to reserve funds, or debt service. Recipients may use sources of funding other than Fiscal Recovery Funds to make deposits to pension funds, contribute to reserve funds, and pay debt service, including during the period of performance for the Fiscal Recovery Fund award.

For recipients using Fiscal Recovery Funds to provide government services to the extent of reduction in revenue, the description of government services reported to Treasury may be narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with \$100 in revenue replacement funds available could indicate that \$50 were used for personnel costs and \$50 were used for pay-go building of sidewalk infrastructure.

In addition to describing the government services provided to the extent of reduction in revenue, all recipients will also be required to indicate that Fiscal Recovery Funds are not used directly to make a deposit in a pension fund. Further, recipients subject to the tax offset provision will be required to provide information necessary to implement the Interim Final Rule, as described in the Interim Final Rule. Treasury does not anticipate requiring other types of reporting or recordkeeping on spending in pensions, debt service, or contributions to reserve funds.

These requirements are further detailed in the guidance on reporting requirements for the Fiscal Recovery Funds available [here](#).

9.5. What is the Assistance Listing and Catalog of Federal Domestic Assistance (CFDA) number for the program? [6/8]

The [Assistance Listing](#) for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov. This includes the final CFDA Number for the program, 21.027.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The CFDA number is the unique 5-digit code for each type of federal assistance, and can be used to search for program information, including funding opportunities, spending on [usaspending.gov](#), or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines, Treasury issued initial payments under an existing CFDA number. If you have already received funds or captured the initial CFDA number in your records, please update your systems and reporting to reflect the final CFDA number 21.027. **Recipients must use the final CFDA number for all financial accounting, audits, subawards, and associated program reporting requirements.**

To ensure public trust, Treasury expects all recipients to serve as strong stewards of these funds. This includes ensuring funds are used for intended purposes and recipients have in place effective financial management, internal controls, and reporting for transparency and accountability.

Please see [Treasury's Interim Final Rule](#) and the [Guidance on Recipient Compliance and Reporting Responsibilities](#) for more information.

10. Miscellaneous

10.1. May governments retain assets purchased with Fiscal Recovery Funds? If so, what rules apply to the proceeds of disposition or sale of such assets?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds. If such assets are disposed of prior to December 31, 2024, the proceeds would be subject to the restrictions on the eligible use of payments.

10.2. Can recipients use funds for administrative purposes?

Recipients may use funds to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID–19 public health emergency and its negative economic impacts. This includes, but is not limited to, costs related to disbursing payments of Fiscal Recovery Funds and managing new grant programs established using Fiscal Recovery Funds.

10.3. Are recipients required to remit interest earned on CSFRF/CLFRF payments made by Treasury? [5/27, updated 7/14]

No. CSFRF/CLFRF payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury’s implementing regulations at 31 CFR part 205 to remit interest to Treasury. CSFRF/CLFRF payments made by Treasury to local governments and Tribes are not subject to the requirement of 2 CFR 200.305(b)(8)–(9) to maintain balances in an interest-bearing account and remit payments to Treasury. Moreover, interest earned on CSFRF/CLFRF payments is not subject to program restrictions. Finally, States may retain interest on payments made by Treasury to the State for distribution to NEUs that is earned before funds are distributed to NEUs, provided that the State adheres to the statutory requirements and Treasury’s guidance regarding the distribution of funds to NEUs. Such interest is also not subject to program restrictions.

Among other things, States and other recipients may use earned income to defray the administrative expenses of the program, including with respect to NEUs.

10.4. Is there a deadline to apply for funds? [5/27]

The Interim Final Rule requires that costs be incurred by December 31, 2024. Direct recipients are encouraged to apply as soon as possible. For direct recipients other than Tribal governments, there is not a specific application deadline.

Tribal governments do have deadlines to complete the application process and should visit www.treasury.gov/SLFRPTribal for guidance on applicable deadlines.

Non-entitlement units of local government should contact their state government for information on applicable deadlines.

10.5. May recipients use funds to cover the costs of consultants to assist with managing and administering the funds? [6/8]

Yes. Recipients may use funds for administering the CSFRF/CLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.

11. Operations

11.1. How do I know if my entity is eligible?

The Coronavirus State and Local Fiscal Recovery Funds American Rescue Plan Act of 2021 set forth the jurisdictions eligible to receive funds under the program, which are:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities (typically, but not always, those with populations over 50,000)
- Non-entitlement units of local government, or smaller local governments (typically, but not always, those with populations under 50,000)

11.2. How does an eligible entity request payment?

Eligible entities (other than non-entitlement units) must submit their information to the [Treasury Submission Portal](#). Please visit the [Coronavirus State and Local Fiscal Recovery Fund website](#) for more information on the submission process.

11.3. I cannot log into the Treasury Submission Portal or am having trouble navigating it. Who can help me?

If you have questions about the Treasury Submission Portal or for technical support, please email covidreliefitsupport@treasury.gov.

11.4. What do I need to do to receive my payment?

All eligible payees are required to have a DUNS Number previously issued by Dun & Bradstreet (<https://www.dnb.com/>).

All eligible payees are also required to have an active registration with the System for Award Management (SAM) (<https://www.sam.gov>).

And eligible payees must have a bank account enabled for Automated Clearing House (ACH) direct deposit. Payees with a Wire account are encouraged to provide that information as well.

More information on these and all program pre-submission requirements can be found on the [Coronavirus State and Local Fiscal Recovery Fund website](#).

11.5. Why is Treasury employing id.me for the Treasury Submission Portal?

ID.me is a trusted technology partner to multiple government agencies and healthcare providers. It provides secure digital identity verification to those government agencies and healthcare providers to make sure you're you – and not someone pretending to be you – when you request access to online services. All personally identifiable information provided to ID.me is encrypted and disclosed only with the express consent of the user. Please refer to ID.me Contact Support for assistance with your ID.me account. Their support website is <https://help.id.me>.

11.6. Why is an entity not on the list of eligible entities in Treasury Submission Portal?

The ARPA statute lays out which governments are eligible for payments. The list of entities within the Treasury Submission Portal includes entities eligible to receive a direct payment of funds from Treasury, which include states (defined to include the District of Columbia), territories, Tribal governments, counties, and metropolitan cities.

Eligible non-entitlement units of local government will receive a distribution of funds from their respective state government and should not submit information to the Treasury Submission Portal.

If you believe an entity has been mistakenly left off the eligible entity list, please email SLFRP@treasury.gov.

11.7. What is an Authorized Representative?

An Authorized Representative is an individual with legal authority to bind the government entity (e.g., the Chief Executive Officer of the government entity). An Authorized Representative must sign the Acceptance of Award terms for it to be valid.

11.8. How does a Tribal government determine their allocation?

Tribal governments will receive information about their allocation when the submission to the Treasury Submission Portal is confirmed to be complete and accurate.

11.9. How do I know the status of my request for funds (submission)?

Entities can check the status of their submission at any time by logging into [Treasury Submission Portal](#).

11.10. My Treasury Submission Portal submission requires additional information/correction. What is the process for that?

If your Authorized Representative has not yet signed the award terms, you can edit your submission with in the into [Treasury Submission Portal](#). If your Authorized Representative has signed the award terms, please email SLFRP@treasury.gov to request assistance with updating your information.

11.11. My request for funds was denied. How do I find out why it was denied or appeal the decision?

Please check to ensure that no one else from your entity has applied, causing a duplicate submission. Please also review the list of all eligible entities on the [Coronavirus State and Local Fiscal Recovery Fund website](#).

If you still have questions regarding your submission, please email SLFRP@treasury.gov.

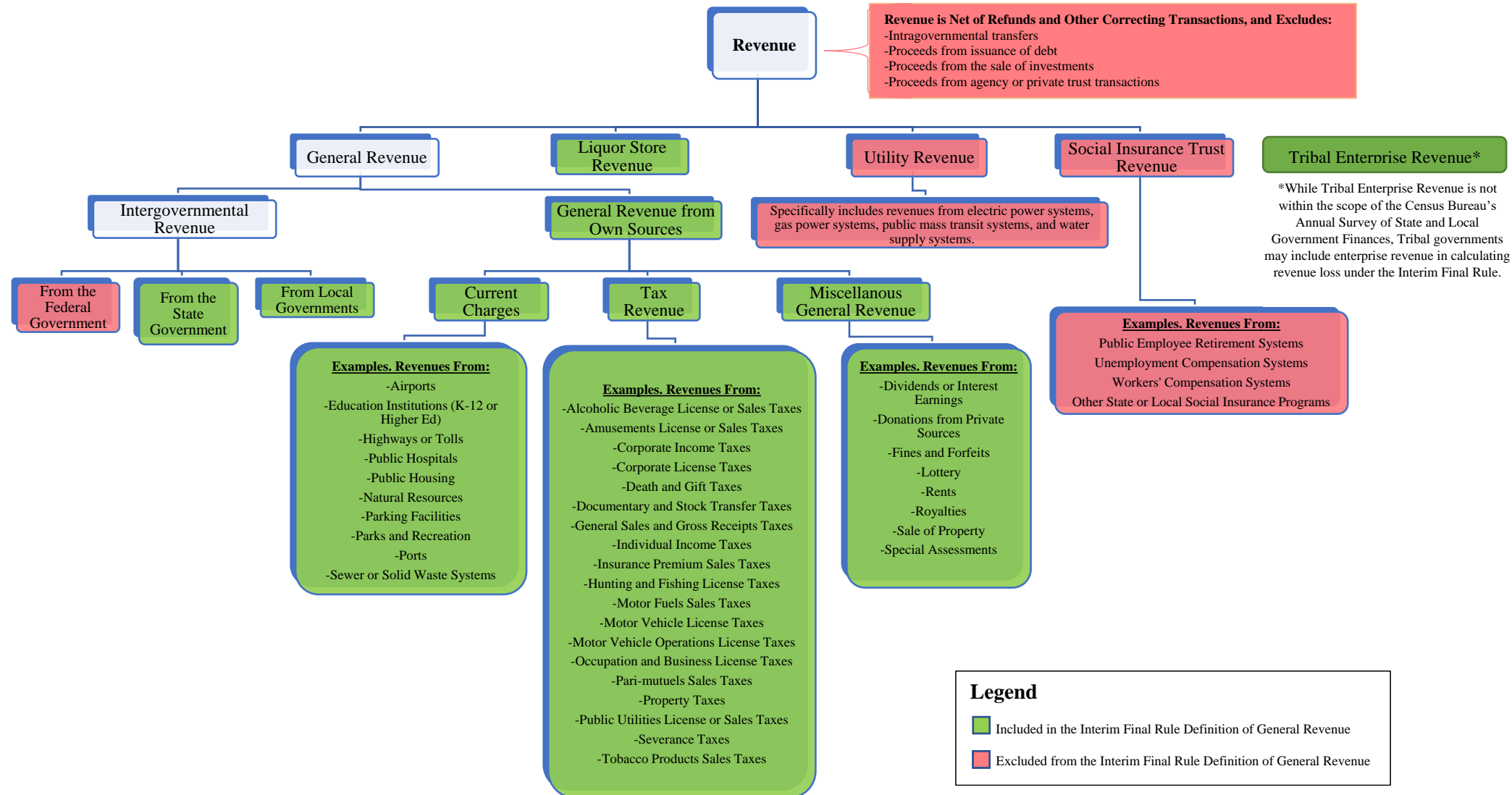
11.12. When will entities get their money?

Before Treasury is able to execute a payment, a representative of an eligible government must submit the government's information for verification through the [Treasury Submission Portal](#). The verification process takes approximately four business days. If any errors are identified, the designated point of contact for the government will be contacted via email to correct the information before the payment can proceed. Once verification is complete, the designated point of contact of the eligible government will receive an email notifying them that their submission has been verified. Payments are generally scheduled for the next business day after this verification email, though funds may not be available immediately due to processing time of their financial institution.

11.13. How does a local government entity provide Treasury with a notice of transfer of funds to its State?

For more information on how to provide Treasury with notice of transfer to a state, please email SLRedirectFunds@treasury.gov.

Appendix: Interim Final Rule Definition of General Revenue Within the Census Bureau Classification Structure of Revenue



Source: [U.S. Bureau of the Census Government Finance and Employment Classification Manual, 2006](#); [Annual Survey of State and Local Government Finances](#)

CITY COUNCIL 6.A

**CITY OF LYNNWOOD
CITY COUNCIL**

TITLE: Executive Session - Potential Real Estate transaction discussion

DEPARTMENT CONTACT: Karen Fitzthum, Executive Office

PRESENTER:

Lynn Sordel, Parks, Recreation and Cultural Arts Director

ESTIMATED TIME:

30

SUGGESTED ACTION:

Receive information and discuss potential real estate transaction

DEPARTMENT ATTACHMENTS

Description:

CITY COUNCIL
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: Ordinance: Franchise Agreement with Puget Sound Energy for Operations of Natural Gas Facilities

DEPARTMENT CONTACT: Les Rubstello, Public Works

SUMMARY:

Puget Sound Energy is seeking a franchise agreement to deploy and operate natural gas facilities within the City.

PRESENTER:

Les Rubstello, Deputy Public Works Director

ESTIMATED TIME:

5

BACKGROUND:

Puget Sound Energy approached the City of Lynnwood to renew their franchise agreement allowing them to deploy and operate facilities to support natural gas services in our area. The last franchise with PSE was signed in 1959. This franchise was negotiated over the last two years, with starts and stops due to COVID. PSE's main concerns revolved around being forced to move their facilities at their cost. They agree to do this for City projects, but not for other government agencies.

(A PSE representative may show up at the Business Meeting to make a short statement of support, and offer to answer any questions.)

SUGGESTED ACTION:

Approve the attached Ordinance granting a non-exclusive Franchise to Puget Sound Energy to deploy and operate natural gas facilities within the City rights of way.

PREVIOUS COUNCIL ACTIONS:

None.

FUNDING:

Pursuant to Section 15 of the attached Franchise Agreement, the City is not allowed by state law to assess PSE a franchise fee. PSE will, however, be charged normal permit fees by DBS for all work done within the City.

DEPARTMENT ATTACHMENTS

Description:

[PSE Lynnwood Gas Franchise \(FINAL - 2021.08.05\).pdf](#)

ORDINANCE NO. [REDACTED]

AN ORDINANCE of the City of Lynnwood, Washington, granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas for power, heat and light, and any other purposes for which gas may be used.

WHEREAS, RCW 35A.11.020 grants the City authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35.47.040 authorizes the City to "grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for... poles, conduits, tunnels, ... pipes, ... and appurtenances thereof ... for gas ... and other private and publicly owned and operated facilities for public service"; and

WHEREAS, Puget Sound Energy, Inc. ("PSE") has requested a franchise for purposes of transmission, distribution, and sale of natural gas for power, heat, light, and any other purpose for which natural gas may be used; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 1434, which granted a franchise to PSE for the construction, operation, maintenance and repair of natural gas distribution facilities for a twenty-five year period; and

WHEREAS, the original term of that PSE franchise ended in 2010, and the parties have continued to operate under the terms of such franchise since that time; and

WHEREAS, the City and PSE have negotiated a new, mutually acceptable franchise, the terms of which are contained in this Ordinance; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of residents of Lynnwood to grant a non-exclusive franchise to PSE for the operation of a natural gas distribution systems within the City right-of-way;

THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 “City” means the City of Lynnwood, Washington, a code city of the State of Washington, and its successors and assigns.

1.1.2 “Dispute” means any and all claims, controversies or disputes arising between the Parties relating to or in connection with this Franchise.

1.1.3 “Environmental Laws” means and includes any Law relating to the protection of human health and the environment, including those relating to the generation, use, handling, transportation, storage, release, discharge or disposal of Hazardous Substances, such as the Model Toxics Control Act, RCW ch. 70.105D.

1.1.4 “Facilities” means, collectively, any and all natural gas distribution systems, including gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and communication systems and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 “Force Majeure” means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by a Party of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the affected Party; and only to the extent that the affected Party has taken commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party’s ability to perform its obligations hereunder and to mitigate the consequences of the event. Force Majeure shall include the following, to the extent also satisfying the criteria specified above: (a) acts of nature, including storms; (b) acts of public enemies, terrorism, war, rioting, insurrection or sabotage; (c) any form of compulsory government action or change in Law; (d) labor disturbances, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents or employees; (e) epidemic, pandemic, or other similar health emergency (except to the extent such emergency was occurring on the effective date of this Ordinance); and (g) delay in obtaining or denial of any regulatory consents or approvals.

1.1.6 “Franchise Area” means any, every and all of the roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

1.1.7 “Hazardous Substances” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.1.8 “Law” means any and all applicable federal, state or municipal law, code, statute, ordinance, rule, regulation or other requirement that is accorded the full force and effect of law and is binding upon the Parties to this Franchise, as such Law exists, is amended, or may be created during the Term. In the event of any conflict or inconsistency between any

municipal law, code, statute, ordinance, rule, regulation or other requirement of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control.

1.1.9 “Ordinance” means this Ordinance No. [REDACTED], which sets forth the terms and conditions of this Franchise.

1.1.10 “Party” means and is a reference to either PSE or the City, and “Parties” means and is a collective reference to PSE and the City.

1.1.11 “PSE” means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.12 “Public Improvement Project” means a capital improvement within the Franchise Area undertaken by or on behalf of the City that requires the relocation of Facilities within the Franchise Area, and such capital improvement is funded by the City or with other public monies obtained by the City for such capital improvement.

1.1.13 “Regulated Service” mean any utility, telecommunications or similar service that is subject to the jurisdiction of one or more federal or state agencies that regulate the terms and conditions such service (including the Federal Energy Regulatory Commission, the Federal Communications Commission, and the WUTC,).

1.1.14 “Term” means the term of this Franchise, as set forth in Section 13, “Franchise Term.”

1.1.15 “WUTC” means the Washington Utilities and Transportation Commission, and any successor agency with jurisdiction over the terms and condition of the services provided by PSE to its customers.

Section 2. Grant of Rights.

2.1 The City hereby grants to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas for power, heat, light and such other purposes for which gas may be used.

2.2 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE’s rights under this Franchise. This Franchise shall not limit or constrain the exercise of the City’s police powers, nor shall this Franchise prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof, if so exercised and used in a manner that is consistent with the terms and conditions of this Franchise.

2.3 The authority granted in Section 2.1 shall not include or be a substitute for (a) any permit or authorization required by Law for the privilege of transacting and carrying on a business within the City, including but not limited to a City business license; or (b) any permit, agreement, authorization, or condition required by Law for using the Franchise Area in connection with

operations on or in the Franchise Area, such as right-of-way use permits and approved traffic control plans.

2.4 This Franchise shall not convey any right to PSE to install its Facilities on, under, over or across, or to otherwise use, any City-owned or leased properties of any kind that are located outside the Franchise Area. Further, this Franchise shall not govern or apply to Facilities located on PSE-owned or leased properties or easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired) and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

2.5 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Ordinance for the Term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to Law.

2.6 This Franchise shall not be construed so as to deprive the City of any rights or privileges under Law to regulate the use and control of the Franchise Area. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under Law. If the City exercises its authority to vacate all or any portion of the Franchise Area containing PSE Facilities, the City shall, through its vacation procedure, reserve an easement for PSE's Facilities. The City shall give PSE advance notice of its intent to vacate any portion of the Franchise Area and shall consult with PSE regarding the terms and conditions of the easement to be reserved for PSE's Facilities.

2.7 By accepting this Franchise, the Parties acknowledge and accept each other's legal right to issue and enforce the Franchise; accept and agree to comply with each and every provision of this Franchise; and agree that the Franchise was granted pursuant to processes and procedures consistent with Law.

Section 3. PSE Use and Occupancy of Franchise Area.

3.1 PSE shall exercise its rights within the Franchise Area in accordance with Law. All work performed on PSE's Facilities within the Franchise Area shall be accomplished in a good and workmanlike manner, by means that minimize interference with the free passage of pedestrian or vehicle traffic, and by methods that allow for reasonable access to adjoining property, whether public or private. PSE shall post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required by Law. If work on PSE's Facilities within the Franchise Area shall impair the lateral support of the Franchise Area or adjacent properties, then PSE shall take such action as is reasonably necessary to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

3.2 Prior to PSE engaging in any work on PSE's Facilities located within the Franchise Area, PSE shall apply for, and obtain, all necessary City permits to do such work, and shall, except to the extent contrary to or inconsistent with the terms and conditions of this Franchise, comply with all requirements and conditions of such permits. In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to endanger the property,

life, health or safety of any individual, PSE may take immediate action, including relocating such Facilities, to correct the dangerous condition without first obtaining any required permit; provided that PSE shall notify the City telephonically or in person within twenty four (24) hours of the event, and provided that PSE applies for any necessary permit(s) from the City for such work as soon as reasonably practicable thereafter. If the City discovers an emergency situation involving PSE's Facilities, the City will promptly notify PSE, and PSE will address the emergency situation consistent with this Section 3.2.

3.3 In the event that the City Director of Public Works or designee reasonably determines, after providing advance written notice to PSE of not less than one hundred twenty (120) days, and a reasonable opportunity for PSE to respond to the City's concerns, that any one or more of PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian, bicycle and/or vehicular traffic therein, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall reasonably cooperate with PSE, including, without limitation, allowing changes or modifications to City-owned improvements in the Franchise Area (not including expanding the scope of the Franchise Area), at no expense to the City, if such changes or modifications provide the most effective or economical means of eliminating such interference. In the event any such interference from PSE's Facilities arises due to a Public Improvement Project, the terms of Section 7.1 shall apply. If the interference from PSE's Facilities is due to a public or private development that is not a Public Improvement Project, the terms of Section 7.2 shall control any relocation of PSE's Facilities.

3.4 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE's Facilities within the Franchise Area, restore the effected Franchise Area and any other City property situated within the Franchise Area that may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City shall not impose any fee, fine, charge or other cost or expense on PSE for such damage or disturbance, provided that such restoration work is completed to the reasonable satisfaction of the City and in accordance with any applicable City construction standards, to the extent that such standards are not in conflict with or inconsistent with the terms and conditions of this Franchise. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored consistent with Law. PSE shall perform all restoration work promptly, and shall promptly repair any damage caused by such work to the Franchise Area at no expense to the City. In the event PSE fails to restore the Franchise Area as required in this Section 3.4 within a reasonable period following the City's written notice to PSE of PSE's failure to do so, the City reserves the right to make such repairs or restoration to the Franchise Area and to bill PSE for the cost of the restoration, including the cost of labor and equipment. PSE shall pay the reasonable costs of such work to the City within thirty (30) days of receipt of the billing for the work.

3.5 The City shall have the right to inspect all work performed by PSE under City permits in the Franchise Area, whether during the performance of such work or after completion, so long as such inspection does not disrupt PSE's system operation. To the extent that the City is required to perform any inspections for PSE work performed under a City permit, the City may recover the costs and expenses consistent with Law.

3.6 PSE shall take prompt corrective action if, after reasonable notice from the City, either Party finds that PSE's Facilities are not operating in a manner consistent with approved plans, or

either Party finds that PSE Facilities and equipment do not comply with the requirements of this Franchise or Law.

3.7 PSE shall exercise reasonable care in the course of the installation and maintenance of its Facilities. All Facilities in the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe condition. PSE shall comply with Law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities.

Section 4. Planning and Coordination.

4.1 The Parties shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. In so doing, the Parties shall undertake cooperative planning so as to promote the coordinated timing, location and prosecution of such work within the Franchise Area. Upon the request of either Party, but not more often than annually unless otherwise agreed upon by the Parties, the Parties shall meet to discuss and coordinate regarding future construction activities then being planned by either Party within the Franchise Area. Such discussions and coordination shall be for informational purposes only and shall not obligate either Party to undertake any specific improvements within the Franchise Area.

4.2 PSE shall provide to the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities within the Franchise Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location.

4.3 Upon the City's reasonable request, PSE will make available for review by the City, PSE's annual maintenance, safety and inspection plans and records concerning or related to PSE's natural gas Facilities located in the City, as prepared for filing with the WUTC.

4.4 PSE reserves the right to withhold information that may be Critical Electric/Energy Infrastructure Information (CEII). CEII means information that relates to the production, generation, transportation, transmission, or distribution of energy in which the release may cause incapacity or destruction that would negatively affect security, economic security, public health, or safety, or any combination thereof. Any such withholding must be consistent with FERC regulations 18 CFR 388.113 (g) (5).

4.5 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the Party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the Party causing such excavation. With respect to any excavations by PSE or the City within the Franchise Area, nothing in this Franchise is intended (nor shall be construed) to relieve either Party of their respective obligations arising under Law with respect to determining the location of utility facilities.

4.6 PSE represents that it is familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute) and understands and will comply with Law relating to the one call locator service program.

Section 5. Decommissioned Facilities.

5.1 PSE may, from time to time, elect to discontinue its use of underground natural gas Facilities within the Franchise Area and decommission such Facilities in place (“Decommissioned Gas Facilities”). In such event, PSE shall notify the City of its decision to decommission such Facilities and provide the City with a plan for such decommissioning. PSE’s written notification may be included with any right-of-way permit application to the City for such decommissioning. The decommissioning plan shall address how the Facilities will be decommissioned and how the Franchise Area will be protected and, if necessary, restored after decommissioning.

5.2 All such decommissioning work shall be accomplished in compliance with Law. Unless otherwise approved by the City, decommissioning work should be accomplished within one hundred and eighty (180) calendar days after the Facilities are decommissioned and any required permits for such decommissioning work have been issued.

5.3 Within thirty (30) calendar days of receiving a decommissioning plan submitted by PSE pursuant to Section 5.1, the City will review the plan and either approve or require changes to and resubmittal of the plan. The City will not unreasonably withhold approval of PSE’s proposed plan, but may require changes if it determines, in its reasonable discretion, that said plan fails to comply with Law or Section 5.1. Following the City’s approval of the decommissioning plan, PSE shall promptly and in good faith implement the plan and obtain all required permits for its work in the Franchise Area. If the City reasonably determines, after consultation with PSE, that leaving the Facilities will threaten the public health, safety or welfare if left in place, the City may require removal of the decommissioned Facilities.

5.4 Decommissioned Gas Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 7 and the indemnification provisions in Section 8). As requested by the City in accordance with Section 4, PSE shall provide the City with drawings that show the approximate location of Decommissioned Gas Facilities.

Section 6. Hazardous Substances.

PSE shall comply with Environmental Laws in connection with its use and occupancy of the Franchise Area. PSE shall only use Hazardous Substances within the Franchise Area incident to PSE’s normal business operations, and in all cases, (a) limited to such quantities as may be required in its normal business operations, (b) used, transported or stored per manufacturer’s instructions, and (c) used, transported or stored only for its intended use. In the event PSE or its contractors cause a release of Hazardous Substances within the Franchise Area, PSE shall notify the City within twenty-four (24) hours of its discovery. PSE shall act promptly to remediate such release of Hazardous Substances in accordance with Environmental Laws (the “Remediation Work”). All Remediation Work shall be performed at PSE’s sole cost and expense.

Section 7. Relocation of Facilities.

7.1 Whenever the City causes a Public Improvement Project to be undertaken within the Franchise Area, and such Public Improvement Project requires the relocation of PSE’s then existing Facilities within the Franchise Area (for purposes other than those described in Section 7.2 below), the City shall:

7.1.1 provide PSE, within a reasonable time (but in no event less than one hundred twenty (120) calendar days) prior to the commencement of such Public Improvement Project, written notice requesting such relocation; and

7.1.2 provide PSE with sufficient plans and specifications, as reasonably determined by PSE, for the planning and coordination of such work (collectively, a “Relocation Notice”).

No later than one hundred twenty (120) calendar days (or such longer period of time as the Parties may mutually agree to in writing for a specific Public Improvement Project) after receipt of such Relocation Notice (the “Relocation Date”), PSE shall relocate the Facilities within the Franchise Area at no cost or charge to the City. If, however, PSE reasonably determines that it is impossible or impracticable to perform the relocation by the proposed Relocation Date, then PSE shall promptly inform the City and provide a reasonable alternative relocation timeline. The Parties shall promptly meet and confer, in good faith and with due regard to all relevant facts and circumstances, to determine a mutually agreeable Relocation Date. If the Parties agree upon a Relocation Date, then PSE shall complete the relocation of its existing Facilities within the Franchise Area in accordance with Section 7.1 on or before the Relocation Date. In all other cases, PSE shall exercise commercially reasonable efforts to relocate such Facilities within the Franchise Area prior to the City’s proposed Relocation Date. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 7.1, the City shall bear the entire cost of such subsequent relocation.

7.2 Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation of PSE’s Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of PSE’s Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, PSE shall have the right as a condition of such relocation, to require such person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE’s Facilities.

7.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE’s Facilities shall be a required relocation for purposes of Section 7.2 above (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

7.4 Nothing in this Section 7 “Relocation of Facilities” shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

7.5 Subject to the exclusions and requirements set forth below in this Section 7.5, if PSE does not relocate its Facilities within the Franchise Area in accordance with Section 7.1 on or before a Relocation Date and such failure to relocate in a timely manner is the direct cause of a delay in performance of Public Improvement Project construction by the City’s contractor(s) resulting in a claim by the City’s contractor(s) for any direct costs or expenses incurred by the contractor(s) by reason of such delay (a “Contractor Delay Claim”), then the City may require that PSE reimburse the City for any such costs and, expenses that are legally required to be paid by the City to its contractor(s); provided, that, if the City requires reimbursement by PSE under this Section 7.5,

then the City shall first give PSE written notice of the Contractor Delay Claim, within a reasonable time of receipt of such claim, and give PSE the opportunity to compromise or settle with the third party contractor(s) the Contractor Delay Claim for a period of not less than thirty (30) days (or such shorter period of time as the City may have to respond to the Contractor Delay Claim without prejudicing its right to respond, provided that the City affords PSE with a reasonable period of time to compromise or settle the claim) prior to the City's payment of the Contractor Delay Claim. Nothing in this Section 7.5 or otherwise shall require PSE to bear or be responsible for any Contractor Delay Claim to the extent the delay giving rise to such Contractor Delay Claim is caused by the City, its contractor(s), any third party that is not an agent, employee, or contractor of PSE, or a Force Majeure event; provided, however, if such a delay is caused by the City, its contractor(s), a third party that is not an agent, employee or contractor of PSE, or a Force Majeure Event, then PSE's performance shall only be excused for the time period that is reasonably attributable to such delay.

Section 8. Indemnification and Insurance.

8.1 Indemnification.

8.1.1 PSE shall indemnify, defend, protect, and hold harmless the City, its elected and appointed officials, officers, employees, representatives and agents, from any and all third party claims made against the City, and any damages, costs, judgments, awards or liability resulting from such claims (a) for injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions, or willful misconduct, of PSE, its officers, employees, agents, representatives, or contractors in the performance of this Franchise and any rights granted hereunder, or (b) to the extent such claim or demand is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of any Environmental Law in its construction, maintenance or operation of its Facilities within the Franchise Area and exercise of any rights granted hereunder; provided, that such indemnification shall not extend to any portion of any claim, demand, liability, loss, cost, damage or expense of any nature including all costs and attorneys' fees caused by the willfully tortious, or negligent acts or omissions of the City, its officers, employees, agents, representatives, or contractors.

8.1.2 In the event any claim for such damages be presented to or filed with the City, the City shall promptly notify PSE. PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim; provided, that in the event any suit or action is filed against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

8.1.3 The provisions contained in this Section 8.1 have been mutually negotiated by the Parties. Solely to the extent required to enforce the indemnification provisions of this Section 8.1, PSE waives its immunity under Title 51 RCW, Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees.

8.1.4 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

8.1.5 The provisions of this Section 8.1 shall survive the termination or expiration of this Franchise.

8.2 Insurance.

8.2.1 During the Term PSE shall maintain the following liability insurance coverages, insuring PSE, and including the City as additional insured, against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE in this Franchise:

A. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be included as an additional insured under PSE's Commercial General Liability insurance policy with respect this Franchise Agreement. Insurance shall be written with limits no less than \$2,000,000 each occurrence.

B. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01. Insurance shall be for a combined single limit for bodily injury and property damage of \$2,000,000 per accident.

C. Worker's compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the PSE's Commercial General Liability and Automobile Liability insurance. The City shall be included as an additional insured on PSE's Excess or Umbrella Liability insurance policy. Insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through PSE's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

8.2.2 PSE's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it.

8.2.3 In lieu of the insurance requirements in Section 8.2, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. If PSE is self-insured or becomes self-insured during the term of the Franchise Agreement, PSE or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of PSE's or its

parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) PSE or its parent company is responsible for all payments within the self-insured retention; and (iii) PSE assumes all defense and indemnity obligations as outlined in the indemnification section of this Agreement.

8.2.4 Each year, PSE shall provide the City with a Certificate of Coverage, evidencing the insurance requirements of the Agreement. If PSE is maintaining a self-insurance program consistent with Section 8.2.3, PSE shall provide reasonable written evidence of such self-insured program. All coverage shall be written with insurers with a current A.M. Best rating of not less than A: VII and licensed to do business in the State of Washington.

8.2.5 PSE shall maintain continuous, uninterrupted insurance coverage, in the amounts required, for the duration of the Franchise term, and in the case of Commercial General Liability, for at least one year after expiration of this Franchise. PSE shall provide the City with written notice of any policy cancellation within ten business days of their receipt of such notice. If the insurance is cancelled or materially changed so as to be out of compliance with the requirements of this section, PSE shall provide evidence a replacement policy has been obtained. Failure on the part of PSE to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days' notice to PSE to correct the breach, terminate the Agreement.

8.2.6 PSE shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of PSE-provided insurance as set forth herein, except PSE shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

Section 9. Performance Bond.

9.1 During the Term PSE shall maintain a performance bond consistent with the applicable requirements of the Lynnwood Municipal Code and as reasonably sufficient to ensure performance of PSE's obligations under this Franchise to perform work within the Franchise Area. Such bond shall not exceed the sum of \$250,000 and shall be executed by a corporate surety authorized to do business in the State of Washington with an A.M. Best's rating of not less than A (Excellent).

9.2 The City shall give PSE written notice of any withdrawal under this section upon such withdrawal. Within thirty (30) days following receipt of such notice, PSE shall restore the performance bond to the amount required under this Franchise. PSE's maintenance of the bond shall not be construed to excuse performance of obligations under the Franchise, or to limit the liability of PSE or otherwise limit the City's recourse to any other remedy available at law or equity.

Section 10. Force Majeure.

If performance of this Franchise or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance

hereunder whenever such causes are removed. Notwithstanding the foregoing, the insufficiency of funds, financial inability to perform or changes in such Party's cost of performing its obligations hereunder shall not constitute a Force Majeure event.

Section 11. Dispute Resolution.

11.1 A Dispute shall be resolved in accordance with the dispute resolution procedures set forth in this Section 11, "Dispute Resolution." A Party shall inform the other Party promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a Dispute. The initial mechanism to resolve a Dispute shall be by negotiation between the Parties' representatives, so designated by the Parties by notice given pursuant to this Section 11.1.

11.2 If the Parties cannot resolve a Dispute satisfactorily within fifteen (15) days after receipt of the initial notice in accordance with Section 11.1, either Party may thereafter deliver to the other Party notice initiating the dispute resolution procedures set forth in this Section 11.2. Such notice shall (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators authorized to settle the Dispute, and (iii) propose a date or dates, not less than (30) days from the date such notice, that such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party shall, within three (3) business days following receipt of the Dispute notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators duly authorized to settle the Dispute. Following delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated shall meet and confer, as often as they deem reasonably necessary during the remainder of the thirty (30) day period, in good-faith negotiations to resolve the Dispute to the satisfaction of both Parties.

11.3 If at any time after the expiration of such thirty (30) day period the City shall determine that continued negotiations with PSE will not result in a resolution of the issue or issues in Dispute, and if the City reasonably believes that PSE is then in default of its obligations under this Franchise, then the City may serve upon PSE a written order to comply with the provisions of this Franchise pursuant to Section 12, "Default."

Section 12. Default and Termination.

If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance. The Parties agree that termination of this Franchise is not the City's sole remedy for PSE's failure to comply with the provisions of this Franchise, but is supplemental to any and all legal and equitable remedies available to the City for such failure or to enforce the provisions of this Franchise. Both Parties reserve the right to pursue all legal and equitable remedies available in the event of a breach of this Franchise.

Section 13. Franchise Term, Renewal and Expiration.

13.1 This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of this Ordinance, file with the City its written acceptance of the Ordinance. The term of this Franchise may be renewed at the sole discretion of the Lynnwood City Council for up to two additional ten (10) year periods, upon the written request of PSE, provided that such request is submitted to the City not more than two (2) years nor less than ninety (90) days prior to the expiration of the Franchise.

13.2 Within one (1) year prior to the expiration of the Term or the final renewal Term of this Franchise, as applicable, or following the termination of this Franchise, and in the absence of any succeeding franchise, either Party may initiate negotiations with the other Party to agree upon the terms and conditions of a succeeding franchise to this Franchise. Following the initiation of any such negotiations by a Party, each Party will work with the other Party diligently and in good faith, to negotiate and agree upon terms and conditions of a succeeding franchise. As long as PSE conduct such negotiations diligently and in good faith, the Parties will continue to operate under the terms and conditions of this Franchise until the date on which a succeeding franchise to this Franchise has been entered into by the Parties and becomes effective.

13.3 All terms and conditions of this Franchise that must be reasonably construed to survive the expiration or termination of this Franchise in order to give full force and effect to the intent of the Parties as set forth herein shall survive the expiration or termination of this Franchise, regardless of whether such survival is expressly specified herein.

Section 14. Assignment.

PSE shall not assign this Franchise to any third party without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 15. Payments to the City.

15.1 Recovery of Costs.

Pursuant to RCW 35.21.860, the City acknowledges that it is precluded from imposing a franchise fee or any other fee upon a gas distribution business, as defined in RCW 82.16.010, for use of the right-of-way, except for actual administrative expenses, fees, taxes or charges authorized by RCW 35.21.860 and RCW 35.21.865. Therefore, the City may not impose a franchise fee under this Franchise, other than as stated in this Franchise.

15.2 Permit Fees.

PSE shall be subject to all standard permit fees that are directly related to receiving and approving a permit or license, and to inspecting plans and construction, to the extent consistent with Law. PSE shall pay such costs and expenses directly to the City within sixty (60) days of submittal by

the City of an itemized billing by project for incurred costs, or in accordance with the City code, whichever is sooner.

15.3 Acceptance of Payment.

No acceptance of any payment by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Franchise. PSE's payment to the City shall not be construed as an acknowledgement by PSE that the amount paid is the correct amount and PSE reserves the right to subsequently seek to recover any amount of such payments in the event of an erroneous overpayment or for other lawful reasons.

Section 16. Miscellaneous.

16.1 Notice.

Unless otherwise specifically provided by this Franchise, all notices, consents, requests, demands or other communications required or permitted by this Franchise must be in writing and given by personal delivery, email or certified mail and shall be sent to the respective parties as follows:

To PSE:

Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, WA 98009-9734
Attn: Municipal Relations

To City:

Art Ceniza, City Administrator
City of Lynnwood
19100 44th Ave W
Lynnwood, WA 98036
aceniza@lynnwoodwa.gov

Any such communication by a Party shall be deemed to have been received by the other Party (i) upon the delivery date received by the intended recipient if delivered by hand; (ii) five (5) business days after it is sent by certified mail, postage prepaid; or (iii) if sent by email transmission, when dispatched and acknowledged by the recipient as having been received in full and in legible form. A Party may change its address for purposes of this Section 16.1 by giving written notice of such change to the other Party in the manner provided in this Section 16.1.

16.2 Terminology.

The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Franchise with initial capitals in another number, tense or form. References containing terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole.

“Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive.

16.3 Severability.

Any provisions of this Franchise prohibited or rendered unenforceable by any law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Franchise. In such event, the remainder of this Franchise will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable, the Parties shall negotiate in good faith to modify this Franchise so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Franchise are fulfilled to the greatest extent possible.

16.4 Entire Franchise.

This Franchise may be amended only by an ordinance which specifically states that it is an amendment to this Franchise and is approved by the Lynnwood City Council and accepted by PSE in accordance with the laws of the State of Washington. This Franchise constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof.

16.5 Reservation of Rights.

16.5.1 The City reserves all rights and powers under its police powers and powers conferred by Law. In particular the City reserves the right to alter, amend, or repeal its municipal code as it determines shall be conducive to the health, safety, and welfare of the public, or otherwise in the public interest. The City agrees that by accepting this Franchise, PSE has not waived its right to object to the application to it of actions by the City pursuant to its reserved rights or police powers.

16.5.2 Both parties expressly reserve all rights they may have under Law to the maximum extent possible; neither the City nor PSE shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

16.5.3 This Franchise is intended to convey limited rights to PSE for use of the Franchise Area in accordance with the express terms of this Franchise. This Franchise is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to PSE shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating. This Franchise does not deprive the City of any power, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City rights-of-way in a manner consistent with the provisions of this Franchise.

16.6 Nothing in this Franchise shall be construed to create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person or entity other than the City and PSE. No action may

be commenced or prosecuted against either the City or PSE by any third party claiming as a third-party beneficiary of this Franchise.

16.7 The Parties shall act in good faith and use commercially reasonable efforts to carry out their respective obligations under this Franchise. The failure of either Party to insist on or enforce strict performance of any provision of this Franchise or to exercise any right or remedy under this Franchise or Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

16.8 This Franchise shall be governed by, subject to and construed under the laws of the State of Washington. This Franchise is subject to the provisions of any applicable tariff on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

16.9 Any litigation filed by either Party arising out of or relating to this Franchise shall be filed in Snohomish County Superior Court.

16.10 Within sixty (60) days of the effective date of this Ordinance, PSE shall execute and return to the City the PSE Acceptance form, attached to this Ordinance. The executed Franchise Acceptance shall be returned to the City. In the event PSE fails to accept this Franchise by said date, this Franchise shall be null and void and the Parties shall continue to operate under the terms of the prior Franchise.

Section 17. Effective Date.

This Ordinance, being passed in compliance with RCW 35A.47.040, shall take effect five (5) days after its publication, which shall be by an approved summary thereof consisting of its title.

PASSED by the City Council this ____ day of _____, 2021.

APPROVED:

MAYOR NICOLA SMITH

ATTEST/AUTHENTICATED:

KAREN FITZTHUM, CITY CLERK

APPROVED AS TO FORM:

ROSEMARY LARSON, CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

ACCEPTANCE OF FRANCHISE

Puget Sound Energy, Inc., for itself and for its successors and assigns, hereby agrees to and accepts the provisions of this Franchise Ordinance, a copy of which is attached hereto. By accepting this Franchise Ordinance, PSE covenants and agrees to perform and be bound by each and every term and condition of this Franchise Ordinance. PSE shall send to the City PSE's written acceptance of this Franchise via certified mail, unless otherwise hand-delivered to an employee of the City at City Hall during regular working hours.

Dated: _____

PUGET SOUND ENERGY, INC.

By: _____

Printed Name: _____

Its: _____

CITY COUNCIL
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: Contract Award - Community Justice Center Construction

DEPARTMENT CONTACT: Cathy Robinson, Executive Office

SUMMARY:

The City desires to establish a contract for construction of the Community Justice Center project.

PRESENTER:

James Nelson, Police Chief; Chuck Steichen Deputy Chief; Michelle Meyer, Finance Director; Cathy Robinson, Interim Procurement Manager

ESTIMATED TIME:

10

BACKGROUND:

The City issued a formal advertised invitation to bid for the Community Justice Center project. Six bids were received. FORMA Construction Company is the lowest, responsive, responsible bidder for the base bid and all three additive alternate items.

SUGGESTED ACTION:

Authorize the Mayor to execute a contract with FORMA Construction Company for the Community Justice Center construction project in the amount of \$56,380,704.52 and execute change orders up to 10% of the contract amount.

FUNDING:

The Community Justice Center project is primarily funded through the Limited Tax Obligation Bonds (LTGO) that were issued on June 24, 2021. Due to significant supply chain and material cost impacts, which are impacting the entire nation as a result of the pandemic, the bids for construction were higher than anticipated.

Although we have the funds on hand to cover the full cost of the construction contract, the budget for the full project will need to be increased. The ordinance that established the parameters for the bond issuance, Ordinance No. 3387 adopted on March 22, 2021, allowed for a maximum True Interest Cost (TIC) of 4.0%; the actual TIC for the bonds is 2.5%. Because of this low interest rate, the City may issue additional principal funding to cover the full cost of the project without exceeding the initial anticipated annual debt service payment. To save on issuance costs, additional funding can be issued in conjunction with the upcoming scheduled refunding on the City's 2012 bonds.

The City's financial advisors and bond counsel will prepare an authorizing ordinance to outline the parameters for the issuance that will be discussed at future meetings. The updated revenue and expenditure amounts for the project will be incorporated into the Mid-Biennial Budget Review process.

DEPARTMENT ATTACHMENTS

Description:

[Procurement Report_Revised 081821_Final.pdf](#)

PROCUREMENT REPORT

Contract No.: 3348 – Community Justice Center Construction
Revised August 18, 2021

Type of Contract:

One-time construction contract.

Term of Contract:

Estimated date of project completion (new construction and tenant improvements) is October 9, 2023.

Background/Purpose of Contract:

The Police Department and Consultant worked together to bring Council a design and proposal for construction of a new Community Justice Center. Council approved moving the project forward by soliciting bids for the building construction.

Cost (includes sales tax if applicable):

\$56,380,704.52, which includes the base bid, three additive alternate items, and sales tax.

Advanced Planning:

Procurement Division worked closely with the Police Department and Design Consultant staff to develop the solicitation for these services.

Method of Procurement:

Invitation to bid process was used as the cost for this project was greater than \$350,000.

Solicitation:

The City issued a formal advertised invitation to bid #3348 on May 6, 2021. Six bids were received. The City selected the lowest, responsive, responsible bidder for the base bid and all three additive alternate items.

Recommended Action:

Approve award of construction contract to FORMA Construction Company for the Community Justice Center project, in the amount of \$56,380,704.52 and authorize the Mayor to execute change orders up to 10% of the contract amount.

Procurement Officer: Cathy Robinson

Date: August 18, 2021

CITY COUNCIL
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: Contract Award - Community Justice Center Special Construction Inspection Consultant Services

DEPARTMENT CONTACT: Cathy Robinson, Executive Office

SUMMARY:

The City desires to establish a consultant contract for special inspection services related to the Community Justice Center Construction project.

PRESENTER:

Cathy Robinson, Interim Procurement Manager

ESTIMATED TIME:

5

BACKGROUND:

The City issued a formal advertised request for qualifications. Six responses were received. As required under state law, the City entered negotiations with the highest ranked qualified responder.

SUGGESTED ACTION:

Authorize the Mayor to execute a contract with Mayes Testing Engineers, Inc., for special inspections and testing services related to the Community Justice Center Construction project in the amount of \$187,282.00.

FUNDING:

The funding for this contract is included in the community justice center project budget.

DEPARTMENT ATTACHMENTS

Description:

[Procurement Report_Revised 081821_Final.pdf](#)

PROCUREMENT REPORT

Contract No.: 3370 – Special Inspection and Testing Services
Revised August 18, 2021

Type of Contract:

One-time services agreement.

Term of Contract:

Estimated date of project completion is October 9, 2023.

Background/Purpose of Contract:

Special inspections and testing services are required during the construction and tenant improvement phases of the community justice center project.

Cost (includes sales tax if applicable):

Estimated cost for inspection and testing services is \$187,282.00.

Advanced Planning:

Procurement Division worked closely with the Police Department and Consultant staff to develop a solicitation for these services.

Method of Procurement:

A Request for Qualification (RFQ) method was used in accordance with state law for obtaining engineering services.

Solicitation:

The City issued RFQ 3370 Justice Center Special Inspection and Testing Services on June 9, 2021. Six responses were received. As required under state law, the City entered negotiations with the highest ranked qualified responder.

Recommended Action:

Approve the award to Mayes Testing Engineers, Inc. for Community Justice Center Special Inspection and Testing Services at an estimated value of \$187,282.00.

Procurement Officer: Cathy Robinson

Date: August 18, 2021

CITY COUNCIL
CITY OF LYNNWOOD
CITY COUNCIL

TITLE: Contract Award - Community Justice Center Geotechnical Construction Testing Services

DEPARTMENT CONTACT: Cathy Robinson, Executive Office

SUMMARY:

The City desires to establish a consultant contract for geotechnical services related to the Community Justice Center Construction project.

PRESENTER:

Cathy Robinson, Interim Procurement Manager

ESTIMATED TIME:

5

BACKGROUND:

The City issued a formal advertised request for qualifications Six responses were received. As required under state law, the City entered into negotiations with the highest ranked qualified responder.

SUGGESTED ACTION:

Authorize the Mayor to execute a contract with The Riley Group, Inc., for geotechnical construction testing services related to the Community Justice Center Construction project in the amount of \$131,722.00

FUNDING:

The funding for this contract is included in the community justice center project budget.

DEPARTMENT ATTACHMENTS

Description:

[Procurement Report_Final.pdf](#)

PROCUREMENT REPORT

Contract No.: 3355 – Geotechnical Testing Services

Type of Contract: One-time services agreement.
Term of Contract: Estimated date of project completion is April 14, 2023.
Background/Purpose of Contract: Geotechnical testing and consultant services are required during the construction phase of the community justice center project.
Cost (includes sales tax if applicable): Estimated cost for geotechnical testing and consultant services is \$131,722.00
Advanced Planning: Procurement Division worked closely with the Police Department and Consultant staff to develop a solicitation for these services.
Method of Procurement: A Request for Qualification (RFQ) method was used in accordance with state law for obtaining engineering services.
Solicitation: The City issued RFQ 3355 Justice Center Geotechnical Testing and Services on June 9, 2021. Six responses were received. As required under state law, the City entered negotiations with the highest ranked qualified responder.
Recommended Action: Approve the award to The Riley Group, Inc., for Community Justice Center Geotechnical Testing and Consultant Services at an estimated value of \$131,722.00.
Procurement Officer: Cathy Robinson Date: August 18, 2021