AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Tuesday, September 28, 2021 – 9:00 a.m.

****ATTENTION****
In response to the current pandemic, to promote social distancing, and in compliance with Governor's Proclamation and the recommendation of the Clallam County Health Officer, the Board of Commissioners meetings will be virtual only. The Board of Commissioners also strongly encourages public comments to be submitted in writing if possible.

This meeting can be viewed on a live stream at this link: http://www.clallam.net/features/meetings.html

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit https://zoom.us/j/8755617844 and use meeting ID: 875 561 7844 and passcode: 12345

Public comment and questions can be directed to the Clerk of the Board at 360-417-2256 or agores@co.clallam.wa.us.

CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

Modification - adding item 2i

PUBLIC COMMENT – Please limit comments to three minutes (10 minutes total)

CONSENT AGENDA – Any Commissioner may remove items for discussion

1a. Approval of vouchers for the week of September 20

Approval of vouchers

1b. Approval of minutes for the week of September 20

Approval of minutes

1c. Letter to New Hope Food Bank for Notice of Termination of American Rescue Plan Act Funds (ARPA) Direct Grant Assistance Agreement

Letter

REPORTS AND PRESENTATIONS

CONTRACTS AND AGREEMENTS

2a. Agreement for collective bargaining unit of 1619 CS

Agreement

Agreement - posted on 9-23-21 after agenda was posted - item 2a

2b. Agreement amendment 4 with Western Federal Lands Highway Division for closing out the East Beach Road Improvement project

Agreement

2c. Agreement with Thurston County for pathology and associated services for death investigations

Agreement

2d. Agreement with Dr. Eric L. Kiesel for autopsy services

Agreement

2e. Revised Agreement with New Hope Food Bank for American Rescue Plan Act funds

Revised Agreement

2f. Agreement with Concerned Citizens to provide adult developmental disability services

Agreement

2g. Agreement with Morningside to provide adult developmental disability services

Agreement

2h. Agreement with Pierce, Jones and Associates to provide adult developmental disability services

Agreement

2i. Amended Agreement with Konica Minolta Business Solutions U.S.A., Inc. for professional services, license user fees and maintenance for the implementation of an eFile Portal

Amended agreement - added 9-28-21

BIDS AND AWARDS

3a. Bid opening – Sequim-Dungeness Way / Woodcock Road Roundabout Project, CRP C1257

Bid opening

3b. Bid opening – 2021 Countywide Overlay Project, CRP C1258

Bid opening

ADMINISTRATION

4a. Letter of understanding for collective bargaining unit of 1619 CS

Letter

Letter of Understanding - posted on 9-23-21 after agenda was posted - item 6

BUDGET

5a. Resolution adopting the following Supplemental Appropriations:
Sheriff - OPNET Drug
• Additional funding from Department of Commerce Multi-Jurisdictional Drug-Gang Task Force Program for the Narcotics Task Force Program/$84,022
• Additional funding from the sale of forfeited vehicles and firearms will pay Washington State Treasurer 10% of two vehicles and remainder to be used to purchase two replacement vehicles/$45,773
Sheriff - Operations - Adds funding from reimbursement from FY18 & FY19 Operation Stonegarden Grant for patrol overtime, grant coordinator salary and benefits and patrol mileage related to grant activities for January through June 2021/$52,592
Superior Court - Additional funding for Uniform Guardianship Act Minor Guardianship program/$111,745

Supplemental appropriations

HEARING(S) – Beginning at 10:30 a.m.

H1. Resolution adopting Policy 958 – Greenhouse Gas Reduction Policy

Resolution adopting Policy 958

H2. Consideration of resolution adopting the following Debatable Emergencies:
Non Departmental - Additional funding for contract with CBG Communication for professional services for renegotiation and technical review work for the WAVE cable franchise renewal/$40,000
Parks and Facilities
• Additional funding for expenses related to COVID-19 for goods and services expenditures incurred in August, 2021 expected to be reimbursed through FEMA/$12,631
• Additional funding for wages for temporary custodian hired through Express Personnel for June through November 2021/$22,150
• Additional funding for the purchase and installation of Supply Fan 1 to the HVAC system in the courthouse and a replacement hot water heater in the Jail/$39,000
Sheriff - Jail Medical - Additional funding for expenses related to COVID-19 for inmate testing expenditures incurred April - August, 2021/$31,500
Sheriff - OPNET Drug - Additional funding to purchase two replacement vehicles for OPNET use/$4,500

Debatable emergencies

H3. Ordinance amending Clallam County Code Title 33 Zoning, and adding a new section adopting standards for Recreational Vehicles, Park Models and Camping

Ordinance amending Clallam County Code Title 33 Zoning

PUBLIC COMMENT – Please limit comments to three minutes

EXECUTIVE SESSION - September 28, 2021 at 2 p.m.
The Prosecuting Attorney's Office is requesting an executive session to discuss potential new affirmative litigation with the BOCC. The suit relates to the Opioid Crisis.

This litigation may be discussed with legal counsel in Executive Session pursuant to RCW 42.30.110(1)(i), which states that executive sessions may be held "to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial

consequence to the agency."

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110

Executive Session

Meeting information

The following meetings are scheduled for the Board of Commissioners September 26 - October 1:

Sunday, September 26:
2:00 p.m. Vietnam Veterans Ceremony

Monday, September 27:
9:00 a.m. Work Session
12:00 p.m. WSAC Virtual COVID Update

Tuesday, September 28:
10:00 a.m. Board Meeting
10:30 a.m. Hearing(s) - See Agenda
2:00 p.m. Executive Session
4:00 p.m. Board of Health Special Meeting

Wednesday, September 29:
12:00 p.m. Forks Chamber Budget Meeting

Friday, October 1:
10:00 a.m. Emergency Management COVID Briefing

INSTRUCTIONS FOR SPEAKING AT A COMMISSIONERS' MEETING:

- Members of the public wishing to address the Board on general items may do so during the designated times on the agenda.
- Members of the public wishing to comment at the public hearing are asked to sign in on the sheet provided giving their name and address.
- The Chair may limit the comment period to 3 minutes for each speaker subject to Board concurrence.
- Speakers, generally, will be heard in the order they signed up. All comments must be made from the speaker's rostrum and any individual making comments shall first state their name and address for the official record.
- General comments, applause, booing from members of the audience are inappropriate and may result in removal.

These guidelines are intended to promote an orderly system for conducting a public hearing so that each person has an opportunity to be heard and to ensure that exercising their right of free speech embarrasses no one.

Note: Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board. Copies of public documents from Board meetings are available by contacting the Public Records Department.

M E M O R A N D U M

LONI GORES
Clerk of the Board

September 28, 2021

TO: Board of Commissioners, Administrator Sill

RE: Agenda Modification(s)

FILE: A14.09.18

- The following item has been added to the September 28, 2021 regular agenda:

CONTRACTS AND AGREEMENTS

2i Amended Agreement with Konica Minolta Business Solutions U.S.A., Inc. for professional services, license user fees and maintenance for the implementation of an eFile Portal

1a
9/28/21

Date of report: September 22, 2021

General	**$149,815.19**
Other	**$762,585.03**
Total	**$912,400.22**

STATE OF WASHINGTON)
)
County of Clallam)

This is to certify that the foregoing Final Check Lists a.k.a., Register of Warrants for the period herein indicated, is a full, true, and correct representation of the corresponding payments for services rendered to and supplies and equipment received by all Clallam County government operations as recorded in the books or original entry maintained by this office.

WITNESS MY HAND AND OFFICIAL SEAL THIS ____ DAY OF _____ 2021.

COPY

_____COUNTY AUDITOR
SHOONA RIGGS

CLALLAM COUNTY BOARD OF COMMISSIONERS does hereby certify that the services and merchandise herein specified have been received and that the claims listed and numbered above are hereby approved for payment:

BOARD OF COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

_____
MARK OZIAS, Chair

_____
BILL PEACH

COPY

_____
RANDY JOHNSON

_____
RICH SILL (County Administrator)

Weekly Expenditures

Sept. 20 - 24, 2021

Fund #	Department	Expenditures		Use Tax	
		General Fund	Other	General Fund	Other
00100.211	**Assessor**	16,800.00			
00100.221	**Auditor**	1,559.09		111.09	
	Commissioners (BOCC)				
19914.291	BOCC - Veterans Relief		3,984.38		
19961.291	BOCC - American Rescue Plan Act		194,921.96		
00100.331-334	**Dept. of Community Develop't (DCD)**	1,366.46			
30301.331	DCD - Lower Dungeness Floodplain		33,171.50		
00100.881	**District Court II**	1,054.05			
11301.511	**Health & Human Services (HHS)**		23,948.30		267.91
00100.511	HHS - Environmental Health	1,280.49			
11322.511	HHS - Homeless Task Force		8,846.31		
11323.511	HHS - Chem Dep/Mental Hlth		33,241.10		
11331.511	HHS - Developmental Disabilities		76,080.00		
00100.461	**Human Resources (HR)**	2,631.77			
50401.461	HR - Risk Management		21,844.33		
00100.411	**Information Technology (IT)**	13,096.72		73.92	
30701.411	IT - Capital Projects		16,095.46		
00100.851	**Juvenile Services**	5,076.45		13.73	
11401.821	**Law Library**		340.40		
13001/13051	**Noxious Weed/LMD #2** (Lake Mgmt. Dist.)		3,674.92		
00100.911/912	**Parks Fair Facilities (PFF)**	38,624.09		10.82	
30101.911	PFF - REET 1 (Real Estate Excise Tax)		2,719.39		
30201.911	PFF - REET 2 (Real Estate Excise Tax)		4,617.47		
30501.911	PFF - Capital Projects		6,067.68		
00100.841-843	**Prosecuting Attorney**	20,238.62			
	Public Works (PW)				
10101.611	PW - Roads		252,995.67		
10135.611	PW - Flood Control		3,265.48		
30901.331	PW - Carlsborg Water Mitigation		2,212.50		
41401.611	PW - Clallam/Sekiu Sewer		2,922.73		
43401.611	PW - Bullman Beach Water System		314.28		
50301.611	PW - ER&R (Equip't Rental & Revolving)		49,221.49		
00100.811-815,817	**Sheriff**	13,667.34		49.35	
00100.816	Sheriff - Jail Medical	3,334.21			
11003.811	Sheriff - Boating Safety		525.00		
11008.811	Sheriff - OPNET Drug		1,314.39		8.80
11065.811	Sheriff - OPSCAN Operations		6,257.33		
11080.811	Sheriff - Inmate Commissary		95.40		4.40
00100.861	**Superior Court**	14,947.62			
12905.861	Superior Court - Dispute Resolution		750.00		
12911.861	Superior Court - Courthouse Facilitator		680.00		
00100.891	**Superior Court Clerk**	2,233.34		196.53	
00100.231	**Treasurer**	60.01			
12231.231	Treasurer - REET Electronic Technology		12,196.45		
00100.931	**WSU Extension**	13,381.04		8.45	
	Total	**149,351.30**	**762,303.92**	**463.89**	**281.11**

Report Reconciliation		Totals			
Total	**911,655.22**	**General Fund**	**149,815.19**		
Final Check Lists	**911,655.22**	**Other**	**762,585.03**		
Difference	-	**Total**	**912,400.22**	**Use Tax**	**745.00**

COPY

Prepared by: _____

Sara DeBiddle, Clallam County Auditor's Office

Invoice History Use Tax Report
CLALLAM COUNTY

Tran Date	Vendor Name	Invoice / Credit Memo No.	Doc Group	Taxable Amount	Tax Amount	Invoice Total
9/9/2021	U S BANK	3229	dputnam1	156.00	13.73	156.00
9/14/2021	U S BANK	6236-Sep21	jkoon2	356.79	31.40	2,059.39
9/14/2021	U S BANK	6730-Sep21	jkoon2	133.93	11.79	1,340.60
9/14/2021	U S BANK	7275-Sep21	jkoon2	100.00	8.80	246.90
9/14/2021	U S BANK	0945-Sep21	jkoon2	69.98	6.16	69.98
9/15/2021	ALTURA COMMUNICATION SOLUTIONS, LLC	363626	tteel	780.00	68.64	780.00
9/15/2021	KONICA MINOLTA BUSINESS, SOLUTIONS USA INC	CLRK20210915	nbotnen	2,233.34	196.53	2,233.34
9/15/2021	SWANSONS SERVICES CORP.	1492938	jkoon	50.00	4.40	50.00
9/15/2021	U S BANK	92324	tteel	60.00	5.28	60.00
9/15/2021	U S BANK	82121	rraymond	96.05	8.45	1,762.88
9/28/2021	FORT KNOX MAILBOX	30857	sprice	1,262.38	111.09	1,262.38
9/28/2021	U S BANK	Swift Fire 967474	mearley1	122.90	10.82	122.90
9/28/2021	U S BANK	4878-090621	tkerr	3,044.42	267.91	3,044.42
			Totals:	**8,465.79**	**745.00**	**13,188.79**

Final Check List
CLALLAM COUNTY

Assessor

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0021407	MASTER'S TOUCH, LLC, THE	E77337	9/14/2021	ESTIMATED POSTAGE FOR V	16,800.00	16,800.00
						Sub total for U S BANK:		16,800.00

16,800.00+
1,559.09+
194,921.96+
34,537.96+
1,054.05+
142,757.99+
24,476.10+
29,830.39+
5,076.45+
340.40+
3,674.92+
52,028.63+
20,238.62+
49,221.49+
252,995.67+
8,714.99+
4,612.46+
17,247.00+
3,334.21+
2,233.34+
16,377.62+
12,256.46+
3,984.38+
13,381.04+
911,655.22*
0.*

0.*

Final Check List
CLALLAM COUNTY

Auditor

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0020849	U S BANK	56682340	8/27/2021	2021 LICENSING & RECORDII	125.00	
				56454456	8/17/2021	2021 LICENSING & RECORDII	75.00	
				56599591	8/24/2021	2021 LICENSING & RECORDII	75.00	
				FOS11624497E	8/27/2021	EAR HOOKS FOR TANNER'S I	21.71	296.71
	9/28/2021	0025641	FORT KNOX MAILBOX	30857	7/26/2021	BLACK COUNTY DROP BOX F	1,262.38	1,262.38
						Sub total for U S BANK:		1,559.09

Final Check List
CLALLAM COUNTY

BOCC

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0024596	ADVANTAGE ESCROW COMP	New Hope 9/15/2	9/17/2021	FBO CORNERSTONE PEC NE	194,921.96	194,921.96
						Sub total for U S BANK:		194,921.96

Final Check List
CLALLAM COUNTY

DCD

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0026025	KAWAL, LARA	21-9 SEPT #1	9/14/2021	G133 WORKSITE 8-31 TO 9-	812.70	812.70
	9/28/2021	0028699	SOUND PUBLISHING INC	8035783	8/31/2021	LRP ADVERTISING	169.26	169.26
	9/28/2021	0036994	SHANNON & WILSON INC	107504	9/2/2021	G146 TASK 2 6-21 TO 8-14-21	33,171.50	33,171.50
	9/28/2021	0039090	GUSSMAN, JOHN	1951	9/10/2021	G133 WORKSITE 3 PROFESS	295.00	295.00
	9/28/2021	0045716	GOODMAN, VIRGIL	REF 9-14-21	9/15/2021	REFUND BPT2021-846	89.50	89.50
						Sub total for U S BANK:		34,537.96

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000296	CENTURYLINK	CentLinkSep202	9/14/2021	SEPTEMBER TELEPHONE SE	109.05	109.05
	9/28/2021	0002298	JOHN D BLACK, PLLC	22319	9/14/2021	CONFLICT COUNSEL BRAUN	210.00	
				22320	9/14/2021	CONFLICT COUNSEL CRAWF	210.00	
				22323	9/14/2021	CONFLICT COUNSEL AMSBA	140.00	
				22349	9/14/2021	CONFLICT COUNSEL ARMOB	105.00	
				22350	9/14/2021	CONFLICT COUNSEL BRAUN	105.00	
				22351	9/14/2021	CONFLICT COUNSEL CRAWF	105.00	
				22328	9/14/2021	CONFLICT COUNSEL HOGMA	70.00	945.00
						Sub total for U S BANK:		1,054.05

Final Check List
CLALLAM COUNTY

HHS

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000336	CLALLAM CONSERVATION DI	EPA21-PIC8	9/8/2021	WQ-PIC IMPLEMENTATION AI	474.72	
				NEP21-OSS#5	9/8/2021	OSS-NEP PIC OSS COST SHA	356.04	830.76
	9/28/2021	0000918	LINCOLN STREET STATION	506-082521	9/14/2021	WLAB-THERMOMETRY CALIE	12.20	12.20
	9/28/2021	0001179	PACIFIC OFFICE EQUIPMENT	1086185	8/31/2021	EHADMIN-3RD ST EAST SIDE	224.17	
				1086186	8/31/2021	OSS-EH COURTHOUSE COPI	33.04	257.21
	9/28/2021	0020849	U S BANK	7298EH-090621	9/14/2021	WQ-SWAINS-PVC BOOTS	21.62	21.62
	9/28/2021	0001641	VERIZON WIRELESS	988688864	9/14/2021	OSS-JANINE REED CELL PHC	158.70	158.70
	9/28/2021	0000546	EXPRESS SERVICES, INC	25952351	8/31/2021	HOPS - PUBLIC HEALTH MED	1,383.28	1,383.28
	9/28/2021	0000599	FORKS OUTFITTERS	19-083121	8/31/2021	HOPS - FORKS SUPPLIES	52.05	52.05
	9/28/2021	0043521	LOLA'S CAFE LLC	919071	9/14/2021	HOPS- SERENITY HOUSE/CO	3,046.40	3,046.40
	9/28/2021	0037042	OFFICE DEPOT	190655939001	9/1/2021	HOPS - HHS SUPPLIES	97.07	
				189473379001	9/6/2021	HOPS - PH SUPPLIES	41.37	
				190672248001	9/6/2021	HOPS - HHS SUPPLIES	23.93	162.37
	9/28/2021	0044384	SUN TAXI INC	ST091021	9/10/2021	HOPSS - SDC FOOD DELIVEF	10,800.00	10,800.00
	9/28/2021	0020849	U S BANK	4878-090621	9/6/2021	HOPS-BTNX-FENTANYL STRI	3,044.42	
				4318-090621	9/6/2021	HOPS-WALMART-SDC SUPPL	2,190.23	
				4910-090621	9/6/2021	HOPS - SAFCO - MASKS	1,354.57	
				4326-090621	9/6/2021	HOPS-FERRELL GAS-SDC PR	454.82	
				7298-090621	9/6/2021	HOPS-BIG LOTS-SDC SUPPLI	293.89	7,337.93
	9/28/2021	0001641	VERIZON WIRELESS	9887294333	8/28/2021	HOPS-COVID PHONE - SIRI	266.51	
				9886888647	8/23/2021	HOPS - WIC PROGRAM 1	169.38	
				9887294332	8/28/2021	HOPS - HELEN KENOYER PH	92.17	528.06
	9/28/2021	0000348	CLALLAM COUNTY DEPT OF,	2HTFADM4-6-2(	9/3/2021	HTF - REIMBURSEMENT FOR	7,004.68	
				1HTFADM4-6-2(	9/3/2021	HTF - REIMBURSEMENT FOR	1,841.63	8,846.31
	9/28/2021	0000348	CLALLAM COUNTY DEPT OF,	2CDMHADM04-(	9/3/2021	CD/MH - REIMBURSEMENT F	4,765.53	
				1CDMHADM04-(	9/3/2021	CD/MH - REIMBURSEMENT F	1,252.53	6,018.06
	9/28/2021	0001139	OLYMPIC PERSONAL GROWT	11323-21-OPGC	8/11/2021	CD/MH - FILLING THE GAP - J	1,660.00	1,660.00
	9/28/2021	0001209	PENINSULA BEHAVIORAL HEA	11323-21-PBH-P	8/28/2021	CD/MH - PATH OUTREACH SE	1,366.31	1,366.31
	9/28/2021	0030719	REFLECTIONS COUNSELING,	11323-21-RCSG	8/30/2021	CD/MH - CRISIS INTERVENTI(	18,588.70	
				11323-21-RCSG	8/30/2021	CD/MH - SUBSTANCE USE DI	2,638.20	
				11323-21-RCSG	9/2/2021	CD/MH - SUBSTANCE USE DI	1,417.59	
				11323-21-RCSG	9/3/2021	CD/MH - SUBSTANCE USE DI	1,400.56	24,045.05
	9/28/2021	0028699	SOUND PUBLISHING INC	PDN935970	8/22/2021	CD/MH - BEHAVIORAL HEALT	151.68	151.68

Bank : apbank U S BANK (Continued)

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0001017	MORNINGSIDE INC	STATE 8/21	9/13/2021	DDD-AUGUST STATE CONTR	39,049.00	
				SSD 8/21	9/10/2021	DDD-SEQUIM SCHOOL DISTF	120.00	39,169.00
	9/28/2021	0017530	PIERCE JONES & ASSOCIATE	STATE 8/21	9/13/2021	DDD-STATE CONTRACT AUG	34,611.00	
				PASD 8/21	9/8/2021	DDD-PASD AUGUST 2021	1,200.00	
				SSD 08/21	9/9/2021	DDD-SSD AUGUST 2021	975.00	36,786.00
	9/28/2021	0001685	W.I.S.E	9393	9/9/1931	DDD-AUGUST 2021 TECHNIC	125.00	125.00
						Sub total for U S BANK:		142,757.99

Final Check List
CLALLAM COUNTY

HR

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0001179	PACIFIC OFFICE EQUIPMENT	1086176	9/15/2021	INVOICE 1086176	277.96	
				1086175	9/15/2021	INVOICE 1086175	37.47	315.43
	9/28/2021	0001680	WA COUNTIES RISK POOL	C202118061	9/15/2021	INVOICE C202118061	17,630.00	
				C202118062	9/15/2021	INVOICE C202118062	946.00	
				C202118073	9/15/2021	INVOICE C202118073	861.10	
				C202121079	9/15/2021	INVOICE C202121079	408.00	
				C202121078	9/15/2021	INVOICE C202121078	309.90	
				C202121066	9/15/2021	INVOICE C202121066	150.00	20,305.00
	9/28/2021	0020849	U S BANK	47829609	9/15/2021	INVOICE 47829609	551.49	
				48125501	9/15/2021	INVOICE 48125501	548.42	
				48350723	9/15/2021	INVOICE 48350723	545.85	
				11417857110337	9/15/2021	11417857110337019	324.20	
				49156948	9/15/2021	INVOICE 49156948	317.94	
				11494372814499	9/16/2021	11494372814499404	313.30	
				8-27-21 PRE EM	9/16/2021	PRE EMP DRUG SCREENS	138.00	
				2021-53 CC	9/16/2021	JOB 2021-53	69.00	
				4714544	9/16/2021	4714544	52.52	
				6LNH6YPBN8H	9/15/2021	PRA DEEP DIVE - J MAJOR	40.00	
				11429731293424	9/16/2021	11429731293424258	39.44	
				243356650	9/15/2021	243356650	29.95	
				11495712164520	9/16/2021	11495712164520237	23.91	
				243356201	9/15/2021	243356201	19.95	
				11219667383283	9/16/2021	11219667383283445	11.96	
				11467214249977	9/16/2021	11467214249977804	8.69	3,034.62
	9/28/2021	0025324	CEDAR GROVE COUNSELING	15803	9/15/2021	INVOICE 15803	50.00	50.00
	9/28/2021	0035753	LOOMIS ARMORED US, LLC	12871024	9/15/2021	INVOICE 12871024	757.66	757.66
	9/28/2021	0045710	CELESTINO, LUCILLE	VOL DRIV ABST	9/15/2021	VOL DRIVING ABSTRACT REI	13.39	13.39
						Sub total for U S BANK:		24,476.10

Final Check List
CLALLAM COUNTY

IT

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000268	WAVE BUSINESS	103951201-0009	9/15/2021	CPI FIBER - COMBINED BILL (	4,790.80	
				105203601-0009	9/15/2021	CPI FIBER - COMBINED (PIN	958.80	5,749.60
	9/28/2021	0000289	CDW GOVERNMENT, INC.	SE2101079	9/15/2021	IT20210915 - WEB DESIGNER	2,275.00	
				SE101388	9/15/2021	IT20210915 - WEB DESIGNER	925.00	
				SE2101078	9/15/2021	IT20210915 - EMAIL ARCHIVIN	700.00	3,900.00
	9/28/2021	0000296	CENTURYLINK	406569255LD-09	9/15/2021	FORKS T-1 LINE	645.97	
				300425321LD-09	9/15/2021	FORKS TO FORKS T-1	477.92	
				406389122LD-09	9/15/2021	FORKS SHERIFF #2	297.12	
				300561295LD-09	9/15/2021	CLALLAM BAY DISPATCH	75.14	
				300511193LD-09	9/15/2021	FORKS COURTROOM FAX	66.92	
				406493163LD-09	9/15/2021	PENCOM RINGDOWN	64.64	1,627.71
	9/28/2021	0000674	GOVCONNECTION, INC.	71764106	9/15/2021	IT20210825 (3) LENOVO THIN	1,726.66	
				71774778	9/15/2021	HHS20210826 - PRINTER (D. (	638.21	2,364.87
	9/28/2021	0001179	PACIFIC OFFICE EQUIPMENT	1086141	9/15/2021	BOCC COPY COUNTS	472.64	
				1086142	9/15/2021	IT COPY COUNTS	162.04	
				1086143	9/15/2021	MULTIMEDIA COPY COUNTS	58.07	692.75
	9/28/2021	0004211	CENTURYLINK	3604527831-091	9/15/2021	MAIN COURTHOUSE	1,432.30	
				3604172850-091	9/15/2021	DID ROLLOER (PRI ACCT)	1,357.00	
				3604529079-091	9/15/2021	PUBLIC HEALTH (3RD ST)	319.29	
				3604521625-091	9/15/2021	TELEPHONE SWITCH MAINT	57.98	3,166.57
	9/28/2021	0005890	ALTURA COMMUNICATION SC	363626	9/15/2021	IT20210826B - PHONE EXPAN	780.00	780.00
	9/28/2021	0020849	U S BANK	112-1497188-41(	9/15/2021	IT20210831 - ASST'D CABLES	394.78	
				4600144	9/15/2021	IT20210826 - OFC SUPPLIES	218.11	
				112-3987695-26	9/15/2021	SHER20210826 - (2) REPLACE	217.03	
				SO-12772	9/15/2021	IT20210902 - ASST'D CABLES	130.79	
				92324	9/15/2021	IT20210823 - WSU AUTOMATI	60.00	
				112-4155980-78	9/15/2021	CREDIT FOR RETURN	-108.32	912.39
	9/28/2021	0022148	CENTURYLINK BUSINESS SE	242486489	9/15/2021	CALLING CARD	3.24	3.24
	9/28/2021	0035596	LAMOTTE, STEVE	082621-SL	9/15/2021	MILEAGE (S.LAMOTTE)	53.76	53.76
	9/28/2021	0038549	SOUTHERN COMPUTER WARIN	-000704536	9/15/2021	IT20210811A - LAPTOPS	10,468.80	10,468.80
	9/28/2021	0044188	BLACKPOINT IT SERVICES IN	2550865SEA	9/15/2021	IT20210913 - REMOTE SUPPC	110.70	110.70
						Sub total for U S BANK:		29,830.39

Final Check List
CLALLAM COUNTY

Juv Svcs

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0001547	SYSCO FOOD SERVICES OF S	355826050	9/8/2021	DET FOOD	258.44	
				355826049	9/8/2021	DET SUPPLIES	0.01	258.45
	9/28/2021	0001705	WA ST DEPT OF HEALTH	9121DOH-JLB	8/31/2021	LICENSE AND CERTIFICATIOI	300.00	300.00
	9/28/2021	0001949	LEWIS, DAVID	93021DL	9/13/2021	CAP VOL-MILEAGE	305.76	305.76
	9/28/2021	0017787	DAIRY FRESH FARMS INC	8082122121	8/9/2021	DET FOOD	117.96	117.96
	9/28/2021	0020849	U S BANK	888592112	8/19/2021	TRVL BUS-MGM NATIONAL H	1,014.80	
				41192838	8/16/2021	OP SUPPLIES-SURVEYMONK	416.64	
				O-0000049414	7/21/2021	REGISTRATION-AXON STORI	375.00	
				14988545	8/19/2021	OP SUPPLIES-PEARSON	361.22	
				088056	8/23/2021	DET FOOD-COSTCO	277.70	
				112541	8/1/2021	SOFTWARE LICENSE-RELIAT	217.59	
				9321SQSPCE	9/3/2021	SUBSCRIPTION	217.01	
				20-27741713	8/23/2021	REGISTRATION-FRED PRYOI	159.00	
				3229	9/1/2021	SOFTWARE LICENSE-CASA M	156.00	
				H3L9VA	8/12/2021	TRVL BUS-DELTA	148.40	
				1720752	8/19/2021	TRVL BUS-DOUG FOX	95.61	
				0062469574499	8/12/2021	TRVL BUS-DELTA	70.00	
				112-7160897-05	8/22/2021	OP SUPPLIES-AMAZON	48.93	
				023967	8/23/2021	DET FOOD & SUPPLIES-WALI	42.30	
				XSNXK4Z3ZQ4	8/17/2021	REGISTRATION-MRSC	40.00	
				074914	8/23/2021	DET FOOD-FRANZ	28.88	
				81621SQSPCE.(	8/16/2021	OP SUPPLIES-SQUARESPACI	18.00	
				81621SQSPCE.(	8/16/2021	OP SUPPLIES-SQUARESPACI	18.00	3,705.08
	9/28/2021	0029825	MARCOUX, BETTY	83121BM	9/8/2021	CAP VOL-MILEAGE	303.52	303.52
	9/28/2021	0044947	KOPER, RANDALL	83121RK	9/13/2021	CAP VOL-MILEAGE	7.28	7.28
	9/28/2021	0045712	RAUCH, NANCY	73121NR	9/8/2021	CAP VOL-MILEAGE	78.40	78.40
						Sub total for U S BANK:		5,076.45

Final Check List
CLALLAM COUNTY

Law Library

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000907	LEXISNEXIS	3093409812	8/31/2021	LEXIS ADVANCE	286.00	286.00
	9/28/2021	0001179	PACIFIC OFFICE EQUIPMENT	1086150	8/31/2021	COPIER SERVICE SEPTEMBE	54.40	54.40
						Sub total for U S BANK:		340.40

Final Check List
CLALLAM COUNTY

Nox Weeds

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0001410	SCUBA SUPPLIES	9921	9/15/2021	DIVER OVERSIGHT 8/19, 8/26	1,958.40	1,958.40
	9/28/2021	0001540	SWAIN'S GENERAL STORE IN	291107	9/15/2021	EYE PROTEC, STAPLES	31.64	31.64
	9/28/2021	0020849	U S BANK	169532856	9/15/2021	MILESTONE, SURFACTANT	1,684.88	1,684.88
						Sub total for U S BANK:		3,674.92

Final Check List
CLALLAM COUNTY

Parks Fair Facilities

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000041	ALDERGROVE CONSTRUCTI(	0921-1	9/15/2021	FG EXPO BLDG CONCRETE S	4,841.60	
				0921-2	9/15/2021	1710CH CONCRETE WORK C	4,617.47	
				0921-3	9/15/2021	FG EXPO BLDG. DRYWALL LA	2,066.74	11,525.81
	9/28/2021	0000091	ANGELES MILLWORKS & LUM	296049	9/15/2021	CH COVID WOOD FOR PODIU	60.00	
				295943	9/15/2021	FG CARPET TRIM	15.09	75.09
	9/28/2021	0000094	ANGELES PLUMBING INC	34225	9/15/2021	VET PLUMBING SERVICE	494.62	494.62
	9/28/2021	0000359	CLALLAM COUNTY PUBLIC W	1480 8/21	9/15/2021	CB AUG SEWER	101.16	101.16
	9/28/2021	0000374	CLEANTECH CARPET CARE	676996	9/15/2021	JUV CARPET CLEAN, HAZARI	2,040.00	
				676997	9/15/2021	CH CARPET CLEAN - PROSE(	775.00	2,815.00
	9/28/2021	0000546	EXPRESS SERVICES, INC	25984559	9/15/2021	CH/SC/COVID WK END 9/5/21	2,767.32	2,767.32
	9/28/2021	0000561	FERGUSON ENTERPRISES IN	9657607	9/15/2021	CH BOILER REPAIR	271.66	271.66
	9/28/2021	0001156	OLYPEN INC	210910-0014	9/15/2021	DRA DSL INTERNET	18.00	18.00
	9/28/2021	0001203	PEN PRINT INC	38837	9/15/2021	2009FAC PLANS, SPEC BOOK	269.63	
				38838	9/15/2021	2007FAC SPEC BOOK PRINTI	127.51	397.14
	9/28/2021	0001252	PORT ANGELES, CITY OF	63871-98716 8/2	9/15/2021	CH AUG UTIL	18,264.81	
				63871-147906 8/	9/15/2021	CH AUG UTIL	3,877.25	
				60327-89776 8/2	9/15/2021	3RD ST AUG UTIL AND GARB/	622.42	22,764.48
	9/28/2021	0001253	PORT ANGELES SOLID WAST	026141	9/15/2021	CH DUMP FEE PROSECUTIN(	15.52	
				026074	9/15/2021	SMPK DUMP FEE	10.00	25.52
	9/28/2021	0001300	PUBLIC UTILITY DISTRICT	43120 8/21	9/15/2021	RH AUG ELECT	180.98	
				44963 8/21	9/15/2021	RH IRR AUG ELECT	29.63	
				67069 8/21	9/15/2021	DL UNMETERED LIGHT	23.10	233.71
	9/28/2021	0001472	SOLMAR WATER SYSTEM, IN(	RH 6-8/21	9/15/2021	RH JUNE THRU AUG WATER	82.00	82.00
	9/28/2021	0001540	SWAIN'S GENERAL STORE IN	291117	9/15/2021	VET RING WAX EXTENDER K	16.25	
				291155	9/15/2021	CH DC1 SWING GATE REPAIF	6.53	
				291040	9/15/2021	CDJ ELECTRICAL ADAPTERS	4.25	27.03

Bank : apbank U S BANK (Continued)

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0020849	U S BANK	Andersen Windo	9/14/2021	CH (30) CASEMENT OPERAT(	614.28	
				Swift Fire 96747	9/14/2021	CH ACRYLIC FIRE EXTING. C/	122.90	
				Viasat CDJ 8/21	9/14/2021	CDJ AUG SATELLITE INTERN	95.65	
				Viasat SC 8/21	9/14/2021	SC AUG SATELLITE INTERNE	70.64	
				Peninsula Award	9/14/2021	SMPK 4 ENGRAVED PLAQUE:	58.75	
				amazon 402821(	9/14/2021	SC TONER CARTRIDGE (4)	43.39	
				amazon 948746:	9/14/2021	CH COVID 11X17 LAMINATINC	39.14	
				amazon 652024:	9/14/2021	CH COVID 9X11 LAMINATING	30.45	
				amazon 412102	9/14/2021	CDJ COVID DISINFECTANT C	28.77	
				amazon 473306(	9/14/2021	CDJ COVID DISINFECTANT S/	27.11	
				amazon 945061	9/14/2021	CH COMMAND STRIPS (24)	20.33	1,151.41
	9/28/2021	0025092	PIERCE, SUSAN	WWWC 9/15/21	9/15/2021	SMPK VOLUNTEER SUPPLIE:	46.49	46.49
	9/28/2021	0033207	HUNT ENGINEERING SERVICI	8162	9/15/2021	2009FAC ENGINEERING SER'	1,500.00	
				8177	9/15/2021	2011FAC ENGINEERING SER'	822.25	2,322.25
	9/28/2021	0037398	ACCURATE ELECTRIC UNLIMI	16645	9/15/2021	2102FAC CH/JAIL CAMERA EL	3,226.10	
				16644	9/15/2021	2102FAC DVR CH/JAIL CAMEI	2,598.05	5,824.15
	9/28/2021	0041765	CALL LUKE LLC	5003021	9/15/2021	JUV OUTSIDE PERIMETER PI	108.50	108.50
	9/28/2021	0042750	CLALLAM COUNTY FAIR ROY/	LoopStitch 1233	9/15/2021	FG ROYALTY EMBROIDERY S	131.29	
				Safeway2021	9/15/2021	FG ROYALTY FLOWERS FOR	108.72	
				amaz 9297046	9/15/2021	FG ROYALTY DECOR; QUEEN	95.32	
				amaz 8175424	9/15/2021	FG ROYALTY WESTERN SHIF	80.34	
				amaz 8681825	9/15/2021	FG ROYALTY RAINBOW TINS	49.10	
				costco 2021	9/15/2021	FG ROYALTY GAS FOR PARA	46.92	
				amaz 1994668	9/15/2021	FG ROYALTY INFLATABLE SN	46.64	
				amaz 3098663	9/15/2021	FG ROYALTY BLACKBERRY V	37.20	
				amaz 3853844	9/15/2021	FG ROYALTY MARABOU FEAT	36.84	
				Peninsula Award	9/15/2021	FG ROYALTY PINS	34.00	
				party city 2021	9/15/2021	FG ROYALTY 8" MIRROR BAL	18.52	
				Miochaels 2021	9/15/2021	FG ROYALTY DECOR FOR FL	16.62	
				Walmart 2021	9/15/2021	FG ROYALTY DECOR FOR FL	14.73	
				amaz6188234	9/15/2021	FG ROYALTY RED LED FLASH	13.73	
				Home Depot 202	9/15/2021	FG ROYALTY PVC FOR FLOA	3.79	733.76
	9/28/2021	0045718	EDGE ANALYTICAL INC	21-21384	9/15/2021	2110UP CDJ WATER SAMPLE	243.53	243.53

Sub total for U S BANK: 52,028.63

Final Check List
CLALLAM COUNTY

Prosecutor

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000546	EXPRESS SERVICES, INC	25984581	9/15/2021	EXPRESS SVS	156.24	156.24
	9/28/2021	0000890	LANGUAGE LINE SERVICES, I	10304271	9/15/2021	LANGUAGE LINE	218.92	218.92
	9/28/2021	0001179	PACIFIC OFFICE EQUIPMENT	1085869	9/15/2021	OFFICE CHAIRS	5,785.95	
				1086180	9/15/2021	POE CONTRACT	371.46	
				1086179	9/15/2021	POE CONTRACT	293.10	
				1086181	9/15/2021	POE CONTRACT	209.55	
				1086182	9/15/2021	POE CONTRACT	88.99	
				1086178	9/15/2021	POE CONTRACT	50.94	6,799.99
	9/28/2021	0020849	U S BANK	4700809724744	9/15/2021	AIR PURIFIERS	4,515.01	
				844775602	9/15/2021	WESTLAW	3,467.34	
				8350	9/15/2021	SUSAN PARR TRAVEL	1,299.58	
				0015205055943	9/15/2021	AIR PURIFIERS	856.11	
				9/15/21 ENVO	9/15/2021	ENVO MASKS	773.57	
				0824695467381	9/15/2021	REPLACEMENT FILTERS	582.45	
				1000718208	9/15/2021	WESTLAW	398.23	
				366474	9/15/2021	ENVO MASK	343.81	
				68654	9/15/2021	TRAINING FEE	325.00	
				101957483	9/15/2021	ZOOM	163.09	
				3361516893943	9/15/2021	OFFICE SUPPLIES	127.75	
				5721504061383	9/15/2021	OFFICE SUPPLIES	65.45	
				4644806038986	9/15/2021	OFFICE SUPPLIES	55.86	
				1518661	9/15/2021	LEMAY PICKUP	43.61	
				0813883764022	9/15/2021	OFFICE SUPPLIES	28.24	
				7083883964341	9/15/2021	OFFICE SUPPLIES	18.37	13,063.47
						Sub total for U S BANK:		20,238.62

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000099	A-1 AUTO PARTS	1342946	9/7/2021	Scotch perf., coupler, plug cp1	43.31	43.31
	9/28/2021	0000172	BAXTER A/P OFFICE	15663-6318	9/13/2021	Steering shaft - PA S302	111.44	
				15663-5657	9/2/2021	Spin-on filter/drier	79.96	
				15663-4216	8/12/2021	Windshield repair kits - PA	44.96	
				15663-5488	8/31/2021	Lube spin-on, fuel elements - P/	38.43	
				15663-6092	9/9/2021	Vapor canister purge solenoid -	38.16	
				15663-4541	8/17/2021	Oil filter - PA 20-Bill, OPNET	4.84	
				15663-3611	8/3/2021	Core return - PA 163	-239.36	78.43
	9/28/2021	0000329	CO-OP FARM AND GARDEN, T	55228	9/7/2021	Propane - SQ 839	19.06	19.06
	9/28/2021	0000772	INDUSTRIAL HYDRAULICS IN(	A335677	9/10/2021	Cap and plug kit - PA	213.72	213.72
	9/28/2021	0000848	PAPE KENWORTH NORTHWE	10811916	9/2/2021	Switches - battery - LC 207, 20:	311.63	311.63
	9/28/2021	0001252	PORT ANGELES, CITY OF	152934/4358 SE	9/10/2021	Utility charges - PA	2,016.34	2,016.34
	9/28/2021	0001463	SNAP-ON TOOLS	908211146	9/8/2021	6pt 5/8" Mag Sprkplg set - PA 2	65.82	65.82
	9/28/2021	0001551	TACOMA SCREW PRODUCTS	140019340-00 E	9/2/2021	Drill bits - PA	48.68	48.68
	9/28/2021	0001573	THOMAS BUILDING CENTER I	30875705	9/1/2021	Treated brntone trailer decking-	265.81	265.81
	9/28/2021	0001700	WA ST DEPT OF ECOLOGY	2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	
				2022-WAG5012	9/10/2021	Sand/Gravel permit- W. Quality	103.00	927.00
	9/28/2021	0001714	WA ST DEPT OF NATURAL RE	0100154571/202	9/1/2021	Surface Mining permit -2022, BI	2,000.00	2,000.00
	9/28/2021	0001781	WHITEHEADS AUTO PARTS IN	205445	9/1/2021	Wheel charger - LC 20-SMTOC	259.32	259.32
	9/28/2021	0002237	ASSOCIATED PETROLEUM, IN	382472-IN	9/13/2021	Diesel fuel purchase - PA	25,127.71	25,127.71
	9/28/2021	0004211	CENTURYLINK	4766812B/0905	9/5/2021	Phone service, 812B - CH 20-F	82.78	82.78
	9/28/2021	0005032	OWEN EQUIPMENT COMPAN	103243	9/3/2021	Nozzles, FTG-.25 NPTF FE - P/	298.66	298.66

Bank : apbank U S BANK (Continued)

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0022435	RACE STREET AUTO PARTS	552805	9/9/2021	Brake pads, rotors - PA S344	600.94	
				551650	8/31/2021	Brake pads, rotors - PA S324	306.08	
				551649	8/31/2021	Brake pads/rotors - PA S324	233.21	
				552530	9/7/2021	Air & oil filters - SQ 416	149.31	
				552868	9/9/2021	Brake rotors, can. purge valve -	147.05	
				550960	8/26/2021	Filters,w.blades,w.wash,degrsr-	139.25	
				553521	9/14/2021	Wheel bearing/hub assembly - I	97.11	
				551786	9/1/2021	Filter - PA	89.21	
				551763	9/1/2021	Wiper blades, wind.wash,degrs	79.26	
				552583	9/7/2021	Hood release cable - SQ 176	59.75	
				553313	9/13/2021	Brake pads - PA S302	58.74	
				550962	8/26/2021	Air filter - PA 149	15.07	
				551520	8/30/2021	Adhesive - rear view - PA CDP2	9.34	
				551542	8/30/2021	Oil filter - PA CDP2	9.31	
				551688	8/31/2021	Oil filter - PA MP203	4.66	
				553336	9/13/2021	Return: Canister purge solenoic	-31.40	
				550511	8/23/2021	Return: Calcat universal - PA M	-650.81	1,316.08
	9/28/2021	0025256	FIRE CHIEF EQUIPMENT CO.,	902421	7/13/2021	Fire ext., buildings - SQ	846.46	
				901874	6/30/2021	Fire extinguishers - PA Stores	202.64	1,049.10
	9/28/2021	0037107	AMERICAN TRUCKBOXES LLC	S1-38371	9/1/2021	Door replace., cold rolled steel-I	240.00	240.00
	9/28/2021	0040272	MATT'S TOOLS USA LLC	120619	9/14/2021	Stylus Pro USB, digital caliper-F	135.71	
				120618	9/14/2021	Adjustable Mechanics seat - PA	81.59	217.30
	9/28/2021	0041488	WEX BANK DBA WRIGHT EXP	4953444/091521	9/15/2021	Fuel purchases - PA S327	55.66	55.66
	9/28/2021	0043469	PETROCARD	425696-IN	9/2/2021	Diesel & UL fuel purchases - L(	10,760.36	
				425701-IN	9/2/2021	Diesel/UL fuel purchases - CB	3,824.72	14,585.08
						Sub total for U S BANK:		49,221.49

Final Check List
CLALLAM COUNTY

Public Works Roads

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000023	ADVANCED TRAVEL	KUCIP091021AT	9/8/2021	KUCIPECK REIMBURSEMENT	181.77	181.77
	9/28/2021	0000039	ALBINA FUEL	0288141-IN	8/19/2021	FOG SEALING CREDIT - PA	-6,506.99	
				0288962-IN	9/7/2021	FOG SEALING ESCALATOR	13,505.66	
				0288657-IN	8/30/2021	FOG SEALING - SQ	12,692.73	19,691.40
	9/28/2021	0000091	ANGELES MILLWORKS & LUM	296285	9/16/2021	MAINTENANCE SUPPLIES - C	32.63	32.63
	9/28/2021	0000196	BILLS PLUMBING & SANIKAN	IS3609971	9/15/2021	09/21~10/21 SQ SHOP SANIK/	95.00	95.00
	9/28/2021	0000331	CLALLAM COUNTY AUDITOR	21-134629	9/15/2021	SURVEY RECORDING	297.50	297.50
	9/28/2021	0000360	CLALLAM COUNTY ER&R	2021.227E	9/14/2021	08/21 MECHANICS TIME	957.00	
				2021.229E	9/14/2021	08/21 SIGNS USED FROM INV	507.34	
				2021.230E	9/14/2021	08/21 RENTAL OF FACILITIES	8,000.00	
				2021.231E	9/14/2021	08/21 GRAVEL USED	136,216.31	
				2021.232E	9/14/2021	08/21 ITEMS FROM ER&R INV	1,304.52	
				2021.240E	9/15/2021	08/21 MONTHLY TRUCK REN	11,364.05	158,349.22
	9/28/2021	0000363	CLALLAM COUNTY SHERIFF	2021Q3CHNGN	9/15/2021	2021 Q3 CHAINGANG HOURS	54,194.25	54,194.25
	9/28/2021	0000377	PACWEST MACHINERY LLC	20349231	8/26/2021	RENTAL ROLLER - SQ	5,548.80	5,548.80
	9/28/2021	0000546	EXPRESS SERVICES, INC	25984558-10101	9/8/2021	08/30/21~09/03/21 ROADS	4,787.13	4,787.13
	9/28/2021	0000709	HARBOR SAW & SUPPLY	668960	8/18/2021	MAINTENANCE SUPPLIES - L	347.02	347.02
	9/28/2021	0000885	LAKESIDE INDUSTRIES, INC	173268-10101	9/4/2021	HMA COMMERCIAL - LC	6,319.10	6,319.10
	9/28/2021	0001094	NORTHWEST LININGS INC	0089841-IN	9/7/2021	ENGINEER SUPPLIES	2,323.97	2,323.97
	9/28/2021	0001156	OLYPEN INC	210911-0015	9/11/2021	09/21~10/21 PA MLS, OLS	40.50	40.50
	9/28/2021	0001551	TACOMA SCREW PRODUCTS	140019340-00 R	9/2/2021	MAINTENANCE SUPPLIES - P	265.62	265.62
	9/28/2021	0004211	CENTURYLINK	6812667-090721	9/7/2021	360-681-2667 726B	191.17	191.17
	9/28/2021	0022435	RACE STREET AUTO PARTS	553411	9/13/2021	FUEL CAP REPLACEMENT FC	16.15	16.15
	9/28/2021	0030212	CARMICHAEL, ADAM	10980037CARM	9/7/2021	CDL PHYSICAL REIMBURSEM	150.00	150.00
	9/28/2021	0030534	KUCIPECK, DEBORAH	KUCIP090821	9/8/2021	TRAVEL EXPENSE REIMBURS	164.44	164.44

252,995.67

Check History Listing
CLALLAM COUNTY

Public Works

Bank code: apbank

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
	09/28/2021	0000360 CLALLAM COUNTY ER&F			2021.190E	06/22/2021	349.06	349.06
	09/28/2021	0000361 CLALLAM COUNTY ROAI			2021.056R	08/20/2021	809.18	
					2021.045R	07/22/2021	492.12	
					2021.052R	08/20/2021	387.39	
					2021.216E	08/22/2021	97.61	1,786.30
	09/28/2021	0026025 LARA KAWAL			LKL073121	07/31/2021	809.37	
					LKL083121	08/31/2021	320.75	1,130.12
	09/28/2021	0039043 ROBINSON NOBLE			21-0641	09/02/2021	2,212.50	2,212.50
	09/28/2021	0000360 CLALLAM COUNTY ER&F			2021.234E	09/14/2021	21.54	21.54
	09/28/2021	0000546 EXPRESS SERVICES, IN			25984558-41401	09/08/2021	426.06	426.06
	09/28/2021	0000885 LAKESIDE INDUSTRIES,			173268-41401	09/04/2021	1,040.13	1,040.13
	09/28/2021	0020614 WOOD HAWK, INC			1929	09/13/2021	1,435.00	1,435.00
	09/28/2021	0000348 HEALTH & HUMAN SERV			21-0649	09/13/2021	53.00	53.00
	09/28/2021	0000546 EXPRESS SERVICES, IN			25984558-43401	09/08/2021	261.28	261.28

apbank Total: **8,714.99**

10 checks in this report

Total Checks: **8,714.99**

Final Check List
CLALLAM COUNTY

Sheriff (1)

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0020849	U S BANK	6236-Sep21	9/6/2021	AMAZON,SHOW ME,WALMAF	2,059.39	
				6730-Sep21	9/6/2021	WALMART,AMAZON,BLAUER	1,340.60	
				0097-Sep21	9/6/2021	MAIL PLUS, PENN AWARDS, S	446.11	
				7275-Sep21	9/6/2021	LIVE VIEW, CODE 4	246.90	
				4761-Sep21	9/6/2021	AMAZON	238.57	
				6528-Sep21	9/6/2021	CODE 4 PSEA	77.00	
				0945-Sep21	9/6/2021	BLAUER	69.98	
				8739-Sep21	9/6/2021	TOTAL WIRELESS, DIRECTV	61.20	
				4738-Sep21	9/6/2021	SWAINS	45.60	
				7400-Sep21	9/6/2021	SIMPLISAFE	27.11	4,612.46
						Sub total for U S BANK:		4,612.46

Final Check List
CLALLAM COUNTY

Sheriff (2)

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000179	BEERS, RICHARD B	Oct 2021	9/15/2021	RENTAL AGREEMENT	525.00	525.00
	9/28/2021	0000296	CENTURYLINK	410622965-Sep2	9/6/2021	DATA CONNECTION 9/6/21 -	3,919.69	3,919.69
	9/28/2021	0000296	CENTURYLINK	406092135-Sep2	9/6/2021	DATA CONNECTION 9/6/21 -	1,236.58	1,236.58
	9/28/2021	0000296	CENTURYLINK	300421654-Sep2	9/6/2021	TELEPHONE SERVICE 9/6/21	224.72	224.72
	9/28/2021	0000354	CLALLAM COUNTY SEWER DI	1481-Sep21	9/13/2021	CLALLAM BAY/SEKIU SEWER	56.50	56.50
	9/28/2021	0000360	CLALLAM COUNTY ER&R	2021.235W	9/14/2021	FUEL & PARTS FOR CHAIN G.	1,380.64	
				2021.236E	9/14/2021	LUBE ON JETTA	15.58	1,396.22
	9/28/2021	0000546	EXPRESS SERVICES, INC	25984565	9/8/2021	CALL CENTER REPRESENTA	894.00	894.00
	9/28/2021	0000593	FORKS, CITY OF	2022	9/8/2021	PRISONER BOARD BILL - AU	1,876.32	1,876.32
	9/28/2021	0000628	GALLS LLC	019192804	9/1/2021	UNIFORM - MILDON	108.98	108.98
	9/28/2021	0001252	PORT ANGELES, CITY OF	82495-151160-S	9/10/2021	UTILITIES - FRONT ST	384.76	384.76
	9/28/2021	0001426	SEQUIM, CITY OF	Oct 2021	9/15/2021	LEASE AGREEMENT	1,100.00	1,100.00
	9/28/2021	0001543	SWANSONS SERVICES CORP	1492938	9/2/2021	INDIGENT PACKS	50.00	50.00
	9/28/2021	0001603	TYLER TECHNOLOGIES INC.	045-353519	9/10/2021	EXECUTIME TRAINER AUG 3	320.00	320.00
	9/28/2021	0001650	VIKING SEW & VAC	641741	9/3/2021	UNIFORM SHIRT ALTERATIOI	21.76	21.76
	9/28/2021	0004211	CENTURYLINK	360-417-5383-S	9/2/2021	INTERNET SERVICE 9/2/21 -	65.00	65.00
	9/28/2021	0020862	GERMAN, NANCY	Oct 2021	9/15/2021	LEASE AGREEMENT	2,166.12	2,166.12
	9/28/2021	0024819	QUILEUTE TRIBE	Oct 2021	9/15/2021	LEASE AGREEMENT	1,200.00	1,200.00
	9/28/2021	0029266	NI GOVERNMENT SERVICES I	21082909221	9/1/2021	SATELLITE PHONE SERVICE	44.08	44.08
	9/28/2021	0037042	OFFICE DEPOT	192037054001	9/3/2021	OFFICE SUPPLIES	867.36	
				193989449001	9/8/2021	OFFICE SUPPLIES	181.30	
				192036657001	9/3/2021	OFFICE SUPPLIES	44.15	1,092.81
	9/28/2021	0041605	HOME DEPOT PRO	638336552	9/1/2021	DISPOSABLE POLY APRONS	464.58	464.58
	9/28/2021	0044691	VERIZON CONNECT FLEET U	633000019687	8/2/2021	CHAIN GANG VEHICLE TRAC	99.88	99.88
						Sub total for U S BANK:		17,247.00

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0001136	OLYMPIC MEDICAL CENTER	OMC 9.15.21	9/15/2021	INMATE MEDICAL	3,066.22	3,066.22
	9/28/2021	0001254	PORT ANGELES FIRE DEPAR	T15-2021-000033	9/15/2021	PAFD AMBULANCE	175.03	175.03
	9/28/2021	0001508	STERICYCLE, INC	3005693952	8/31/2021	BIOHAZARD WASTE DISPOS/	20.72	20.72
	9/28/2021	0004826	OLYMPIC MEDICAL PHYSICIAI	71227603920	9/15/2021	INMATE MEDICAL	41.00	41.00
	9/28/2021	0025115	RADIA INC PS	Z8DKIP6	9/15/2021	INMATE MEDICAL	31.24	31.24
						Sub total for U S BANK:		3,334.21

Final Check List
CLALLAM COUNTY

Clerk

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0023450	KONICA MINOLTA BUSINESS,	CLRK20210915	9/15/2021	E-FILING ADD ON LICENSING	2,233.34	2,233.34
						Sub total for U S BANK:		2,233.34

Final Check List
CLALLAM COUNTY

Superior Court

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0000357	CLALLAM-JEFFERSON CO PR	08-21 CF	9/14/2021	AUGUST 2021 - COURT FACIL	680.00	680.00
	9/28/2021	0001212	PENINSULA DISPUTE RESOL	08-21 PDRC	9/14/2021	AUGUST 2021 - PDRC SURCH	750.00	750.00
	9/28/2021	0000716	HAYDEN, JOHN F	JH 09-21	9/13/2021	SEPT 2021 - CHINS/YAR ATTC	2,333.33	2,333.33
	9/28/2021	0002298	JOHN D BLACK, PLLC	JB 09-21	9/13/2021	SEPTEMBER 2021 - JUVENILE	700.00	700.00
	9/28/2021	0001607	KAREN L UNGER, P.S.	KU 09-21	9/13/2021	SEPT 2021 - ADULT CRIMINAL	3,000.00	3,000.00
	9/28/2021	0020134	STANLEY B MYERS, JR, ATTO	SM 09-21	9/13/2021	SEPTEMBER 2021 - ADULT CI	3,000.00	3,000.00
	9/28/2021	0021617	WOLFLEY LAW OFFICE P.S.	LW 09-21	9/13/2021	SEPT 2021 - ADULT CRIMINAL	3,000.00	
				JW 09-21T	9/13/2021	SEPT 2021 - TRUANCY ATTOI	1,050.00	4,050.00
	9/28/2021	0020849	U S BANK	01	9/14/2021	8/18/21: AMBROISA EBERHAF	~~629.00~~ 647.54	
				9886947930	9/14/2021	AUGUST 2021 - VERIZON CEL	50.21	
				HNQJZ-N6A51-(	9/14/2021	8/19/21-VISTAPRINT, COURT	46.23	~~725.44~~
	9/28/2021	0020849	U S BANK	1998 31297	9/14/2021	8/19/21-GAYLORD HOTEL, DC	811.84	743.98
				094057	9/14/2021	7/23/21-LAUREL LANES, DRU	218.55	
				043529	9/14/2021	8/19/21-USMA LLC TAXI, DC C	57.50	
				019514	9/14/2021	8/14/21-BLUE TOP CAB, DC C	32.42	1,120.31
						Sub total for U S BANK:		~~16,359.08~~

16,377.62

SDeB

Final Check List
CLALLAM COUNTY

Treasurer

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0029534	HARRIS GOVERN	TAMN00000714	9/15/2021	QTRLY PACS SUPPORT - ASS	12,196.45	12,196.45
	9/28/2021	0037042	OFFICE DEPOT	191882359001	9/15/2021	OFFICE SUPPLIES	49.14	
				191881843001	9/15/2021	OFFICE SUPPLIES	10.87	60.01
						Sub total for U S BANK:		12,256.46

Final Check List
CLALLAM COUNTY

Veterans

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/15/2021	0000268	WAVE BUSINESS	WAVE 9/8/21	9/15/2021	VET CENTER PHONE	109.15	109.15
	9/15/2021	0000360	CLALLAM COUNTY ER&R	ER&R 9/15/21	9/15/2021	RENTAL VEHICLE	103.00	103.00
	9/15/2021	0001179	PACIFIC OFFICE EQUIPMENT	POE 9/8/21	9/15/2021	VET CENTER PRINTER	261.94	261.94
	9/15/2021	0001300	PUBLIC UTILITY DISTRICT	BP0572 9/15/21	9/15/2021	UTILITIES	187.29	187.29
	9/15/2021	0002928	MAKAH HOUSING AUTHORITY	CJ7249 9/8/21	9/15/2021	RENT	689.00	689.00
	9/15/2021	0004037	HARPER RIDGEVIEW CHAPEL	BM9971 9/8/21	9/15/2021	BURIAL BENIFIT	800.00	800.00
	9/15/2021	0020849	U S BANK	BP0572 9/15/21	9/15/2021	FOOD	150.00	
				BR4125 9/15/21	9/15/2021	FOOD	150.00	
				JJ2522 9/8/21 S	9/15/2021	FOOD	150.00	
				LP6817 9/15/21 '	9/15/2021	FOOD	150.00	
				MB8950 9/8/21 \	9/15/2021	FOOD	150.00	
				MG9761 9/8/21 \	9/15/2021	FOOD	150.00	
				SR6054 9/8/21 V	9/15/2021	FOOD	150.00	
				WS7621 9/15/21	9/15/2021	FOOD	150.00	
				GA1302 9/15/21	9/15/2021	FOOD	100.00	
				JJ9950 9/8/21 W	9/15/2021	FOOD	100.00	
				FJ0230 9/8/21 S	9/15/2021	FUEL	90.00	
				FJ0230 9/8/21 W	9/15/2021	FOOD	60.00	
				JJ9950 9/8/21 S	9/15/2021	FUEL	50.00	1,600.00
	9/15/2021	0033217	RADIO PACIFIC, INC	RADIO PACIFIC	9/15/2021	RADIO AD	234.00	234.00
						Sub total for U S BANK:		3,984.38

Final Check List
CLALLAM COUNTY

WSU Ext

Bank : apbank U S BANK

Check #	Date	Vendor		Invoice	Inv Date	Description	Amount Paid	Check Total
	9/28/2021	0001738	WA STATE UNIVERSITY	CI00009489	9/15/2021	WSU MY SALARY AUGUST 2C	11,368.16	11,368.16
	9/28/2021	0020849	U S BANK	82121	9/15/2021	US BANK AUGUST 2021	1,762.88	1,762.88
	9/28/2021	0028699	SOUND PUBLISHING INC	8035807	9/15/2021	SOUND PUBLISHING	250.00	250.00
						Sub total for U S BANK:		13,381.04

BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of September 20 - 24, 2021

1b 9/28/21

WORK SESSION – 9 a.m.

The work session convened at 9 a.m., Monday, September 20, 2021. Present were Commissioners Ozias (video), Johnson, and Peach (video) and Administrator Sill.

Items of discussion per the agenda published September 16 were:

- Calendar/Correspondence
- Agreement with Konica Minolta Business Solutions U.S.A., Inc. for professional services, license user fees and maintenance for the implementation of an eFile Portal
- Agreement with Thurston County for pathology and associated services for death investigations
- Agreement with Dr. Eric L. Kiesel for autopsy services
- Agreement with Concerned Citizens to provide adult developmental disability services
- Agreement with Morningside to provide adult developmental disability services
- Agreement with Pierce, Jones and Associates to provide adult developmental disability services
- Agreement amendment 4 with Western Federal Lands Highway Division for closing out the East Beach Road Improvement project
- Discussion and update on American Rescue Plan Act funding and allocations for affordable housing/homelessness support
- Resolution authorizing an expenditure from the Hotel/Motel Tax Fund for an approved 2021 Lodging Tax Funding Applications
- Revised Agreement with New Hope Food Bank for American Rescue Plan Act funds

Meeting adjourned at 10:32 a.m.

REGULAR MEETING OF THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair Ozias (video) called the meeting to order at 10 a.m., Tuesday, September 21, 2021. Also present were Commissioners Johnson (video) and Peach (video), and Administrator Sill (video).

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

ACTION TAKEN: CRJm to adopt the agenda as presented, CBPs, mc

PUBLIC COMMENT FOR AGENDA ITEMS

- Rene Renninger, Carlsborg, commented on COVID-19 mandates
- Dave LaRoux, Sequim, commented on Sequim Valley Airport

CONSENT AGENDA

1a Approval of vouchers for the week of September 13
1b Approval of payroll for the period ending August 31
1c Approval of minutes for the week of September 13

ACTION TAKEN: CRJm to adopt the consent agenda as presented, CBPs, mc

DRAFT

REPORTS AND PRESENTATIONS

- CBP commented on Life Boat Committee, Colleen McAleer, Citizen of the Year Awards
- CRJ commented on Timber Caucus, Olympic Area Agency on Aging
- CMO commented on Washington State Association of Counties Round Table – House Bill 1152, Washington State Association of Counties Board Meeting

CONTRACTS AND AGREEMENTS

2a Agreement with Konica Minolta Business Solutions U.S.A., Inc. for professional services, license user fees and maintenance for the implementation of an eFile Portal
ACTION TAKEN: CRJm to approve, CBPs, mc

2b Agreement amendment 1 with Anchor QEA, LLC for the Dungeness Off-Channel Reservoir Project
ACTION TAKEN: CRJm to approve, CBPs, mc

2c Agreement with Washington State Administrative Office of the Courts for the support of the CASA/Volunteer Guardian Ad Litem Program
ACTION TAKEN: CRJm to approve, CBPs, mc

BIDS AND AWARDS

3a Request for proposals to be received no later than 3 p.m., Monday, October 18, 2021 for Developmental Disability Proposal 2022
ACTION TAKEN: CRJm to issue notice, CBPs, mc

ADMINISTRATION

4a Letter to Gov Domain Registration requesting domain name change
ACTION TAKEN: CRJm to approve, CBPs, mc

4b Resolution authorizing an expenditure from the Hotel/Motel Tax Fund for an approved 2021 Lodging Tax Funding Application
ACTION TAKEN: CRJm to adopt, CBPs, mc

HEARING(S)

H1 Ordinance adding a new section within Title 27 Environment, of the Clallam County Code, Adopting Stormwater Management
- Brittany Port, AHBL, Inc. presented a report (see attached)

ACTION TAKEN: CRJm to open the public hearing, CBPs, mc
- CMO noted no one signed up to speak
- The following sent in written testimony: Ed Telenick (see attached)

ACTION TAKEN: CRJm to close the public hearing and adopt, CBPs, mc

PUBLIC COMMENT

- Dave LeRoux, Sequim, commented on Sequim Valley Airport
- Andy Sallee, Sequim, commented on Sequim Valley Airport (see attached)
- Ken Brown, Sequim, commented on Sequim Valley Airport

Meeting concluded at 11:21 a.m. and continued to 9 a.m., Monday, September 27.

There are no Zoom chat logs for the week of September 20.

DRAFT

The Board of Commissioners attended WSAC Virtual Assembly, Board of Health Meeting, KONP and a COVID-19 Briefing during the week of September 20

PASSED AND ADOPTED this twenty-eighth day of September 2021

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach

KEY TO ABBREVIATIONS:

ARS	Administrator Rich Sill	m	moved
CMO	Commissioner Mark Ozias	mc	motion carried
CRJ	Commissioner Randy Johnson	s	seconded
CBP	Commissioner Bill Peach		

DRAFT

Hearing Presentation and Comments

Clallam County Stormwater Regulations

Clallam County Board of County Commissioners

September 21, 2021

Presented by AHBL, Inc.

H1
9/21/21
Hearing
Presentation
by
Brittany Part

Stormwater Ordinance

27.14.050 Stormwater Management Manual and Review Thresholds

- Outside of the UPAUGA
  - Residential development (excluding residential driveways) on **less than 1 acre:**

Thresholds (Hard surface/Land disturbance)	Drainage Permit required –Y/N?	Applicable Stormwater Manual	Minimum Requirements (MR)
< 400 sq. ft. of new plus replaced hard surface OR <7,000 sq. ft. land disturbing activity	No, but Construction Stormwater Best Management Practices are always required	N/A	MR 2
Between 400 and 5,000 sq. ft. of new plus replaced hard surface OR between 7,000 and 10,000 sq. ft. land disturbing activity	Yes	Clallam County Small Project Drainage Manual[2]	MRs 1-5
≥5,000 sq. ft. of new plus replaced Hard Surface OR ≥10,000 sq. ft. land disturbing activity	Yes	Ecology's 2019 Stormwater Manual	MRs 1-9[3]; Engineered Plan required.

Stormwater Ordinance

27.14.050 Stormwater Management Manual and Review Thresholds

- Outside of the UPAUGA
  - Residential development (excluding residential driveways) on **1 acre or more:**

Thresholds (Hard surface/Land disturbance)	Drainage Permit required –Y/N?	Applicable Stormwater Manual	Minimum Requirements
<400 sq. ft. of new plus replaced hard surface OR <7,000 sq. ft. land disturbing activity OR <1.5 acres of veg to lawn conversion, OR <5 acres of veg to pasture	No, but Construction Stormwater Best Management Practices are always required	N/A	MR 2
Between 400 to3,000 sq. ft. of new plus replaced hard surface (requiring a building permit)	Yes	Clallam County Small Project Drainage Manual[1]	MRs 1-5, Optional Flow Control determined by County Engineer[2]
Between 3,000 and 7,000 sq. ft. of new plus replaced hard surface OR between 7,000 and 12,000 sq. ft. land disturbing activity OR between 1.5 and 2 acres of veg to lawn conversion, OR between 5 and 7.5 acres of veg to pasture	Yes	Clallam County Small Project Drainage Manual[1]	MRs 1-5
≥7,000 sq. feet new plus replaced Hard Surface OR ≥12,000 sq. ft. land disturbing activity, OR ≥2 acres of veg to lawn conversion, OR ≥7.5 acres of veg to pasture conversion	Yes	Ecology's 2019 Stormwater Manual	MRs 1-9[3] Engineered Plan required

Stormwater Ordinance

- Outside of the UPAUGA
  - All non-residential development (including commercial, industrial and multifamily):

Thresholds (Hard surface/Land disturbance)	Drainage Permit required –Y/N?	Applicable Stormwater Manual	Minimum Requirements
≤ 2,000 sq. ft of new plus replaced hard surface OR ≤ 7,000 sq. ft land disturbing activity	No, but Construction Stormwater Best Management Practices are always required	N/A	MR 2
≥ 2,000 sq. ft of new plus replaced hard surface OR ≥ 7,000 sq. ft land disturbing activity	Yes	Ecology's 2019 Stormwater Manual	Per Manual. Engineered Plan required

Stormwater Ordinance

27.14.070 Construction Stormwater Best Management Practices

- All land development activities will be required to employ construction stormwater best management practices.
- Within the UPAUGA:
  - For projects that meet or exceed the thresholds within the Ecology Manual, a Construction Stormwater Pollution Prevention Plan (SWPPP) is required to be submitted consistent with the requirements in the Ecology Manual
  - Projects that fall below the thresholds must consider al Construction SWPPP elements and develop controls for all Construction SWPPP elements that pertain to the project site.

Stormwater Ordinance

27.14.070 Construction Stormwater Best Management Practices

- Outside the UPAUGA:
  - For projects that require a Drainage Permit, a Construction SWPPP is required consistent with the applicable manual (Ecology Manual or Small Project Drainage Manual)
  - For projects that do not require a Drainage Permit, the County may take enforcement actions if the land development results in significant erosion, discharge of sediment or other pollutants into receiving waters, or causes harm to infrastructure or neighboring properties.

Ecology Manual

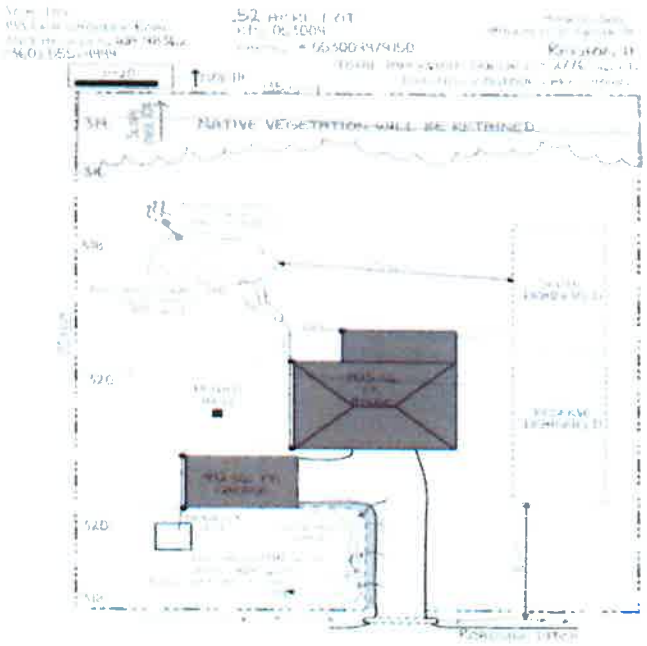
- Depending on how savvy the applicant is, will likely require a civil engineer to comply with
- Where the Ecology Manual applies, generally the following is a continuum of the most affordable to least affordable ways of managing stormwater
  - Dispersion
  - Infiltration
  - Bioretention/Raingarden
  - Permeable Pavement

Small Project Drainage Manual

- Developed with the intent that a homeowner can complete a plan without an engineer
- Focused on single family residential projects to mitigate impacts of new hard surfaces.
- Addresses traditional stormwater management practices that can be completed without a specialty contractor
  - More advanced BMPs may be utilized in accordance with the design parameters in the Ecology Manual
    - Rainwater harvesting
    - Vegetated roof
    - Permeable pavement

Small Project Drainage Manual

- Organization
  - Developing a Drainage Plan
    - Example Drainage Plan that can be used to develop their own drainage plan
    - Goal is to mitigate the impact of increased stormwater runoff volumes and peak flow rates.
      - Promote infiltration and dispersion



Small Project Drainage Manual

Raingarden

Infiltration trench

Drywell

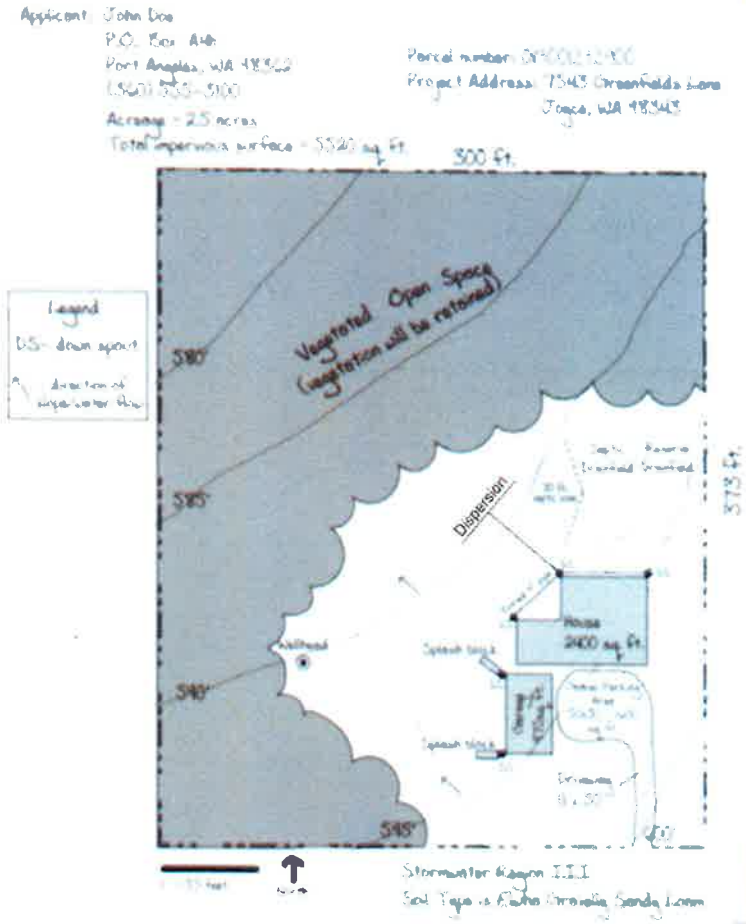
Downspout Dispersion

- Featured BMPs - constructible with readily available materials
  - Infiltration Trenches
  - Dispersion
  - Drywells
  - Raingardens
  - Other BMPs possible, but the focus is on BMPS that an "average" project would be able to utilize

Costs

- Example: Full Dispersion on a Large Lot Drainage Plan
- Site Acreage: 2.5 acres
- Impervious Surface: 5,520sf
- BMP(s): Downspout Dispersion
- Estimated Cost*:
  - 175 LF Pipe = $2962.75
  - Splashblocks = $10
  - Rental mini exc. = $560
  - Total = $3532.75
  - Does not include labor and requires a dispersion easement with a recording cost of $140.50

*These costs are approximate and may vary depending on where the products are sourced.



Questions?

- Brittany Port, AICP - bport@ahbl.com

H1
9/21/21
Hearing Comment
Ed Telenick

Halencak, Morgann

From: Gores, Alanna
Sent: Tuesday, September 21, 2021 3:59 PM
To: Halencak, Morgann
Subject: FW: Public comment on stormwater management

Please attach to the minutes for the stormwater hearing on 9-21.

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

From: Ed telenick [mailto:e.telenick@hotmail.com]
Sent: Monday, September 20, 2021 9:15 AM
To: Gores, Alanna
Subject: Public comment on stormwater management

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

I would like to voice my concerns regarding the proposed Clallam County stormwater management issue that is being discussed tomorrow.

While I fully support increased protections for the environment, the results of this endeavor are likely going to create another level of bureaucracy and expense to both the homeowner and taxpayers without an effective outcome.

New ordinances mean absolutely nothing unless there is an effective mechanism for enforcing the rules that are adopted.

The County struggles with enforcing its own existing codes so it makes no sense to add additional burdens to that department.

The fundamental question of why there is no Code Enforcement should be addressed BEFORE heaping on more new rules that will never be enforced.

Thanks for taking time to consider my concerns,

Ed Telenick

Public Comment

Andy Sallee Public Comment 9/21/21

Halencak, Morgann

From: Andy Sallee <sequimairport@gmail.com>
Sent: Monday, September 20, 2021 8:50 PM
To: Halencak, Morgann; Ozias, Mark
Subject: Fwd: Comments for 9-22 Commissioners Meeting Regarding Sequim Valley Airport
Attachments: Sequim Valley Airport Sewer and Water Request.pdf; Fire Department Letter For Water.docx; DART Sequim Valley Airport Support Letter.docx; Drill - Airport.docx; Airport Community Contributions .pdf; Vital Infrastructure Comprehensive Emergency Management Plan Including Sequim Valley Airport.png; Partners.png; PUD Water and Sewer Map Sequim Valley Airport.JPG

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

---------- Forwarded message ---------
From: **Andy Sallee** <sequimairport@gmail.com>
Date: Mon, Sep 20, 2021 at 8:30 PM
Subject: Comments for 9-22 Commissioners Meeting Regarding Sequim Valley Airport
To: <agores@co.clallam.wa.us>

Attached is a letter for the 9-21-21 Commissioners Meeting requesting assistance obtaining Carlsborg Sewer and PUD Water with supporting data.

PUD Water Request 9-21-2021

To: Clallam County Commissioners

This letter is a formal request for assistance in obtaining a sewer hook-up from the Carlsborg Sewer System and water from PUD to Sequim Valley Airport.

Sequim Valley Airport is vital during a major emergency. In the event of a large earthquake, the Airport would be a primary distribution center for food and supplies for Eastern Clallam County. This necessitates a proper sewer and water system and is mutually beneficial for the Airport and County.

The Airport allows DART, Civil Air Patrol, US Coast Guard, and US Army to train on site. The Airport allows lifesaving air ambulance flights and could possibly be used for firefighting operations in the event of a large forest fire on residential, DNR, US Forest Service and National Park Lands.

We have had discussions with the County and PUD for a few years now. As you can see, Sequim Valley Airport is a big asset to the community in many ways including, transportation, air ambulance, events, emergency management and much more.

Mary Ellen Winborn and other County officials have expressed a willingness to assist us but it appears that this has to go through the Washington State Department of Commerce.

We are asking the County Commissioners to write a letter to the Washington State Department of Commerce asking them to allow the Airport to connect to the Carlsborg Sewer System and a second letter to the Clallam County PUD expressing the same for PUD Water

The current sewer and water facilities at the airport are inadequate for a regional emergency where the Airport is used as a staging location. We believe Carlsborg Sewer and PUD Water to be the best solution and a win / win scenario for all parties.

There is a convenient hook-up location which can be accessed by a 1300' sewer line which can easily be installed on currently vacant land along the Olympic Discovery Trail Right of Way to Airport owned property.

Your assistance would be much appreciated.

Andy Sallee

Andy Sallee

Airport Manager and Sequim Valley Airport Inc. President

PO Box 101, Carlsborg, WA 98324
sequimairport@gmail.com
360-670-3083

Clallam County Fire District 3
323 N Fifth Ave., Sequim, Washington 98382
360-683-4242, Fax: 360-683-6834
www.ccfd3.org

G. Michael Gawley
Steven K. Chinn
Bill Miano
Commissioners

Ben J. Andrews, Fire Chief

10/13/2020

PUD #1 of Clallam County
Tom Martin, Superintendent
104 Hooker Road
Sequim, WA 98382

Letter of support for Sequim Airport

Mr. Martin,

This letter is in support of the request for PUD water access that has been made by the Sequim Airport and surrounding areas.

On September 4th we had a significant fire which consumed a harvester and a couple of acres of field. This was a reminder of how far water is from the airport and what it takes to get water to any portion of the property.

The Sequim Airport has made significant strides in improving their facilities and infrastructure; a dedicated water system would certainly add to those improvements. As the PUD grows and adds new customers, I ask that you please continue to consider the Sequim Airport's requests for water.

As you know, hydrants make a huge difference in Fire District Operations when fighting fire and protecting property. Consideration of this water access would not only benefit the Sequim Airport, it would benefit the Fire District and citizens in the surrounding areas.

If you have any questions, please contact me directly at (360) 683-4242. Ext. 114

Respectfully,

Dan Orr, Assistant Chief
Clallam County Fire District 3

Cc: Andy Sallee

Clallam County

DART

Disaster Airlift Response Team

January 20, 2021

To Whom It May Concern,

I am Chairman and Founder of the Clallam County Disaster Airlift Response Team. This DART is the first in the State of Washington and the only fully developed DART in this State. We have been the inspiration for many other counties and organizations in Washington to develop other local or regional DART's. The life saving value of this concept has been recognized by Washington State and incorporated into their logistical disaster response plans and our DART in annexed into the Clallam County Emergency Plan as well. It is a fully volunteer organization with pilots using their own aircraft at their own expense and assisted by ground trained volunteers to provide a wide variety of disaster relief missions both major as well as lesser events such as food and PPE delivery around the County as has been done recently throughout Western Washington.

In a Cascadia level earthquake scenario, it is likely that most if not all bridges throughout the County will be rendered impassable creating 21 micro islands cut off to vehicular traffic. Volunteer aircraft will be the primary early means of delivering personnel, medical supplies, food, water and damage assessment to these outlying areas of our County. To do this, landing and staging areas are critical to this overall mission.

Sequim Valley Airport is particularly crucial as it is the only paved airstrip in the eastern portion of our County and is elevated from tsunami concerns and flooding. This location will be the hub of pickup and delivery of all types aircraft cargo as well as evacuation of casualties. This facility will be called upon to operate for weeks or months in the aftermath of a large event. It will thus need dependable electric service, water and facilities to house workers, materials and aircraft.

Bottom line is that for this facility to further develop support facilities that will be crucial to support disaster response activities in the event of a largescale response, adequate water and power from PUD

is essential. This is both to support emergency operations, but also to allow the airport to further develop for a wide variety of aviation uses deriving profit over the years to support its' continued existence and growth.

For all concerned, I urge you to take this potential lifesaving mission for this airport into account by allowing it to develop and prosper to be viable and available into the future as a critical part of our disaster response in Clallam County.

Respectfully,

Alan Barnard, Chairman

Clallam County Disaster Airlift Response Team

Air Station/SFO Mishap Drill

Date: 04.30.21

Time: 0930L – 1400L.

Mishap Crew:

- LT Tim Early
- LT Casey Fall
- FM (undetermined)

Communications:

- CTAF – 122.7

Drill Goals:

1. Test JHOC lost communications protocol.
2. Validate D13 briefing tree.
3. Actuate National Command Center.
4. Test salvage capability and inventory trailer.
5. Validate Mishap Response Plan and Permanent Mishap Board's execution.
6. Team with local EMS to build relationships and improve response methods.
7. Inventory and implement mishap response kits.
8. Train PA Members on mishap process, evidence gathering, and site security to increase unit acumen.

Mishap Scenario: Alternator Failure that leads to a fire and degradation of the primary hydraulic lines and forward left servo. Upon executing the Land/Ditch Emergency Procedure, the mishap crew experiences a hard landing at Sequim Valley Airport (W28).

Participants:

Coast Guard:

- Aircrew and helicopter
- Support staff
- Investigative team
- Salvage team

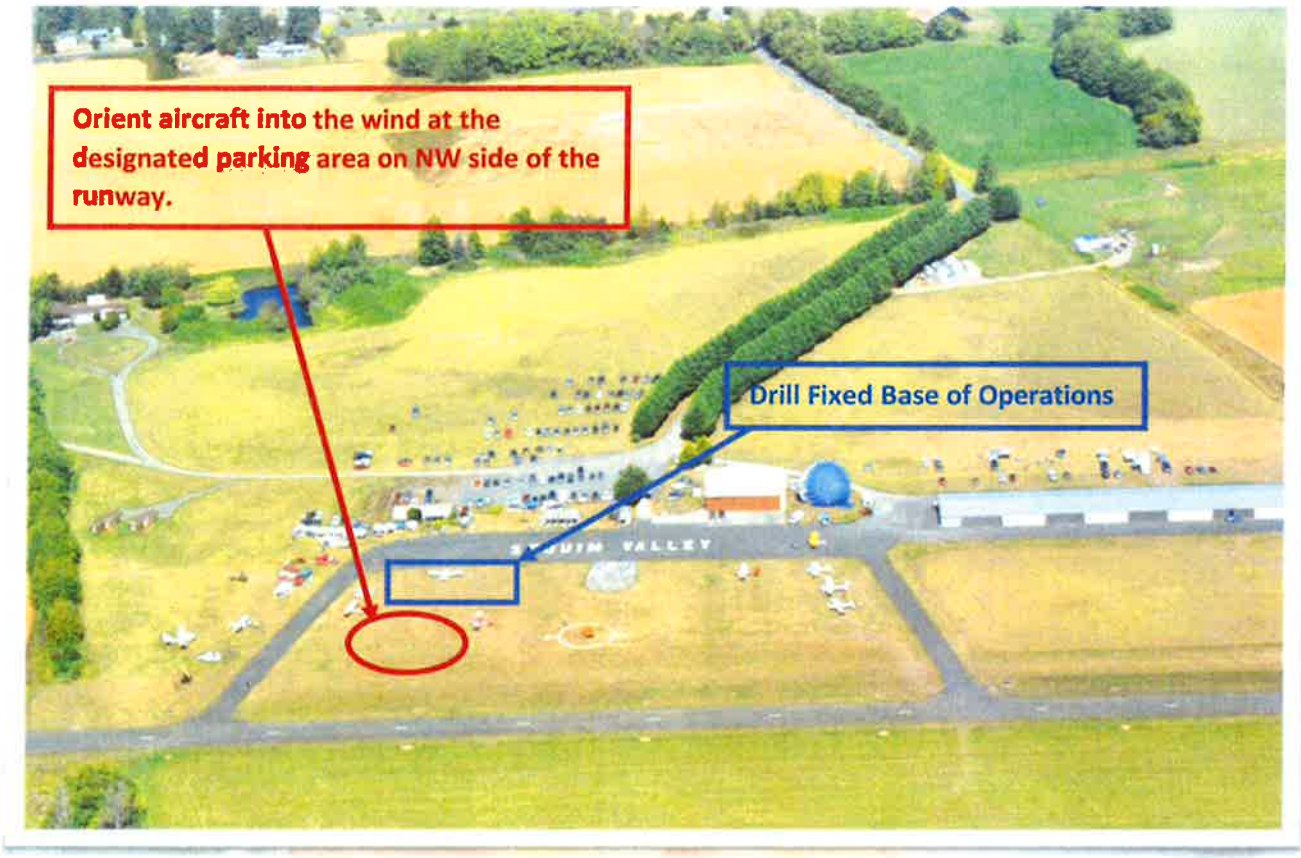
Other:

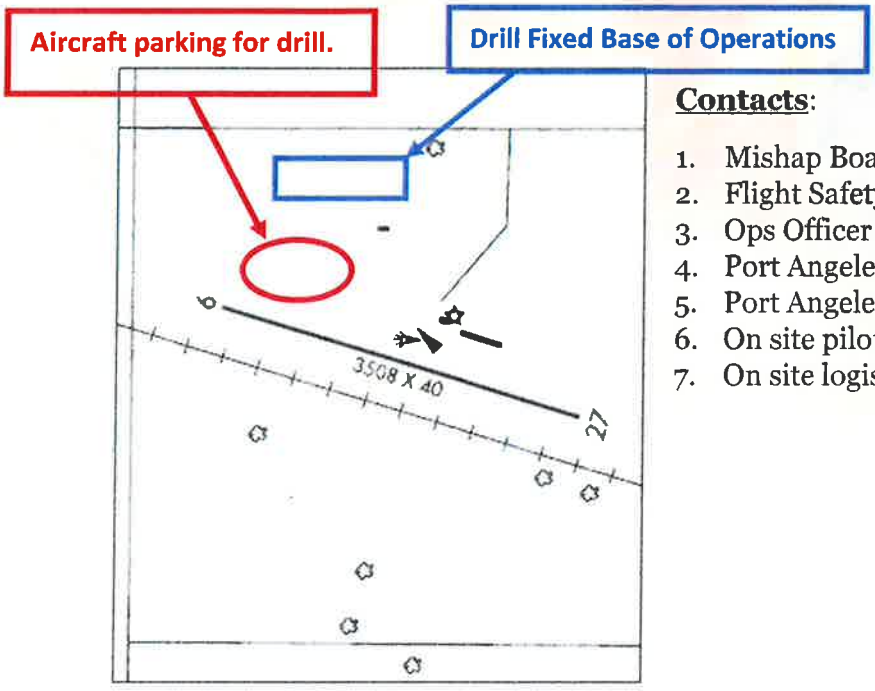
- Clallam County Fire District 3
- Port Angeles Police
- Washington State Patrol

Timeline:

Time	Action
0830	Support staff arrives at W28.
0845	Support staff sets up FBO for shelter/refreshments (reference diagram included).
0915	MH65E departs AirSta Port Angeles.
0930	Helicopter lands at W28, positions NW of the runway on the grass and shutsdown.
0935	Aircrew starts simulated drill
0940	Support staff sets out simulated FOD objects around helicopter (all items will be accounted for).
1000-1030	EMS arrives on scene. Support staff and aircrew dialogue with local responders.
1035	Flight Safety team arrives and starts investigative process.
1045	Security team arrives and starts salvage process.
1100-1230	Training of other members on scene.
1300	Morale day commences.
1400	Secure from drill.
1415	Helicopter departs.
1430	Support staff secures FBO and FOD from airport.

Primary/Secondary Location:





Contacts:

1. Mishap Board Lead – CDR Scott Austin – 813.765.1925
2. Flight Safety Officer – Sam Hill – 850.748.3269
3. Ops Officer – Darin Coleman – 970.201.4991
4. Port Angeles OOD – 360.417.5800
5. Port Angeles SDO – 360.809.4200
6. On site pilot – LT Tim Early – 513.260.8673
7. On site logistics – LCDR Dave Janney – 515.298.9442.

Tertiary Location:

Overview: This is a full scale drill for a simulated aircraft crash. The intent is to validate the mishap response plan, test salvage procedures, provide mishap response training, and implement security protocol. The drill is weather dependent and will proceed as follows:

Primary: *(If weather is good)*

- Fly aircraft to W28
- Mishap response at W28
- Salvage at W28
- Morale support & Morale day at W28
- Max personnel & participation at W28.

Secondary – *(Above training mins, but heavy rain)*

- Fly aircraft to W28
- Mishap response at W28
- Salvage at W28
- Minimal morale support to W28 for refreshments/shelter
- Morale day in AirSta Hangar.

Tertiary – *(Below training minimums)*

- Tow aircraft to approach end of Runway 08
- Mishap response to on-site location
- Salvage response to on-site location
- Morale support on runway for salvage/refreshments
- Morale day in hangar.

SEQUIM VALLEY AIRPORT PROVIDES:

Sequim Valley Airport is a private corporation but also a public use airport that has served Clallam County for the last 34 years and will continue to serve the public in the future. This airport would cost the County or City millions to build and operate. The airport does not receive any local funding but is a facility that benefits the public in so many ways including:

Government Related Airport Users:

- DART training and disaster food distribution location
- USCG and US Army training
- US Border Patrol
- Sheriff Department
- Fire Department training
- Forest fire fighting operations
- Civil Air Patrol

Other Airport Users:

- Local and out of town pilots
- Farmland preservation and beautiful home sites in partnership with Discovery Trail Farm Airpark
- Various ambulance and air ambulance medivac companies
- Blood transportation companies
- Animal rescue flights
- Angel Flights
- Air cargo
- Air taxi service
- Flight instruction, aviation education and hot air balloon flights
- Aviation fuel buyers
- Experimental Aircraft Association
- People attending events such as Olympic Peninsula Air Affaire and weather webcam for travelers

On January 30 2018, the Board of Clallam County Commissioners approved the Disaster Airlift Response Plan (DARP/DART) annexation into the Comprehensive Emergency Management Plan.

More about DART: http://www.sequimgazette.com/news/pilots-catastrophe-training-turns-into-food-drive/

www.sequimvalleyairport.com www.olympicpeninsulaairaffaire.com

IC 9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC - Finance

WORK SESSION ☒ **Meeting Date: September 27, 2021**

REGULAR AGENDA ☒ **Meeting Date: September 28, 2021**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance Discussion
☐ Final Ordinance
☒ Other Termination of ARPA Agreement

Documents exempt from public disclosure attached: ☐

Executive summary:
On September 7, 2021, the Clallam County Board of County Commissioners executed an ARPA direct Grant Assistance Agreement that was effective between Clallam County Washington and an entity that was purported to be New Hope Food Bank (the Recipient). This agreement was for the provision of Federal ARPA funds to the Recipient to assist in the purchase of a building to house the Food Bank so that it could continue to meet community need by providing food security to families and community members in need of food because of the impacts of the COVID-19 pandemic. At the time that New Hope Food Bank was set to close on the subject property, it came to the attention of Advantage Escrow Company and Clallam County that New Hope Food Bank was not a legal entity able to purchase and hold the subject property.

Since that time, the Recipient has taken steps to re-organize and make relevant applications to the Washington Secretary of State for organization as, and creation of, a non-profit corporation. The Recipient has re-applied for ARPA Direct Grant funds under its new identity. Based on the foregoing, the original ARPA Direct Grant Assistance Agreement, executed by the Clallam County Board of County Commissioners on September 7, 2021, between Clallam County Washington and the New Hope Food Bank, is hereby terminated pursuant to Paragraph Five (5) of said agreement which states that "the County may terminate this Agreement for convenience or otherwise and for no consideration or damages, upon prior notice to the Recipient." This termination is effective immediately.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Sign letter terminating ARPA Direct Grant Assistance Agreement executed on September 7, 2021.

County Official signature & print name: Mark Lane

Name of Employee/Stakeholder attending meeting: Mark Lane

Relevant Departments: BOCC and Finance

Date submitted: 9/20/2021

* Work Session Meeting - Submit 1 single sided/not stapled copy Notice of Termination of New Hope Food Bank ARPA agreement 09-28-21

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies) Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

Board of Clallam County Commissioners

223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015
360.417.2233 Fax: 360.417.2493
Email: commissioners@co.clallam.wa.us

MARK OZIAS, District 1, Chair
RANDY JOHNSON, District 2
BILL PEACH, District 3

RICH SILL, County Administrator

September 28, 2021

New Hope Food Bank
Attn: Tom Hull, President
PO Box 336
16693 Highway 112
Clallam Bay, WA 98326

RE: Notice of Termination of ARPA Direct Grant Assistance Agreement

On September 7, 2021, the Clallam County Board of County Commissioners executed an ARPA direct Grant Assistance Agreement that was effective between Clallam County Washington and an entity that was purported to be New Hope Food Bank (the Recipient). This agreement was for the provision of Federal ARPA funds to the Recipient to assist in the purchase of a building to house the Food Bank so that it could continue to meet community need by providing food security to families and community members in need of food because of the impacts of the COVID-19 pandemic. At the time that New Hope Food Bank was set to close on the subject property, it came to the attention of Advantage Escrow Company and Clallam County that New Hope Food Bank was not a legal entity able to purchase and hold the subject property.

Since that time, the Recipient has taken steps to re-organize and make relevant applications to the Washington Secretary of State for organization as, and creation of, a non-profit corporation. The Recipient has re-applied for ARPA Direct Grant funds under its new identity. Based on the foregoing, the original ARPA Direct Grant Assistance Agreement, executed by the Clallam County Board of County Commissioners on September 7, 2021, between Clallam County Washington and the New Hope Food Bank, is hereby terminated pursuant to Paragraph Five (5) of said agreement which states that "the County may terminate this Agreement for convenience or otherwise and for no consideration or damages, upon prior notice to the Recipient." This termination is effective immediately.

Any questions regarding this Notice may be directed to Mark Lane at 360-417-2383 or by email at mlane@co.clallam.wa.us.

Sincerely,

Clallam County Board of Commissioners

Mark Ozias, Chair

Randy Johnson

Bill Peach

Cc: New Hope Food Bank

29
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Human Resources

WORK SESSION ☒ **Meeting Date: 9/27/2021**

REGULAR AGENDA ☒ **Meeting Date: 9/28/2021**

Required originals approved and attached? ☐ **Not Signed**
Will be provided on: 9/24/2021 Afternoon

Item summary:

☐ Call for Hearing
☒ Contract/Agreement/MOU - Contract # 461.21.14
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:
In accordance with Collective Bargaining protocols and the 6-30-21 expiration of the 2020-2021 Contract Extension Agreements from the original 2018-2020 Colllective Bargaining Agreements (CBA), staff has completed negotiations with the bargaining unit of 1619 CS (Correction Sergeants) and have ratified a three-year contract extension agreement commencing retroactive to July 1, 2021 and expiring on June 30, 2024.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
2021 budgetary impacts will be discussed at the worksession.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve the ratified proposed contract extension agreements as negotiated and presented.

County Official signature & print name: Tom Reyes

Name of Employee/Stakeholder attending meeting: Tom Reyes – Rich Sill

Relevant Departments: All Departments

Date submitted: 9/21/2021

S 9/27/21 2a 9/28/2

Document was submitted after the agenda and packet were posted on 9/23/21

Agreement
By and Between
Clallam County

And

The Washington State Council of
County and City Employees, Local 1619-CS
For the Period

July 1, 2021 – June 30, 2024

Contract Extension Agreement

Corrections Sergeants

Clallam County/AFSCME 1619-CS
Contract Extension Agreement
July 1, 2021 – June 30, 2024

Clallam County ("the County") and AFSCME 1619-CS ("the Union") have, by mutual agreement, modified the collective bargaining agreement extension expiring June 30, 2021, as follows:

Article 1 – Term of Agreement. Revise as follows:

> This AGREEMENT shall be effective as of July 1, 2021 and shall continue in full force and effect through June 30, 2024.
>
> This AGREEMENT shall supersede previous agreements and MOU's signed between the County and the Union on the Articles below regarding wages and conditions of employment. This agreement shall take effect on July 1, 2021 or the first of the month following ratification and signature by both parties, whichever is later.

Article 11.6 Flex-Time

With the mutual agreement of an employee and his/her immediate supervisor, an employee who works overtime may adjust scheduled shift hours remaining within the workweek or the following workweek and not receive overtime payments for the hours worked beyond the regular shift. The adjustment of shifts due to flextime will not obligate the employer to additional compensation in any form.

Article 12.10 Health and Welfare Coverage

A. During the life of this Agreement, the County will provide Health Care Insurance for employees and their dependents who meet hours of eligibility as specified in Article 2 and in the Teamster Trust. The bargaining unit may reopen this Article periodically to change the specified Teamster medical benefit plans provided to the group to different selection of plans, provided that the change occurs at a time and in a manner which is permissible under Teamster Trust guidelines and the County's participation agreement, provided that, if the cost of such selection exceeds County contribution identified below, 100% of such excess cost shall be paid by the employee. Both parties reserve the right to reopen this Article 12.10 concerning the cost of insurance benefits, plan design, and the employee and County share of the cost of insurance benefits. If reopened, the parties will schedule bargaining during the months of November and December. Bargaining will occur between the County and AFSCME units M&P, CD and CS as a coalition. The parties shall exchange proposals and data in advance and shall not be required to meet for more than one day of bargaining. The result of negotiations will be either an agreement reached by the parties in bargaining or the agreement reflected in this Article with respect to costs. The bargaining unit may reopen this Article periodically to change the medical benefit plans. The change must be permissible with the Teamster Trust guidelines and the trust subscription agreement provided that, if the cost of such selection exceeds the County's contribution identified below, 100% of such excess cost shall be paid by the

employee.

If the bargaining unit elects a change in insurance plans, the change shall become effective prospectively and only in accordance with and as permitted by Teamster trust guidelines. If the cost of benefits elected by the bargaining unit is less than the cap, extra dollars shall be paid into the employees' HRA account
The bargaining unit has elected for 2021:

Teamster Medical Plan Z

Teamster Dental Plan B

Teamster Vision Plan EXT

Teamster Life Insurance (30k)

Effective July 1, 2021 , the County shall contribute up to one thousand one hundred seventy eight dollars and fifty-six cents ($1,178.56) as an employer cap towards the medical plans identified above, and the employee shall contribute one hundred sixty five dollars and sixty-four cents ($165.64) creating a total contribution to the medical plans of one thousand three hundred forty-four dollars and twenty cents ($1,344.20). Effective January 1, 2022, the new employer cap shall increase by fifty dollars ($50.00), to one thousand two hundred twenty-eight dollars and fifty-six cents ($1,228.56). Effective January 1, 2023, the new employer cap shall increase by fifty dollars ($50.00), to one thousand two hundred seventy eight dollars and fifty-six cents ($1,278.56). Effective January 1, 2024, the new employer cap shall increase by fifty dollars ($50.00) to one thousand three hundred twenty-eight dollars and fifty-six cents ($1,328.56). If the County's contribution exceeds the cost of the above plans the difference shall be placed into a HRA account to be established by the County. This account will be owned by the employee.

HRA contributions will be made on a monthly basis beginning July 1, 2018.
Note: Effective July 1, 2020, the County will contribute an additional one hundred seventy-five dollars ($175.00) to either the HRA VEBA or into the medical plan, based on the bargaining unit's determination. In subsequent years for the life of the Agreement, the employee and County will share equally (50/50) in the premium amount in excess of the cap. . Increases for which the employee is responsible will first result in a reduction of the HRA contribution to cover such cost. The Union and the Employer agree that monthly contributions to the Teamsters Trust shall be distributed as follows: the Dental Plan, the Vision Plan, and then the Medical Plan.

No changes to the rest of Article 12.10.

Clallam County/AFSCME 1619-CS
Contract Extension Agreement
July 1, 2021 – June 30, 2024

Article 12.17 - COVID Leave (New)

Effective July 1, 2021, regular full-time employees (defined as thirty-seven and one-half (37.5) hours/week or more) shall be eligible for up to an additional eighty (80) hours of paid sick leave during the 2021 calendar year for absences caused by COVID-related illness or mandatory quarantine because of COVID infection or exposure. This is a contingent benefit and shall have no cash out value should the benefit not be utilized by an employee, nor shall there be carryover of unused COVID leave into the next calendar year. This benefit is retroactive to January 1; 2021and requires that a physician or the Clallam County Health Officer provide verification to Human Resources.

Article 12.18 - COVID Vaccine Benefit (New)

Each full-time employee (defined as thirty-seven and one-half (37.5) hours/week or more) who presents proof of completed COVID vaccination treatment to the Human Resources Department (through presentation of a vaccine record from an accredited state agency or health care provider) shall receive sixteen (16) hours of floating holiday in the calendar year in which the employee completed vaccine treatment. This is a one-time benefit and shall have no cash out value nor shall there be carryover of unused hours into the next calendar year.

Article 13.1 Wages

The attached Appendix A wage scale reflects the wage scale for Corrections Sergeants with base wages in effect on July 1, 2021, which shall continue during 2021 and be subject to adjustment as hereinafter specified.

Effective January 1, 2022, provide a cost of living increase to the Appendix A wage scale reflected of two and one-half percent (2.50%). Effective January 1, 2023, provide an additional cost of living increase to the Appendix A wage scale of two and one-half percent (2.50%). Effective January 1, 2024, provide an additional cost of living increase to the Appendix A wage scale of two and one-half percent (2.50%).

Article 13.2 Step Placement:

The County shall implement the following step administration plan for those positions and salaries enumerated under the County's wage and classification plan.

A. The step increases shall be based solely upon performance and shall not be granted unless supported by satisfactory employee evaluations. Evaluations of employees shall be conducted at least annually and shall be used as a factor in justifying annual step increases.

B. Entry level for Sergeant is identified as Year One (1) of Appendix A, the "3-Step Wage Scale." All promotions to the position of Sergeant shall be made in accordance with 13.2 C. Lateral appointments shall be made within the 3-Step Wage Scale. An employee shall move to the next highest step of the 3-Step Wage Scale effective on the first day of the month following the twelve (12) month anniversary of promotion or date of lateral hire except when the anniversary falls on the first day of the month in which case the increase shall be effective on that day. Longevity steps are identified in Article 13.6.

C. Assignment to a step in the Sergeant range of the 3-step pay plan of an employee promoted from another classification of Clallam County employment shall be a minimum of five percent (5%) increase above the wage of the lower classification.

Article 13.4 Out of Class Differential

Corrections Sergeants may be assigned as acting managers. A Sergeant who is assigned as acting manager shall be paid a differential of five percent (5%) of the Sergeant's base wage per hour for out-of-class assignments of one full shift or more.

Article 13.6 Longevity

Longevity pay is embedded within the Appendix A wage schedule after the completion of four (4), nine (9) and fourteen (14) years of employment as a Clallam County Corrections Sergeant.

Article 13.9 Accreditation Pay (New)

To recognize the high standards met, and the efforts involved in the accreditation process, as of July 1, 2021, each employee covered under this Agreement shall receive an additional one percent (1%) monthly accreditation premium pay calculated from the employee's base salary. In the event management does not seek accreditation renewal, or fails the accreditation process, the premium pay shall end on the expiration date of the existing accreditation certification. Accreditation premium pay shall remain in place so long as any portion of the Sheriff's Office (patrol or jail) is accredited. Any eligible employee receiving an evaluation having an overall rating less than satisfactory/meets standards/meets expectations shall have accreditation pay suspended until such time as an overall satisfactory/meets standards/meets expectations (or higher) evaluation is received.

Clallam County/AFSCME 1619-CS
Contract Extension Agreement
July 1, 2021 – June 30, 2024

Agreement which contravenes any federal, state or local law shall be invalid.

Dated Signed
By Union: _____

THE WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES LOCAL 1619-CS

_____
Darrell Bryant, President

_____
Josh Marburger, AFSCME Representative

_____
APPROVED AS TO FORM
Matthew Lynch, Employment Council

_____
Bill Benedict, Clallam County Sheriff
Date Signed: _____

Date Signed
By County: _____

CLALLAM COUNTY BOARD OF COMMISSIONERS

_____
Mark Ozias, Chair

_____
Bill Peach

_____
Randy Johnson

ATTEST:

_____
Loni Gores
Clerk of the Board

CORRECTIONS SERGEANT
3-Year Contract Extension

	July 1, 2021 Salary Schedule
Year 1	5,680.67
Year 2	5,830.17
Year 3	5,979.66
Year 4	5,979.66
Year 5 (Long 5.6%)	6,314.52
Year 6	6,314.52
Year 7	6,314.52
Year 8	6,314.52
Year 9	6,314.52
Year 10 (Long 3.4%))	6,529.78
Year 11	6,529.78
Year 12	6,529.78
Year 13	6,529.78
Year 14	6,529.78
Year 15 (Long 3.4%)	6,751.79
Year 16	6,751.79
Year 17	6,751.79
Year 18	6,751.79
Year 19	6,751.79
Year 20	6,751.79
Year 21	6,751.79
Year 22	6,751.79
Year 23	6,751.79
Year 24	6,751.79
year 25	6,751.79

2b
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Public Works/Road

WORK SESSION ☒ **Meeting Date: 09/20/2021**

REGULAR AGENDA ☒ **Meeting Date: 09/28/2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Resolution
☐ Draft Ordinance
☒ Contract/Agreement/MOU - Contract #101-15-011D
☐ Proclamation
☐ Final Ordinance
☐ Budget Item
☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

This item is a Funds Transfer Agreement –Amendment 4 from FHWA-WFL closing out the East Beach Road Project.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

That the Board signs this agreement closing out the project.

County Official signature & print name: R Tyler, Ross Tyler

Name of Employee/Stakeholder attending meeting: Ross Tyler

Relevant Departments: Public Works/Road Dept.

Date submitted: 9/15/2021

101-15-011D

US Department of Transportation
Federal Highway Adinistration
December 11, 2020

Western Federal Lands Highway Division, FHWA
610 E. Fifth Street
Vancouver, WA 98661

Funds Transfer Agreement

Clallam County

Providing Funding of **$0.00**

Western Federal Lands Highway Division, FHWA Agreement # DTFH70-16-E-00015 - Amendment 0004

Project Number/Name: WA Clallam 92210(1), East Beach Road

This amendment closes the FTA.

Fund Transfer Summary:

Phase	Form	Amount	Due	Received	FTA Number	Amend #	Comments
PE	Cash	$25,380.00	5/1/2016	8 /30/2016	DTFH7016E00015	Base	Match
CN	Cash	$254,340.00	5/15/2017	6/15/2020	DTFH7016E00015	0001	Match
		$ 0.00			DTFH7016E00015	0002	Extend Period of Performance
		$ 0.00			DTFH7016E00015	0003	Extend Period of Performance
	Total:	$279,720.00			DTFH7016E00015	0004	Close

The following is the Clallam County's Finance Billing Information:		The following is Western Federal Lands Highway Division, FHWA Finance Billing Information:	
DUNS#	075-739-235	DUNS#	139-768-597
Finance Contact	Ross Tyler	Finance Contact	Genise L. Dance
Finance Phone	(360) 417-2448	Finance Phone	(360) 619-7534
Finance Fax		Finance Fax	(360) 619-7945
Finance E-mail	rtyler@co.clallam.wa.us	Finance E-mail	genise.dance@dot.gov
Project Contact	Ross Tyler	Project Contact	Andrew Rasmussen
Project Phone	(360) 417-2448	Project Phone	(360) 619-7899
Project Fax		Project Fax	(360) 619-7945
Project E-mail	rtyler@co.clallam.wa.us	Project E-mail	andrew.rasmussen@dot.gov
Street Address	223 E. 4th ST., Suite 6		
City, State, Zip	Port Angeles, WA 98362-3015		

Expiration Date: This Funds Transfer Agreement will expire on 12/31/2021

The current authorized funding is: **$279,720.00.** In no case shall **Clallam Cty** or FHWA exceed this amount or extend the end date of the agreement without a mutually agreed upon written modification of this Agreement. All other terms and conditions remain unchanged.

Mark Ozias, BOCC , Dist #1 Date
Clallam County

Namrata Battan, Contracting Officer Date
Western Federal Lands Highway Division, FHWA

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2C
9/28/21

Department: Prosecuting Attorney's Office

WORK SESSION ☒ **Meeting Date: 09/20/2021**

REGULAR AGENDA ☒ **Meeting Date: 09/28/2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing
☒ Contract/Agreement/MOU - Contract # 843.21.002
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:
Signature requested on the interlocal agreement with the Thurston County Coroner's Office. The agreement memorializes the terms and fees associated with Clallam County autopsies hosted at Thurston County's facility. We will be utilizing the Thurston County facility as it includes a true autopsy suite, has access to services not immediately available at our local funeral homes, and to accommodate pathologist scheduling.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Funds have been allocated within the budget for such fees, however we will be requesting a debatable emergency in the amount of $40,000 to be added to the Coroner Services budget line. This year has seen a cost increase related to coroner cases, an increase in cases that require autopsies outside of the county, and additional expenses related to the pandemic. The additional funds requested will cover expenses related to services provided by our pathologists, contract funeral homes, and other partner agencies. Our county is required to pay for these services per RCW 68.50.104 (1): "The cost of autopsy shall be borne by the county in which the autopsy is performed..."

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Approve and sign the agreement. Return to the Prosecuting Attorney's Office to my attention.

County Official signature & print name: Mark Nichols

Name of Employee/Stakeholder attending meeting: Christi Wojnowski

Relevant Departments: Prosecuting Attorney's Office

Date submitted: September 15, 2021

---

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

843.21.002

INTERLOCAL AGREEMENT FOR PATHOLOGY SERVICES BETWEEN THURSTON COUNTY AND CLALLAM COUNTY

This Interlocal Agreement for Pathology Services ("Agreement") is entered into between Thurston County, through the Thurston County Coroner's Office, ("Thurston") and Clallam County, through the Ex-Officio Coroner ("Clallam"), both political subdivisions of Washington state.

RECITALS

A. The Interlocal Cooperation Act, Chapter 39.34 RCW, allows public agencies, such as Thurston County and Clallam County, to enter into cooperative agreements to more efficiently provide services within their jurisdictions.

B. Thurston County, through the Thurston County Coroner's Office, is capable of providing regional pathology and associated services for death investigations.

C. The Clallam County Ex-Officio Coroner needs pathology and associated services for death investigations which Thurston County has the ability to provide.

D. The parties would mutually benefit from the Thurston County Coroner's Office providing pathology and associated services for death investigations ("Services") to Clallam County subject to the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises and covenants, the parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to provide for the joint and cooperative undertaking of the parties to extend Services to Clallam, identify those persons responsible for administering the Services, and define the responsibilities of the parties as contemplated in RCW 39.34.030.

2. ORGANIZATION. No separate legal or administrative entity is created by this Agreement nor do the Parties intend to create through this Agreement a separate legal or administrative entity subject to suit.

3. ADMINISTRATOR. The Thurston County Coroner and Clallam County Coroner, or their designees, will administer this Agreement for each party.

4. SCOPE OF SERVICES. Thurston, through its Coroner's Office, will provide the Services identified in Attachment A (Scope of Services & Compensation) which is attached and incorporated in full by reference. All Services will be provided based on Clallam County's needs and Thurston County's available resources.

5. COMPENSATION. Compensation for the Services provided is set forth in Attachment A (Scope of Services & Compensation) which is attached and incorporated in full by reference.

6. EFFECTIVE DATE/DURATION. This Agreement shall be effective from the date this Agreement is last executed by both parties and shall remain in effect for one (1) year, unless terminated or extended. This Agreement may be extended for additional consecutive one (1) year term upon the written agreement of the Parties.

7. TERMINATION. Either party may terminate this Agreement upon 15-days prior written notice to the other.

8. PROPERTY. The parties do not anticipate the acquisition of property for the performance of this Agreement and any property acquired by a party during this Agreement shall be held by and remain the property of the acquiring party.

9. NONDISCRIMINATION. No party will discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of this Agreement.

10. EFFECTIVE DATE/FILING. This Agreement will take effect when executed by the parties. Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or, alternatively, listed by subject on the web site or other electronically retrievable public source in compliance with RCW 39.34.040.

11. NOTICE. All notices will be delivered in writing to the Thurston County Coroner or Clallam County Coroner. Notice mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

Thurston County Coroner's Office
2925 37th Ave SW
Tumwater, WA 98512
(360) 867-2140
FAX: (360) 867-2141

Clallam County Coroner's Office
223 East 4th Street, Suite 11
Port Angeles, WA 98362
(360) 565-2611
FAX: (360) 417-2543

12. COMPLIANCE WITH LAWS. The parties shall comply with all applicable laws, rules and regulations pertaining to them in connection with the Services provided and matters covered in the Agreement.

13. IMPLIED CONTRACT TERMS. Each provision of law and any terms required by law to be in the Agreement are made a part of the Agreement as if fully stated in it.

14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, and with facsimile, email, or electronic signatures, all of which shall be deemed to constitute one and the same instrument, with each counterpart deemed an original.

15. INDEPENDENT CAPACITY. The employees and agents of each party who are engaged in the performance of this Agreement shall continue to be the employees or agents of that party and shall not be considered, for any purpose, to be employees or agents of the other party to this Agreement. Neither party shall have the authority to bind the other nor control the employees, agents or contractors of the other party to this Agreement. All rights, duties and obligations of a party shall remain with that party.

16. CHANGES, MODIFICATIONS, AND AMENDMENTS. This Agreement may be changed, modified, or amended, only by written agreement executed by the parties hereto.

17. NO THIRD-PARTY RIGHTS. This Agreement is intended to be solely between the parties. No part of this Agreement shall be construed to add, supplement, or amend existing rights, benefits, or privileges of any third party, including without limitation, employees of either party.

18. ASSIGNMENT. The rights or obligations under this Agreement, and any claims arising thereunder, are not assignable or delegable by either party.

19. WAIVER. A failure by any party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party.

20. SEVERABILITY. The provisions of this Agreement are severable. Any term or condition of this Agreement or application thereof deemed to be illegal, invalid, or unenforceable, in whole or in part, shall not affect any other terms or conditions of the Agreement and the parties' rights and obligations will be construed and enforced as if the Agreement did not contain the particular provision.

21. SURVIVAL. Those provisions of the Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include, without limitation, the respective responsibilities of each party, compensation, and indemnification.

22. HEADINGS. Headings of this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

23. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties and supersedes any other agreement or understanding of the parties relating to the subject matter of this Agreement.

24. AUTHORIZATION. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

Dated this _____ day of _____, 20__.

Thurston County Coroner's Office

Gary Warnock, Coroner

Thurston County Civil Attorney

Rick Peters

Dated this 13th day of Sept., 2021.

Clallam County Coroner's Office

Mark Nichols, Ex-Officio Coroner

Board of Clallam County Commissioners

Mark Ozias, Chair

ATTACHMENT A
SCOPE OF SERVICES &
COMPENSATION

1. Facility. Thurston County maintains a facility in which autopsies and any other postmortem examinations are performed. Some of the supplies and equipment necessary for conducting required examinations include: protective supplies, (such as gowns, gloves, aprons, face shields, boots, and shoe covers); containers for bodies and tissue samples; items used in performance of autopsies (such as syringes, scalpels, scissors, forceps, chisels, knives, saws, and photographic film); and cleaning supplies (such as soaps, detergents, and disinfectants).

2. Thurston County will provide the following Pathology Services for Clallam County which shall include the services identified in the chart below. The associated fees for each service represent the actual cost to Thurston County for providing the services per deceased.

Service	Fee (for each deceased person)
Autopsy, case evaluation, report	n/a
External examination	n/a
Autopsy technician services	n/a
Transcription services	n/a
Facility usage	$150.00
Histology cassette services	n/a
Laboratory Services	n/a
X-Ray	$250.00
Specimen/Tissue Storage	n/a

3. Transportation of Deceased. Clallam County will remain responsible for transportation of the deceased for all purposes. Within three (3) business days of receipt of oral or written notice from Thurston County that the Services have been completed, Clallam County shall have the body of the deceased removed from the Thurston County Coroner's Office and transported to the funeral home. The body may be picked up from the Thurston County Coroner's Office between 8:00am and 5:00pm. Pickups outside these hours are not permitted. Failure to remove the body of the deceased within five (5) business days, without the prior consent of the Thurston County Coroner may result in the assessment of an additional fee of $50 per day.

4. Autopsy/Inspection Photographs. Autopsy/inspection photographs taken will be provided to Clallam County.

5. Specimen/Tissue Samples. Specimen and tissue samples will be returned to Clallam County for storage and/or destruction.

6. Death Investigations. Clallam County will provide its own death investigation services.

7. Personal Property. Clallam County will remain responsible for the retention and disposition of all personal property of the deceased as required by law. Any personal property of the deceased received by Thurston County with the body of the deceased will be retained in a safe location until returned to Clallam County for disposition.

8. Excluded Services. The following services, when requested by Clallam County, will be assessed at an additional fee. The fee charged will be the actual cost to Thurston County for providing such services.
   - Transportation services
   - Expert consultation services
   - Testimony and associated costs (e.g. travel)
   - Death investigation services
   - External fees for services

9. Jurisdiction. The parties agree that jurisdiction of the body of the deceased is with the County where the death occurred.

2d

9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Prosecuting Attorney's Office

WORK SESSION ☒ **Meeting Date: 09/20/2021**

REGULAR AGENDA ☒ **Meeting Date: 09/28/2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing

☒ Contract/Agreement/MOU - Contract # 843.21.001

☐ Resolution

☐ Proclamation

☐ Budget Item

☐ Draft Ordinance

☐ Final Ordinance

☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:
Signature requested on the memorandum of understanding with Dr. Eric Kiesel. This agreement has been reviewed and approved to form by Elizabeth Stanley. Dr. Kiesel is contracted to perform autopsy services when needed to determine cause and manner of death of a deceased individual under the jurisdiction of the Clallam County Coroner's Office. Dr. Kiesel has performed such services on behalf of the coroner's office for greater than 10 years. This memorandum of understanding is to replace the one which expired this year.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Funds have been allocated within the budget for pathologist fees, however we will be requesting a debatable emergency in the amount of $40,000 to be added to the Coroner Services budget line. This year has seen a cost increase related to coroner cases, an increase in cases that require autopsies outside of the county, and additional expenses related to the pandemic. The additional funds requested will cover expenses related to services provided by our pathologists, contract funeral homes, and other partner agencies. Our county is required to pay for these services per RCW 68.50.104 (1): "The cost of autopsy shall be borne by the county in which the autopsy is performed..."

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Approve and sign the agreement. Return to the Prosecuting Attorney's Office to my attention.

County Official signature & print name: Mark Nichols

Name of Employee/Stakeholder attending meeting: Christi Wojnowski

Relevant Departments: Prosecuting Attorney's Office

Date submitted: September 15, 2021

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

843.21.001

Memorandum of Understanding

This Service Agreement (this "Agreement") dated the 7th of September 2021 (the "Effective Date"), by and between Dr. Eric L. Kiesel, MD PhD ("Dr. Kiesel"), a licensed physician (Washington State MD license number 21422, expiration 7/22/2023) and the Clallam County Coroner ("County"), with offices located at 223 E 4th St, Port Angeles, WA 98362 sets forth the terms and conditions for Dr. Kiesel to provide to Clallam County autopsy services.

For good and valuable consideration, Clallam County and Dr. Kiesel hereby agree as follows:

1. Term. The term of this Agreement shall be two (2) years, commencing on the Effective Date set forth above (the "Term"). The Term of this Agreement shall renew automatically for additional terms of one (1) year each unless either party provides the other party with written notice of its intent not to renew the Agreement at least ninety (90) days prior to the expiration of the then current Term.

2. Services. During the Term Dr. Kiesel will provide to CLALLAM COUNTY with autopsy services. The Services will be provided in accordance with applicable state laws and the provisions of this Agreement.

   In performing Services under this Contract Dr. Kiesel will exercise the degree of care, skill and learning expected of a reasonably prudent health care provider in the profession acting in same or similar circumstances at the time the Services are provided.

3. Fees. Dr. Kiesel shall invoice CLALLAM COUNTY for each completed autopsy at $1,700 per autopsy and $1,100 per external examination, and $1250 per head only autopsy. If the State of Washington increases its reimbursement amount for autopsies, then Dr. Kiesel shall be entitled to that increased reimbursement amount for each autopsy performed for CLALLAM COUNTY. Records consultations performed by Dr. Kiesel will be invoiced at the rate of $400 per hour. Dr. Kiesel may provide special services to CLALLAM COUNTY and will charge a cost equivalent to his cost for those services. CLALLAM COUNTY will pay all invoices within 30 days of receipt.

   In the event Dr. Kiesel is subpoenaed regarding exams he has performed for the County, he will be paid by the agency/person issuing the subpoena. The compensation to be paid to Dr. Kiesel should he be subpoenaed will be agreed upon by Dr. Kiesel and the party or entity that has issued him a subpoena before Dr. Kiesel responds to or complies with the subpoena.

4. DELETED

5. Termination for Cause. This Agreement may be terminated in writing by the non-defaulting party at any time for Cause. Cause is defined as a (i) a material breach of this Agreement which is not cured by the breaching party within fifteen (15) days after

sending of written notice, (ii) the occurrence of a bankruptcy, reorganization, insolvency or similar condition or event; (iii) repeated failures by governmental entities to timely pay for Services rendered; or (iv) exclusion from or sanction by any state or federal health care program.

6. Termination without Cause: Either party may terminate this Agreement, without cause, upon 90 days written notice to the other.

7. Independent Contractor: Responsibility for Patients.

(a) Dr. Kiesel shall perform all of the Services hereunder as an independent contractor and nothing contained herein shall be construed to create an employer/ employee, partnership or joint venture relationship between the parties.

(b) Except for the Services, CLALLAM COUNTY shall be solely responsible for all other services for its patients.

8. DELETED

9. Insurance: Dr. Kiesel shall maintain in full force and effect during the term of this Agreement, the following insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended.

☒	ERRORS AND OMISSIONS or PROFESSIONAL LIABILITY with an Extended Reporting Period Endorsement (two year tail)	$1,000,000	per occurrence

Proof of the existence of such coverage shall be provided within 30 days of the Effective Date of this Agreement and annually thereafter on the anniversary of the Effective Date.

10. DELETED

11. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Washington, without regard to the conflict of law provisions.

12. Entire Agreement; Amendment; Waiver; Assignment. This Agreement is a final and complete expression of the subject matter herein and shall not be amended without the written agreement of both parties. A party to the Agreement may choose to allow the other party to not perform one of its obligations under this Agreement, but by doing so

the party allowing such non-performance is not prevented from requiring performance of that same obligation at a later date. This Agreement may not be assigned without the express written consent of the CLALLAM COUNTY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date first above written.

Eric L. Kiesel, MD PhD

Signature

14 SEPT 2021

Date

Mark Nichols, Ex-Officio Coroner

Signature

September 13, 2021

Date

Board of Clallam County Commissioners

Mark Ozias, Chair

Date

2e

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

9/28/21

Department: Finance

WORK SESSION ☒ **Meeting Date:** **09/20/2021**

REGULAR AGENDA ☒ **Meeting Date:** **09/28/2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing ☒ Contract/Agreement/MOU - Contract # 19961.21.005

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☒ Other Monthly Review

Documents exempt from public disclosure attached: ☐

REVISED AGREEMENT--ARPA DIRECT ASSISTANCE AGREEMENT—NEW HOPE FOOD BANK-- FOR PROVISION OF FOOD INSECURITY ECONOMIC SUPPORT FOR THEIR ACQUISITION OF A NEW FACILITY:

BACKGROUND

Following the execution of the ARPA Direct Assistance Agreement with New Hope Food Bank on September 7, 2021 in support of New Hope purchasing and renovating a new facility to replace its existing building, the County was made aware by the escrow company handling the purchase and sale of the 33 Bogachiel St building in Clallam Bay (the former Bank of America building), that New Hope Food Bank needed to execute articles of incorporation with the WA Secretary of State office in order to take legal possession of this building as New Hope Food Bank is operated by the Clallam Bay Assembly of God Church, which recently was renamed Cornerstone Pentecostal Evangelical Church of Clallam Bay-Sekiu. Approval of these articles of incorporation was received from the Secretary of State on September 14, 2021.

As a result of these developments, the County in consultation with the Prosecuting Attorney Civil Division has determined that it is appropriate to re-execute this ARPA agreement reflecting the correct legal entity now filed with the Secretary of State's office that will be taking possession of this building—Cornerstone PEC of Clallam Bay-Sekiu, DBA New Hope Food Bank. In addition to this change, due to New Hope Food Bank's faith-based ownership structure, this proposed replacement agreement has also been modified to include additional provisions as follows:

(1) The New Facility building is required to be operated solely as a food bank and shall not be used for any "inherently religious" activities;

(2) A Non-Discrimination provision has been added that simply requires that food security services are provided to clients solely upon the basis of need;

(3) A provision requiring that ARPA funds provided under this agreement must be returned to the County in the event the new facility ceases to be used as a food bank, or if the property is sold, at which point such funds would be distributed for other ARPA eligible purposes or be returned to the US Treasury.

In conjunction with execution of this new agreement, it will be necessary to terminate the original agreement.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Approval of this contract will authorize the release of $250,000 of ARPA funds from the American Rescue Plan Act special revenue fund to NHFB.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
In an effort to support NHFB staying on track with closing on the purchase of the new building facility scheduled for September 30, 2021, we request the Commissioner's feedback and approval to proceed in submitting this agreement for approval during the next BOCC meeting scheduled on Tuesday, September 28, 2021.

County Official signature & print name: Mark Lane

Name of Employee/Stakeholder attending meeting: Mark Lane, Dee Boughton

Relevant Departments: Finance, BOCC, PA Civil Division

Date submitted:

September 15, 2021

ARPA DIRECT GRANT ASSISTANCE AGREEMENT

19961.21.005

This ARPA Direct Grant Assistance Agreement ("Agreement") is dated as of the _____ day of _____, 2021, by and between Clallam County, a Washington political subdivision ("County"), and The Cornerstone PEC of Clallam Bay-Sekiu (Federal Tax ID 86-3346084, UBI # 604-800-690), a Washington state non-profit 501(c)(3) organization ("Recipient"), that operates the New Hope Food Bank for the exclusive purpose of providing the New Hope Food Bank with a new facility in which the sole purpose is providing the Clallam Bay-Sekiu communities of Clallam County with food security services.

WHEREAS, the U.S. Department of the Treasury ("Treasury") has allocated to the County $15,020,640 of federal stimulus funding from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Funds under CFDA No. 21.027 ("ARPA Funds") under Section 603(b) of the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act ("ARPA Act"), of which $7,510,320 was outlaid to the County on May 28, 2021 with the remainder of funds of $7,510,320 to be disbursed by Treasury to the County one year thereafter, for the limited purposes identified in the Interagency Agreement between the Treasury and Clallam County designated under FAIN #SLFRP2169 ("IGA"), identified as Attachment A, the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule ("Interim Final Rule"), identified as Attachment B, and the Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds ("Compliance & Reporting Guidelines"), identified as Attachment C. Attachments A, B & C are attached hereto and incorporated herein by this reference.

WHEREAS, the ARPA Act authorizes the County to expend ARPA Funds awarded to the County for the following eligible purposes as outlined in the Interim Final Rule as follows:

(1) To respond to the COVID-19 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;
(2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
(3) 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
(4) To make necessary investments in water, sewer, or broadband infrastructure;
(5) To address the disparate impact of COVID-19 on certain populations and geographics, additional eligible services may include:

a. 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;

b. 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;

c. 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

d. 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. (collectively "Eligible Uses").

Pursuant to the ARPA Act, Eligible Uses under this non-R&D federal program must be obligated no earlier than March 3, 2021 and no later than December 31, 2024, with final disbursement of all funds no later than December 31, 2026.

WHEREAS, the County desires to allocate portions of the ARPA Funds awarded to Clallam County in support of non-profit organizations and other agencies engaged in supporting the food security needs of those low income households, residents residing in Qualified Census Tracts, and other vulnerable populations or geographic areas disproportionately-impacted by the COVID public health emergency in the County who are experiencing food insecurity, which is consistent with Items 1 and 5 (b) of the Eligible Uses of ARPA Funds outlined above.

WHEREAS, the Recipient, a Clallam County non-profit organization that operates a food bank serving residents of Clallam Bay-Sekiu and surrounding areas within Clallam County who are experiencing food insecurity during the COVID-19 public health emergency, has witnessed a significant increase in Clallam County households seeking food assistance in its service area during the COVID-19 public health emergency. Notable impacts of the COVID-19 emergency on the Recipient's food bank services include:

- Since March 2020 when the COVID-19 emergency began, the number of households seeking food assistance in the area served by the Recipient during the COVID-19 emergency increased substantially;
- This increased need for assistance resulted in the local volunteer fire department within the Recipient's service area to volunteer in assisting with food distribution and delivery of food assistance to home-bound impacted residents, resulting in serving approximately 150 people on a regular basis during the COVID-19 emergency in addition to those households served by the Recipient.
- As a result of the increased demand for food assistance during the COVID-19 emergency, the Recipient experienced a significant expansion and availability of food aid coming into Clallam County from other food assistance agencies, including USDA and Northwest Harvest. This increased supply of food overwhelmed the existing storage space of the Recipient within its existing facility;
- As a result of these food storage space constraints within its current facility, the Recipient has regularly been forced to turn food assistance away, including fresh produce and other cold storage items which are in need by the households served by the Recipient, and has limited how often the Recipient's facility is open to distribute food assistance;
- The Recipient's current food bank facility (a 30+ year-old single-wide mobile home of approximately 720 square feet) has due to the building's age and construction quality

fallen into a state of severe disrepair, and as a result of pest infestation, electrical wiring problems and other issues is no longer safe or viable for the Recipient to continue operating as a food bank;

- In addition to the inadequacy of the Recipient's current facility from a food storage capacity and operating safety perspective, the Recipient's current facility is located approximately 3 miles outside of Clallam Bay, which greatly hinders its ability to service the food security needs of low income residents in the area, many of which lack a means of transportation to access the Recipient's facilities;
- In order to address its facility deficiencies, the Recipient has identified an approximate 1,300 square foot replacement building located at 33 Bogachiel St, Clallam Bay, WA, at the center of Clallam Bay that is within close proximity of several local organizations that support the needs of the community including the Lyons Club, health clinic, community center, and local church.
- On July 30, 2021, the Recipient entered into a purchase and sale agreement to acquire this facility at a cost of $195,000, contingent upon the Recipient arranging sufficient grant financing through the County;
- The Recipient has identified a number of renovations that will be needed to make this new facility suitable for its needs, including installation of a 2nd exit/entry to the building, removal of an existing vault, remodel of a bathroom, purchase and installation of additional cold and dry food storage equipment and shelving, and installation of an offloading area. The recipient estimates the cost of these renovations will be approximately $80,000;
- To date, the Recipient has raised approximately $27,000 in available funding to purchase and renovate a replacement facility, leaving an estimated funding deficit of approximately $250,000 in order to proceed with the acquisition and renovation of the replacement facility which the Recipient does not have the financial resources to fund.

WHEREAS, the County believes the provision of economic support to the Recipient is necessary and appropriate given the Recipient's critical role in providing food security assistance to impacted, vulnerable residents of the Clallam Bay area within Clallam County, the severe adverse condition of the Recipient's current facility which render it no longer viable or safe to operate as a food bank for its volunteers and residents needing food assistance, and the Recipient's lack of sufficient financial resources to fully fund its purchase of a suitable replacement facility needed in order to better meet the increased food storage, distribution and location needs of the residents of the Clallam Bay Area experiencing food insecurity, and represents an eligible use of ARPA Funds as outlined previously;

WHEREAS, the County and Recipient desire to enter into this Agreement so that the County may advance ARPA Funds to the Recipient via a direct economic support grant to the Recipient to provide the Recipient with sufficient proceeds to enable the Recipient to proceed with completing its acquisition and renovation of the property located at 33 Bogachiel St, Clallam Bay, WA (the "New Facility"), with such assistance allowed under the IGA and Interim Final Rule.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2024, unless terminated by the County in writing.

2. ARPA Funds. The County agrees to provide the Recipient a total sum not to exceed $250,000 which may be used by the Recipient to complete the purchase and renovation of the New Facility. Funds necessary to fund the purchase of the New Facility will be provided to the closing agent designated in the New Facility purchase and sale agreement dated July 30, 2021 upon receipt by the County of a final settlement statement from the closing agent and receipt of proof of satisfaction of all other terms and conditions and inspections required for the closing of the purchase to proceed. Following closing of the purchase of the New Facility, the County shall be provided a copy of final closing documents. Remaining ARPA Funds will be provided to the Recipient on a reimbursement basis to be used for eligible costs incurred relating to renovation and equipment costs incurred by the Recipient for the New Facility based on eligibility criteria outlined in Attachment D. All funds must be expended no later than December 31, 2024.

3. Ineligible Uses. Non-allowable uses of ARPA Funds include, without limitation, the following: a) usage of funds to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation or administrative interpretation during the covered period that reduces any tax or delays the imposition of any tax or tax increase; b) damages covered by insurance; c) usage of funds as a deposit into any pension fund; d) expenses that have been or will be reimbursed under any federal program; e) debt service costs; f) contributions to a "rainy day" fund; and d) legal settlements.

4. Agreed Limitation on Uses. The Recipient agrees that the New Facility to be purchased shall not be used for "inherently religious" activities, and further that the New Facility described above shall be used only as a food bank or for uses directly associated to or connected with a food bank, including but not limited to food storage, and food distribution.

5. Non-Discrimination. The Recipient shall provide food security services to clients based solely upon the basis of need and shall not, in the operation of New Hope Food Bank, discriminate against any person on the basis of religion, race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.

6. Reimbursement Request Support. To facilitate release of ARPA funding to the Recipient and meet the County's reporting requirements of ARPA funding under the IGA, the Recipient will submit a detailed invoice in a form specified and approved by the County, on or before the 10th day of each month of this Agreement, detailing the eligible expenses incurred by the Recipient for which Reimbursement is being requested as outlined in Attachment D. Such schedule may be modified with the prior approval of the

County, until such time as such funds are fully depleted. Such invoice will be accompanied by copies of all invoices and related support for each expenditure listed in the reimbursement request submitted by the Recipient. Failure to provide any of the required documentation may result in termination of the Agreement and in the withholding and/or nonpayment of all remaining funds awarded to the Recipient by the County under the Agreement.

7. Return of Grant Funds upon cessation of agreed use. In the event that the above described New Facility ceases to be used as a food bank, or if Recipient sells the property to another person or entity, the Recipient shall return the above described ARPA funds, actually received by Recipient, to Clallam County for distribution to other ARPA recipients or return of such monies to the US Treasury.

8. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Recipient.

9. Independent Contractor. Each party under the Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Recipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

10. Indemnification. The Recipient agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Recipient, its officers, directors, employees, and/or agents relating to the Recipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

11. Compliance with Laws, Guidelines. The Recipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the IGA, Interim Final Rule, and Compliance & Reporting Guidelines to the extent applicable, when disbursing ARPA Funds to recipients or when seeking Reimbursement from the County.

12. Maintenance and Audit of Records. The Recipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office and as required by the IGA, Interim Final Rule and Compliance & Reporting Guidelines for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Recipient was reimbursed for unallowable costs under this Agreement, the Recipient agrees to promptly reimburse the County for such payments upon request.

13. Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Recipient
The Cornerstone PEC of Clallam Bay-Sekiu
Attn: Tom Hull, President
PO Box 336
16693 Highway 112
Clallam Bay, WA 98326

Clallam County
Attn: Mark Lane, Chief Financial Officer
223 E 4th St, Suite 4
Port Angeles, WA 98362-3015

14. Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

15. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

16. Time. Time is of the essence in this Agreement.

17. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

18. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.

19. Governing Law; Venue. The Agreement will be governed in all respects by the laws of Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted and maintained only in a court of competent jurisdiction in Clallam County, Washington or as provided by RCW 36.01.050.

17. Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise

thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. Assignment. The Recipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the County.

20. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to Treasury in connection with the use of ARPA Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

DATED this _____ day of _____, 2021.

RECIPIENT

By: _____

Print Name: Tom Hull

Its: President

DATED this _____ day of _____, 2021.

APPROVED AS TO FORM by DPA Stanley

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

_____
MARK OZIAS, Chair

_____
RANDY JOHNSON, Commissioner

_____
BILL PEACH, Commissioner

ATTEST:

_____
L. Gores, Clerk of the Board

ATTACHMENT A

INTERAGENCY AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF TREASURY AND
CLALLAM COUNTY

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OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: CLALLAM COUNTY 223 EAST FOURTH STREET, SUITE 4 PORT ANGELES, Washington, 98362-3015	DUNS Number: 075739235 Taxpayer Identification Number: 916001298 Assistance Listing Number: 21.019

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient: DocuSigned by: MARK OZIAS 9C5FE664B8F24C1...

Authorized Representative: MARK OZIAS

Title: CHAIRMAN, BOARD OF CLALLAM COUNTY COMMISSIONERS

Date signed: 5/19/2021

U.S. Department of the Treasury:

_____

Authorized Representative:

Title:

Date:

PAPERWORK REDUCTION ACT NOTICE
The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

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U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
   a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.

4. Maintenance of and Access to Records
   a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.

   c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

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9. Compliance with Applicable Law and Regulations.
   a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

   b. Federal regulations applicable to this award include, without limitation, the following:

      i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

      ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

      iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

      iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

      v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

      vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

      vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

      viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

      ix. Generally applicable federal environmental laws and regulations.

   c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

      i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

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ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.
    a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

    b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.
    a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

    b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.
    a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

    b. The list of persons and entities referenced in the paragraph above includes the following:
        i. A member of Congress or a representative of a committee of Congress;
        ii. An Inspector General;
        iii. The Government Accountability Office;
        iv. A Treasury employee responsible for contract or grant oversight or management;
        v. An authorized official of the Department of Justice or other law enforcement agency;
        vi. A court or grand jury; or
        vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

    c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

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ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.

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4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

   The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.

9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

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agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

CLALLAM COUNTY

Recipient

5/19/2021

Date

DocuSigned by:
MARK OZIAS
9C5FE664B8F24C1...

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

ATTACHMENT B

U.S. DEPARTMENT OF TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
INTERIM FINAL RULE
DATED 5-17-2021

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID–19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID–19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.[7] Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.[8] These cuts to State, local, and Tribal government workforces

[1] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited May 8, 2021).

[2] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE,* May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNU02000000,* May 3, 2021.

[3] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS,* May 7, 2021.

[4] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, https://www.census.gov/programs-surveys/household-pulse-survey.html (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.*

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[6] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.*

[7] Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), *https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities.*

[8] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.[9]

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID–19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID–19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include "directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation."

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID–19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

[9] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[10] Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[11] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and* (last visited May 4, 2021).

[12] Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID–19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, Psychological Trauma Vol. 12(5):443–45 (2020), *available at https://psycnet.apa.org/fulltext/2020-37320-001.pdf.*

[13] Emily Vogles et al., 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (Apr. 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[14] Emma Dorn et al., COVID–19 and student learning in the United States: The hurt could last a lifetime (June 2020), *https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf;* Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, J. of Public Econ. Vol. 193(C) (July 2020), *available at https://www.nber.org/papers/w27555.*

[15] *See, e.g.,* Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, *https://www.dallasfed.org/research/economics/2020/1110* (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, *https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf* (last visited May 9, 2021).

[16] American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term "state" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term "territory" as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean "the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131)." See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term "local governments" as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

[17] 42 U.S.C. 801 *et seq.*

[18] Sections 602, 603 of the Act.

[19] The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID–19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID–19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID–19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION**. Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID–19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID–19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID–19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.[20]

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID–19 public health emergency. Assessing whether a program or service "responds to" the COVID–19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID–19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.

[20] Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID–19 or the negative economic impacts of the COVID–19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID–19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID–19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID–19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID–19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[21] By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.[22] This wave brought acute

[21] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[22] Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID–19 in the United States, February 24–April 21, 2021, MMWR Morb Mortal Wkly Rep 2021, 69(18):551–56 (May 8, 2021), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm.*

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID–19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.[23] By early May 2021, the United States has experienced over 32 million confirmed COVID–19 cases and over 575,000 deaths.[24]

Mitigating the impact of COVID–19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID–19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

The need for public health measures to respond to COVID–19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID–19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with "long COVID," and research to understand how COVID–19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID–19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26] The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29] Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[31] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[32]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 211 deaths per 100,000 as of May 2021.[34]

[23] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited May 8, 2021).

[24] *Id.*

[25] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited May 8, 2021).

[26] Panchal, *supra* note 4; Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic– United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[27] Leeb, *supra* note 4.

[28] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8, 2021).

[29] Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid–19, N. Engl. J. Med. 383:2302–04 (Dec. 10, 2020), *available at https://www.nejm.org/doi/full/10.1056/NEJMp2024046.*

[30] Jeanne M. Santoli et al., Effects of the COVID–19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, Morb. Mortal. Wkly. Rep. 69(19):591–93 (May 8, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm;* Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID–19 Pandemic—New York City, March 1–June 27, 2020, Morb. Mortal. Wkly. Rep. 69(30):999–1001 (Jul. 31 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm.*

[31] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[32] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Romano, *supra* note 10.

[33] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[34] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases

Continued

Over the last year, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[35] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[36]

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.[37] Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[38] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[39]

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID–19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID–19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID–19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID–19 public health emergency, including:

• *COVID–19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID–19. Mitigation and prevention efforts for COVID–19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.*, monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.*, nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These COVID–19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]

• *Medical Expenses.* The COVID–19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID–19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID–19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]

and Deaths in the United States, by Social Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[35] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited Apr. 26, 2021).

[36] *See, e.g.*, Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited Apr. 26, 2021).

[37] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[38] *See, e.g.*, Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[39] *See, e.g.*, Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K–12 Schools through Phased Prevention, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.*

[41] Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed here (*e.g.*, telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this **SUPPLEMENTARY INFORMATION**) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this **SUPPLEMENTARY INFORMATION**).

[42] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), *available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.*

[43] Centers for Disease Control and Prevention, *supra* note 24.

[44] Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html* (last visited Apr. 26, 2021).

[45] Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID–19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID–19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response. Recipients need not routinely track staff hours.

• *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID–19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID–19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),[47] to families living in QCTs, or when these services are provided by Tribal governments.[48] Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

• Funding community health workers to help community members access health services and services to address the social determinants of health;[49]

• Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

• Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;

• Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and

• Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote

[46] In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

[47] Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

[48] U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html* (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), *https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf* (last visited Apr. 26, 2021).

[49] The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. *See, e.g.,* U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, *https://health.gov/healthypeople/objectives-and-data/social-determinants-health* (last visited Apr. 26, 2021).

[50] National Commission on COVID–19 and Criminal Justice, Impact Report: COVID–19 and Crime (Jan. 31, 2021), *https://covid19.councilonj.org/2021/01/31/impact-report-covid-19-and-crime-3/* (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID–19 pandemic, Am. J. of Emerg. Med. 38(12): 2753–55 (Dec. 1, 2020), *available at https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext* (showing a spike in domestic violence).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points [58] during the pandemic as compared to 1.0 percentage points for Black men [59] and 2.0 percentage points for White women.[60]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[61] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores [62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: As of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[68]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[69] In general, small businesses can face greater hurdles in accessing credit,[70] and many small businesses were already financially fragile at the outset of the pandemic.[71] Non-profits, which provide vital services to communities, have similarly faced

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[51] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited May 8, 2021).

[52] *Id.*

[53] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited May 8, 2021).

[54] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited May 8, 2021).

[55] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[56] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and* (last visited May 8, 2021).

[57] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. *See, e.g.,* Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), *available at https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at https://www.nber.org/papers/w26947.*

[58] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited May 8, 2021).

[59] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited May 8, 2021).

[60] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited May 8, 2021).

[61] *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

[62] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

[63] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

[64] Board of Governors of the Federal Reserve System, *supra* note 5.

[65] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

[66] Biden, *supra* note 6.

[67] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[68] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited May 8, 2021).

[69] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

[70] *See e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

[71] Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

economic and financial challenges due to the pandemic.[72]

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.[73] These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID–19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID–19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID–19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID–19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010–2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID–19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID–19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.[84] Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.[85]

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID–19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be

[72] Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf.*

[73] Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

[74] Kim Parker et al., Economic Fallout from COVID–19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/;* Gould, *supra* note 55.

[75] *See infra* Section II.B of this Supplementary Information.

[76] Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), *https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/.*

[77] Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), *https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.*

[78] David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), *available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.*

[79] Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. *See, e.g.,* Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, PLoS ONE 13(7) (2018), *available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144;* Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, *https://opportunityinsights.org/education/* (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education* (last visited Apr. 26, 2021).

[80] *See, e.g.,* Bacher-Hicks, *supra* note 14.

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, *https://ies.ed.gov/schoolsurvey/* (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), *https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07* (last visited May 4, 2021).

[82] HHS, *supra* note 79.

[83] Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J. of Pediatrics Vol. 223:188–93 (Aug. 1, 2020), *available at https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract.*

[84] Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey.'' Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. *https://doi.org/10.18128/D030.V8.0; see also* Donna Feir & Charles Golding, Native Employment During COVID–19: Hard hit in April but Starting to Rebount? (Aug. 5, 2020), *https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.*

[85] Moreno & Sobrepena, *supra* note 73.

eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm.[86] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must "respond to" the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.
- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID–19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID–19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID–19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID–19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID–19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:
  - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
  - Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics, such as physical

[86] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID–19 vaccination, testing, or contact tracing programs; and

○ Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID–19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.*, comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.[87]

• *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.[88] Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

• *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID–19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID–19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID–19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID–19 public health emergency.[89] Recipients should also consider whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID–19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID–19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID–19 public health emergency, including:

○ *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID–19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.[91]

[87] *See* Federal Reserve Bank of Cleveland, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx* (discussing the impact of COVID–19 on minority owned businesses).

[88] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited May 8, 2021).

[89] From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. *See* U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/USLAH* (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (*e.g.* revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. *See* Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, *https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.*

[90] HUD, *supra* note 48.

[91] Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), *https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-*

Continued

Services in this category alleviate the immediate economic impacts of the COVID–19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.[92] Eligible services include:

- Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
- Affordable housing development to increase supply of affordable and high-quality living units; and
- Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

○ *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

- New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
- Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
- Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and
- Evidence-based practices to address the social, emotional, and mental health needs of students;

○ *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.[94] Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

- New or expanded high-quality childcare to provide safe and supportive care for children;
- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (*e.g.*, investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (*e.g.*, affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. *See* Section II.D of this **SUPPLEMENTARY INFORMATION.** State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. *See* Section II.C of this **SUPPLEMENTARY INFORMATION.**

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID–19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID–19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

persistent-urban-inequality-and-concentrated-poverty/.

[92] U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11* (last visited Apr. 26, 2021).

[93] The Opportunity Atlas, *https://www.opportunityatlas.org/* (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), *available at https://opportunityinsights.org/paper/neighborhoodsi/.*

[94] *See* supra notes 52 and 84.

plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID–19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID–19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID–19 response, and therefore reimbursable, in an easily-administrable manner?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries" affected by the COVID–19 public health emergency?

Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID–19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities? Describe how these respond to the COVID–19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID–19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID–19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID–19.[96] Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID–19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID–19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[100]

[95] Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

[96] *See, e.g.*, Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, *https://covid.cdc.gov/covid-data-tracker/#health-care-personnel* (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID–19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, *https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff* (last visited May 4, 2021).

[97] *See, e.g.*, The Lancet, The plight of essential workers during the COVID–19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.*

[98] *Id.*

[99] Joanna Gaitens et al., Covid–19 and essential workers: A narrative review of health outcomes and moral injury, Int'l J. of Envtl. Research and Pub. Health 18(4):1446 (Feb. 4, 2021), *available at https://pubmed.ncbi.nlm.nih.gov/33557075/;* Tiana N. Rogers et al., Racial Disparities in COVID–19 Mortality Among Essential Workers in the United States, World Med. & Health policy 12(3):311–27 (Aug. 5, 2020), *available at https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358* (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

[100] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.[101] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[102] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID–19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government." [103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would "respond to" to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.[105]

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.[106] For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID–19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID–19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

[101] McCormack, *supra* note 37.

[102] *Id.*

[103] Sections 602(g)(2), 603(g)(2) of the Act.

[104] The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oessrcst.htm* (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, *https://www.bls.gov/oes/current/county_links.htm* (last visited May 1, 2021).

[106] Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

[107] However, such compensation must be "in addition to" remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID–19 public health emergency.[108] Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[112] Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,[113] while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID–19 public health emergency began.[114]

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of "general revenue" for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

General Revenue. The interim final rule adopts a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term "general revenue" to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

[108] ARPA, *supra* note 16.

[109] Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan., States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), *available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.*

[110] National League of Cities, City Fiscal Conditions (2020), *available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

[114] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited Apr. 27, 2021).

[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, *https://www.census.gov/programs-surveys/gov-finances.html* (last visited Apr. 30, 2021).

[116] The interim final rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (*i.e.,* inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

the COVID–19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID–19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID–19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID–19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID–19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID–19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID–19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years of available data.[122] This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.,* last full fiscal year before January 27, 2020), called the *base year revenue.*
- *Step 2:* Estimate *counterfactual revenue,* which is equal to *base year revenue* * [(1 + *growth adjustment*) ^ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

[118] *Supra* note 116.

[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), *https://www2.census.gov/govs/class/classfull.pdf.*

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), *https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.*

[121] For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/graph/?g=r3YI* (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), *https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.*

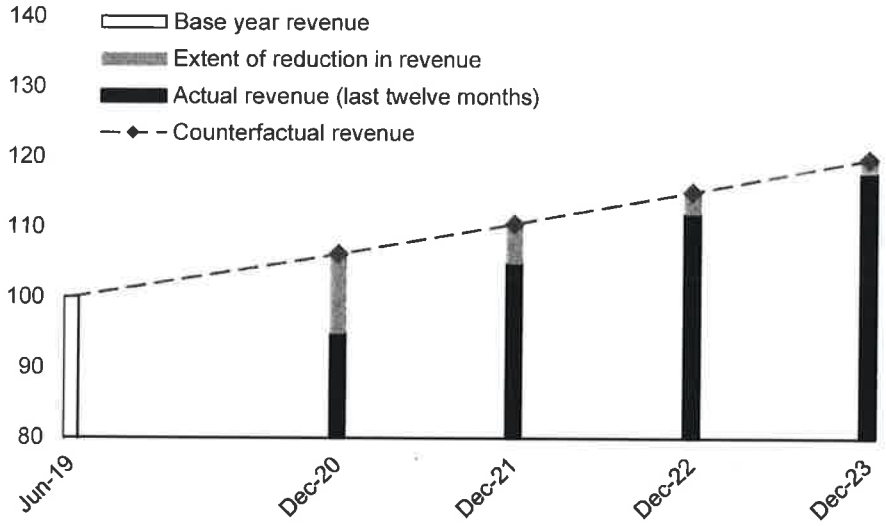
years prior to the COVID–19 public health emergency.

- *Step 3:* Identify *actual revenue,* which equals revenues collected over the past twelve months as of the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue.* If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



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

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building[123] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services.

Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of "general revenue" for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID–

[123] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID–19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.[124]

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

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF,

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

[125] Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, *https://www.epa.gov/dwsrf* (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf* (last visited Apr. 30, 2021).

[127] Water Quality Act of 1987, Public Law 100–4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111–5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113–121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115–270.*

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA–816–R–00–023 (Nov. 2000), *https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; See also* Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).*

[130] 33 U.S.C. 1383(c). *See also Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.*

[131] 42 U.S.C. 300j–12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), *https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf;* Environmental Protection Agency, Drinking Water

the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID–19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to "assist systems most in need on a per household basis according to state affordability criteria" would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible

Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), *https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.*

[133] *Id.*

[134] *Id.*

[135] 42 U.S.C. 300j–12(b)(3)(A).

[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), *https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.*

[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), *https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf;* Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, *https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations* (last visited Apr. 30, 2020).

infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure

The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017[146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses

[139] *See, e.g., https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, *https://www.ntia.gov/data/digital-nation-data-explorer.*

[140] As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.*

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), *https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx;* Kansas Office of Broadband Development, Broadband Acceleration Grant, *https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf* (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), *https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf.*

[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

[145] Federal Communications Commission, Broadband Speed Guide, *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19–126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf.* Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband internet Speeds—Speedtest Global Index, *available at https://www.speedtest.net/global-index/united-states#fixed.*

to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others. [151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the "above baseline" performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP) [156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an "advanced telecommunications capability." [158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be "unserved" generally if they lack access to broadband service

[148] *Id.*

[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.*, Zoom, System Requirements for Windows, macOS, and Linux, *https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c* (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org:* What is Symmetrical internet? (March 2020).

[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at https://openvault.com/complimentary-report-4q20/.*

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/;* Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity, available at https://openvault.com/upstream-whitepaper/.*

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), *https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.*

[155] *Rural Digital Opportunity Fund,* Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.*

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

[158] *Deployment Report, supra* note 142.

[159] *Rural Digital Opportunity Fund, supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID–19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID–19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID–19 public health emergency, and

2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID–19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans

(Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments [160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION.** As discussed below Section IV of this **SUPPLEMENTARY INFORMATION,** a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The interim final rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.,* cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.,* an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:
  - State or territory tax changes that would increase any source of general

[160] In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

[161] For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

○ Spending cuts in areas not being replaced by Fiscal Recovery Funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.,* fiscal year 2019 tax revenue adjusted for inflation). This "revenue reduction cap," together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

• Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this **SUPPLEMENTARY INFORMATION.**

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal Government's expansion of the EITC in the ARPA.[162] This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the "most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency" as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The interim final rule defines "reporting year" as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases ("in-year" value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term "reporting year" refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The interim final rule's definition of "tax revenue" is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

[162] *See, e.g.,* Tax Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at https://www.cbo.gov/publication/56965.*

[166] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

revenue does not include revenue taxed and collected by a different unit of government (*e.g.*, revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis.* The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

[167] *See, e.g.*, Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.*

[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to "indirectly" offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

[169] This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (*e.g.*, average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (*e.g.*, replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

[172] Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

[174] Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.*, February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.[176] Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

[175] The interim final rule also provides that Treasury may extend any deadlines.

[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID–19 pandemic, J. of Public Econ. (Nov. 2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389.*

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021[179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."[180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.*, a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID–19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and

[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, *https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions* (last visited Apr. 27, 2021). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/UNRATE* (last visited Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, *https://www.bls.gov/news.release/laus.t01.htm* (last visited Apr. 30, 2021).

[180] Section 602(c)(3) of the Act.

"public benefit corporation" that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.*, requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.*, a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (*e.g.*, on obligations, expenditures, contracts, grants, and subawards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit

annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." [181] The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID–19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID–19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available

[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule").

techniques to quantify anticipated present and future benefits and costs as accurately as possible." OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the $350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this interim final rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief.

This interim final rule is primarily a transfer rule: It transfers $350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined $350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[183] Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–09 recession.[184]

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID–19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.
- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data

[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118–45 (Aug. 2012), *available at https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118.*

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html;* Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf;* Gordon, *supra* note 9.

from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

• *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

• *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," which laid out an Administration-wide priority to support "equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."[185] To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;[186] and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal Government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications within the meaning of the Executive order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive order. The compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the interim final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule

[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, *https://www.epi.org/publication/bp339-public-sector-jobs-crisis* (last visited May 9, 2021).

becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus "both clearly and directly related to a federal grant program." *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the "process necessary to maintain state . . . eligibility for federal funds," *id.,* as well as the "method[s] by which states can . . . qualify for federal aid," and other "integral part[s] of the grant program," *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule"). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is "extraordinary" legislation about which "both Congress and the President articulated a profound sense of 'urgency.'" *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to "respond to the public health emergency," and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, "[t]o the extent practicable," funds must be provided to Tribes and cities "not later than 60 days after the date of enactment." *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been "virtually impossible"). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA "covered period" began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.,* payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent ($48.80 per hour *)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	†20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.
**5,050–TBD.
***Per year after first year.
†(Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the *www.regulations.gov* docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to *oira_submission@omb.eop.gov*.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

35.1 Purpose.
35.2 Applicability.
35.3 Definitions.
35.4 Reservation of authority, reporting.
35.5 Use of funds.
35.6 Eligible uses.
35.7 Pensions.
35.8 Tax.
35.9 Compliance with applicable laws.
35.10 Recoupment.
35.11 Payments to States.
35.12 Distributions to nonentitlement units of local government and units of general local government.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

As used in this subpart:

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this subpart, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in section § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (e) of this section

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in

response to the COVID–19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID–19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID–19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID–19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID–19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID–19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID–19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

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

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

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

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

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

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii).

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and Executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, § 35.6, or § 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.5, § 35.6, or § 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(2) Any reports required to be filed by that date pursuant to this subpart that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Laurie Schaffer,

Acting General Counsel.

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ATTACHMENT C

U.S. DEPARTMENT OF TREASURY
COMPLIANCE AND REPORTING GUIDANCE FOR CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
DATED 6-17-2021

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

June 24, 2021

Version: 1.1

Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

This guidance provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the SLFRF implementing regulation, and other regulatory and statutory requirements, including regulatory requirements under the Uniform Guidance (2 CRF Part 200). Please see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and the U.S. Department of the Treasury's ("Treasury") expectations and recommends best practices where appropriate under the SLFRF Program.

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B. Statutory Eligible Uses..... P. 3
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Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

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Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an Interim Final Rule to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.[1] It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's Interim Final Rule details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

1. **Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

   To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

   - A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
   - Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
   - A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
   - A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and
   - A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

   Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative

[1] Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule. https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf

interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's Interim Final Rule for more information on these restrictions.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's Interim Final Rule.

   Recipients may use SLFRF award funds to provide assistance to households, businesses, and individuals within the eligible use categories described in Treasury's Interim Final Rule for costs that those households, businesses and individuals incurred prior to March 3, 2021. For example,

   a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
   b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
   c. Revenue Loss: Treasury's Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
   d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred after March 3, 2021.

   Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors. For the purposes of determining expenditure eligibility, Treasury's Interim Final Rule provides that "incurred" has the same meaning given to "financial obligation" in 2 CFR § 200.1.

3. **Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury's Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number ("ALN"), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the "Uniform Guidance"). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization's compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the 2020 OMB Compliance Supplement Part 3. Compliance Requirements (issued August 18, 2020). Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury's Interim Final Rule and the recipient's Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

2. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.

SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.[2]

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed, or not in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

a. Administrative costs: Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.[3] Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.[4][5] Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

b. Salaries and Expenses: In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's Interim Final Rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 or 2 CFR 200.305(b)(8)-(9).

   As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and record retention, to determine and monitor implementation of criteria for

[2] See 42 CFR 433.51 and 45 CFR 75.306.
[3] Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).
[4] 2 CFR 200.413 Direct Costs.
[5] 2 CFR 200.414 Indirect Costs.

determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.

7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.

8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.[6] Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental or real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds

[6] 2 CFR 200.320(c)(1)-(3) and (5)

should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

10. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

    In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

11. **Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as defined under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

    First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

    Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

    Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

12. **Special Tests and Provisions.** Treasury has set a deadline of July 16, 2021, for receipt of public comment on its Interim Final Rule and will adopt a final rule responding to these comments. In addition, Treasury may add clarifications to the implementing guidance.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and example of each best practice.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury's Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

1. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (https://www.sam.gov). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.[7]

2. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

   Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").

3. **Single Audit Requirements.** Recipients and subrecipients that expend more than $750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.[8] Recipients and subrecipients may also refer to the Office of

[7] See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.
[8] For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, the PRAC and the Treasury's OIG.

Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

4. **Civil Rights Compliance**. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

   In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. **See Section A, page 13.**
- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over $50,000, and other information. **See Section B, page 15.**
- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. **See Section C, page 23.**

Table 2: Reporting requirements by recipient type

Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then 30 days after the end of each quarter thereafter[9]	By August 31, 2021, and annually thereafter by July 31 [10]
Metropolitan cities and counties with a population below 250,000 residents which received more than $5 million in SLFRF funding			Not required
Tribal Governments			
Metropolitan cities and counties with a population below 250,000 residents which received less than $5 million in SLFRF funding		By October 31, 2021, and then annually thereafter[11]	
NEUs	Not required		

The remainder of this document describes these reporting requirements. A users' guide will be provided with additional information on how and where to submit required reports.

[9] Interim Final Rule Page 111
[10] Interim Final Rule page 112
[11] Interim Final Rule Page 111

Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Changes from CRF to SLFRF include:

- **Project, Expenditure, and Subaward Reporting**: The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports**: CRF reports were due within 10 days of each calendar quarter. SLFRF quarterly reporting will be due 30 days from quarter end.
- **Program and Performance Reporting**: The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures[12] by Expenditure Category from the date of award to July 31, 2021. The recipient will be required to enter obligations[13] and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

a. Revenue replacement (EC 6.1[14]): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
- Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
- Fiscal year end date
- Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
- Actual general revenue as of the twelve months ended December 31, 2020
- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions and/or template to be provided in users' guide)

[12] For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).
[13] For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.
[14] See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.

In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with $100 in revenue replacement funds available could indicate that $50 were used for law enforcement operating expenses and $50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

b. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:

- NEU name
- NEU DUNS number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
- Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)

- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:
- States, U.S. territories, and Tribal governments
- Metropolitan cities and counties that received more than $5 million in SLFRF funding

For these recipients, the initial quarterly Project and Expenditure Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 and 3	Award Date – September 30	October 31, 2021
2	2021	4	October 1 – December 31	January 31, 2022
3	2022	1	January 1 – March 31	April 30, 2022
4	2022	2	April 1 – June 30	July 31, 2022
5	2022	3	July 1 – September 30	October 31, 2022
6	2022	4	October 1 – December 31	January 31, 2023
7	2023	1	January 1 – March 31	April 30, 2023
8	2023	2	April 1 – June 30	July 31, 2023
9	2023	3	July 1 – September 30	October 31, 2023
10	2023	4	October 1 – December 31	January 31, 2024
11	2024	1	January 1 – March 31	April 30, 2024
12	2024	2	April 1 – June 30	July 31, 2024
13	2024	3	July 1 – September 30	October 31, 2024
14	2024	4	October 1 – December 31	January 31, 2025
15	2025	1	January 1 – March 31	April 30, 2025
16	2025	2	April 1 – June 30	July 31, 2025
17	2025	3	July 1 – September 30	October 31, 2025
18	2025	4	October 1 – December 31	January 31, 2026
19	2026	1	January 1 – March 31	April 30, 2026
20	2026	2	April 1 – June 30	July 31, 2026

Report	Year	Quarter	Period Covered	Due Date
21	2026	3	July 1 – September 30	October 31, 2026
22	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Metropolitan cities and counties that received less than $5 million in SLFRF funding.
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by October 31. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	Award Date – September 30, 2021	October 31, 2021
2	October 1, 2021 – September 30, 2022	October 31, 2022
3	October 1, 2022 – September 30, 2023	October 31, 2023
4	October 1, 2023 – September 30, 2024	October 31, 2024
5	October 1, 2024 – September 30, 2025	October 31, 2025
6	October 1, 2025 – September 30, 2026	October 31, 2026
7	October 1, 2026 – December 31, 2026	March 31, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports:

a. Projects: Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. In particular, recipients should review the Required Programmatic Data described below and define their projects at a sufficient level of granularity to report these metrics for a reasonably specific activity or set of activities in each project.

   Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

b. Expenditures: Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
   - Current period obligation
   - Cumulative obligation
   - Current period expenditure
   - Cumulative expenditure

c. Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
   - Not Started
   - Completed less than 50 percent
   - Completed 50 percent or more
   - Completed

d. Project Demographic Distribution: Recognizing the disproportionate impact of the pandemic-related recession on low-income communities, recipients must report whether certain types of projects[15] are targeted to economically disadvantaged communities, as defined by HUD's Qualified Census Tract.[16] Recipients will be asked to identify whether or not the project is serving an economically disadvantaged community. To minimize the administrative burden on recipients while ensuring that this important aspect of program performance is tracked, recipients may assume that the funds for a project count as being targeted towards economically disadvantaged communities if the project funds are spent on:
   - A program or service is provided at a physical location in a Qualified Census Tract (for multi-site projects, if a majority of sites are within Qualified Census Tracts);
   - A program or service where the primary intended beneficiaries live within a Qualified Census Tract;
   - A program or service for which the eligibility criteria are such that the primary intended beneficiaries earn less than 60 percent of the median income for the relevant jurisdiction (e.g., State, county, metropolitan area, or other jurisdiction); or
   - A program or service for which the eligibility criteria are such that over 25 percent of intended beneficiaries are below the federal poverty line.

   Recipients may use reasonable estimates to determine if a project meets one of these criteria, including identifying the intended beneficiaries of a program or service in terms of income characteristics, geographic location, or otherwise estimating the beneficiaries of a program based on its eligibility criteria. Recipients do not need to track information on each individual beneficiary to make the determination of whether or not the project is serving an economically disadvantaged community. If a recipient is unable to measure economic characteristics of the primary intended beneficiaries of a program or service due to data limitations or for other reasons, that program or service may not be counted as targeted to economically disadvantaged communities. Treasury recognizes that in some circumstances, recipients may fund eligible programs or services that benefit economically disadvantaged communities but may lack adequate data to assess conclusively that such a program or service is targeted to economically disadvantaged communities based on the criteria described above.

e. Subawards: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than or equal to $50,000.

[15] Specifically recipients must report this information for projects in the Expenditure Categories that are marked with "^" in the expenditure category listing in Appendix 1 of this guidance

[16] HUD defines as a QCT as having "50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more." To view median income area for their jurisdiction, recipients may visit the U.S. Census website on median incomes and select the geography for their jurisdiction and relevant unit of measurement (household or individual) for the project.

Recipients do not also need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the $50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than or equal to $50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below $50,000. This information will be accounted for by expenditure category at the project level.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and received $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF Recipients are governmental entities with executive salaries that are already disclosed, so no additional information must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

f. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.

g. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Payroll for Public Health and Safety Employees (EC 1.9):
   - Number of government FTEs responding to COVID-19 supported under this authority

2. Household Assistance (EC 2.1-2.5):
   - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
   - Number of individuals served (by program if recipient establishes multiple separate household assistance programs)
   - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule

3. Small Business Economic Assistance (EC 2.9):
   - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
   - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
   - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule

4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12):
   - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
   - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic
   - For each subaward:
     - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
     - Purpose of funds (e.g., payroll support, safety measure implementation)

5. Rehiring Public Sector Staff (EC 2.14):
   - Number of FTEs rehired by governments under this authority

6. Education Assistance (EC 3.1-3.5):
   - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.[17]

[17] For more information on NCES identification numbers see https://nces.ed.gov/ccd/districtsearch/ (districts) and https://nces.ed.gov/ccd/schoolsearch/ (schools).

7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2):
   - List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
   - Number of workers to be served
   - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
   - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's[18] average annual wage, whichever is higher, on an annual basis:
     - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy.

8. Revenue replacement (EC 6.1):
   Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:
   - General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021);
   - Calculated revenue loss due to the Covid-19 public health emergency; and
   - An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

   In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

h. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

[18] *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.

1. All infrastructure projects (EC 5):
   - Projected/actual construction start date (month/year)
   - Projected/actual initiation of operations date (month/year)
   - Location (for broadband, geospatial location data)
   - For projects over $10 million:
     a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
        - The number of employees of contractors and sub-contractors working on the project;
        - The number of employees on the project hired directly and hired through a third party;
        - The wages and benefits of workers on the project by classification; and
        - Whether those wages are at rates less than those prevailing.[19]

        Recipients must maintain sufficient records to substantiate this information upon request.
     b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
        - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
        - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
        - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
        - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
        - Whether the project has completed a project labor agreement.
     c. Whether the project prioritizes local hires.
     d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

[19] As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

2. Water and sewer projects (EC 5.1-5.15):
   - National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
   - Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

3. Broadband projects (EC 5.16-5.17):
   - Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
   - Technology to be deployed
   - Miles of fiber
   - Cost per mile
   - Cost per passing
   - Number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload
     - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download
     - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
   - Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
     - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
     - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload

i. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
   - NEU name
   - NEU DUNS number
   - NEU Taxpayer Identification Number (TIN)
   - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
   - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
   - NEU authorized representative name and email address
   - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
   - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)
   - Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
   - Payment amount(s)
   - Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

j. NEU Documentation (NEUs only): Each NEU will also be asked to provide the following information with their first report submitted by October 31, 2021:
   - Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
   - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
   - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027

The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary
Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds
Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as the Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes
Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?

d. Outcomes: Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

a. Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
b. Services to Disproportionately Impacted Communities (EC 3): services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is defined in the Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions[20] and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.[21]

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).[22] Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.[23]

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

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[20] As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

[21] Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.

[22] For more information on the required standards for program evaluation, see OMB M-20-12.

[23] For more information on learning agendas, please see OMB M-19-23

7. Table of Expenses by Expenditure Category

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models[24] to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data

While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the

[24] A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.

section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
   - Number of people or households receiving eviction prevention services (including legal representation)
   - Number of affordable housing units preserved or developed

b. Negative Economic Impacts (EC 2):
   - Number of workers enrolled in sectoral job training programs
   - Number of workers completing sectoral job training programs
   - Number of people participating in summer youth employment programs

c. Education Assistance (EC 3.1-3.5):
   - Number of students participating in evidence-based tutoring programs[25]

d. Healthy Childhood Environments (EC 3.6-3.9):
   - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)
The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision 31 CFR 35.8, as detailed below. As indicated in the Interim Final Rule, Treasury is seeking comment on reporting requirements related to the Tax Offset Provision, including ways to better rely on information already produced by States and territories and to minimize burden.

The terms "reporting year," "baseline," "covered change," "net reduction in total spending," and "tax revenue" are defined in the Interim Final Rule, 31 CFR 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3. Similarly, for purposes of calculating baseline, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3.

For purposes of reporting actual tax revenue and calculating tax revenue for the fiscal year ending 2019,[26] (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating

[25] For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.
[26] Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.

a net reduction in total spending, recipients should report data using audited financials where available.

a. Revenue-reducing Covered Changes:
For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

b. Baseline Revenue:
Baseline has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

Whether the revenue-reducing covered changes are in excess of the *de minimis*.
Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue.

c. Actual Tax Revenue:
Actual tax revenue means the actual tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

d. Reduction in Net Tax Revenue:
The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

e. Any revenue-increasing covered changes:
A recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes.

Recipients should maintain records regarding revenue-reducing covered changes and estimates of such changes.

f. Net reduction in total spending, and tables of specific spending cuts:
Recipients must report on spending cuts. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As in the Interim Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States. If that subtraction yields a positive value, there has been a net reduction; if it yields zero or a negative value, there has not been a net reduction. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit," as defined below. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit, and (3) the amount by which the reduction in spending exceeds the Fiscal Recovery funds spent in the reporting unit. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in aggregate spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate of spending cuts.

To align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Recipients may also choose to report at a more granular sub-department level. Recipients are encouraged to define and report spending in departments, sub-departments (e.g., bureaus), agencies, or authorities (each a "reporting unit") in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. For example, if a State health department maintains separate budgets for different units (e.g., medical and public health units), those units may be reported and considered separately. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts. As discussed in the Interim Final Rule, in order to help ensure governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. Evasions of the Tax Offset Provision may be subject to recoupment.

Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^

3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure[27]	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: "Last Mile" projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)

[27] Definitions for water and sewer Expenditure Categories can be found in the EPA's handbooks. For "clean water" expenditure category definitions, please see: https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf. For "drinking water" expenditure category definitions, please see: https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports.

Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?
For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means the evidence base that can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

Revision Log

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	• Pg. 12, removed references to "summary" level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. • Pg. 13, removed references to "summary" level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 31, removed references to "summary level" with respect to Expenditure Categories in Appendix 1 to avoid confusion.

THE DEPARTMENT OF THE TREASURY
1789

ATTACHMENT D

SCOPE OF WORK

The Board of Commissioners is directing to provide the Recipient a total sum not to exceed $250,000 which may be used by the Recipient to complete the purchase and renovation of the New Facility.

Expenses under this grant must meet the eligibility criteria outlined below:

1. Eligible Costs

Funds are to be used for the purchase and renovation costs of the New Facility to be incurred from March 3, 2021 thru December 31, 2024.

These costs may include:

- The purchase price and closing costs of the New Facility pursuant to the Commercial & Investment Real Estate Purchase & Sale Agreement dated July 30, 2021 between the Recipient and Holdings LLC Marquis.

- Costs of renovating the New Facility necessary to make it suitable to function as a food bank, including costs incurred to:
    - Add a 2nd exit/entry to the New Building as required by code;
    - Removal of a vault and refinishing of the affected space;
    - Remodel the bathroom;
    - Acquire and install additional cold storage refrigerators, walk-in freezer, and food storage shelving needed; and
    - Make necessary changes to electrical wiring, plumbing, lighting, dry wall finishing, or other such renovation costs necessary to meet the operating needs of the Recipient's food bank.

2. Program Funding and Award Amount

Funds necessary to fund the purchase of the New Facility will be provided to the closing agent designated in the New Facility purchase and sale agreement dated July 30, 2021 upon receipt by the County of a final settlement statement from the closing agent and receipt of proof of satisfaction of all other terms and conditions and inspections required for the closing of the purchase to proceed. Following closing of the purchase of the New Facility, the County shall be provided a copy of final closing documents.

Any remaining ARPA Funds will be provided to the Recipient on a reimbursement basis to be used for eligible costs incurred relating to renovation and equipment costs incurred by the

Recipient for the New Facility as outlined above. All funds are to be expended no later than December 31, 2024.

3. Reimbursement Process:

As outlined above, the funding for the purchase of the New Facility will provided to the closing agent designated in the New Facility purchase and sale agreement dated July 30, 2021 upon receipt by the County of a final settlement statement from the closing agent and receipt of proof of satisfaction of all other terms and conditions and inspections required for the closing of the purchase to proceed.

All remaining funding will be provided via reimbursement to the Recipient upon its submission to the County of expenditure details, invoices, and other supporting materials supporting its use in eligible activities. The Recipient may only submit one request for Reimbursement per month, with such request to be received no later than the 10th day of each month.

This shall ensure the eligibility of the expenditures consistent with the application requirements prior to payment.

2f
9/28/14

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Health & Human Services

WORK SESSION ☒ **Meeting Date:** September 20, 2021

REGULAR AGENDA ☒ **Meeting Date:** September 28, 2021

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing ☐ Contract/Agreement/MOU ☒ Contract # 11331-21-CONCIT

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

These contracts are between Clallam County HHS and Concerned Citizens, Morningside and Pierce Jones & Associates for adult developmental disability services. The purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons who experience intellectual and developmental disabilities. Contract Agreement period is July 1, 2021 thru June 30, 2023.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Funds are already in the budget.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Please approve and sign.

County Official signature & print name: Kevin LoPiccolo

Name of Employee/Stakeholder attending meeting: Kevin LoPiccolo & Kelley Lawrence

Relevant Departments: Health & Human Services

Date submitted: September 14, 2021

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

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AUG 26 2021

11331-21-CONCIT

PROVIDER CONTRACT
Concerned Citizens

This PROVIDER CONTRACT is entered into and effective July 1, 2021 through June 30, 2023 between CLALLAM COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, hereinafter referred to as "County" and Concerned Citizens, hereinafter referred to as "Provider".

CLALLAM COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES

Address: 111 E 3rd Street
Port Angeles, WA 98362

Main Phone: (360) 417-2303
Fax: (360) 452-9605

Contact Person: Kelley Lawrence, Clallam County Coordinator for Developmental Disabilities
Contact Phone: (360) 417-2407
Contact E-Mail: klawrence@co.clallam.wa.us

Provider: Concerned Citizens
PO Box 1787
Forks, WA 98331
Phone: (360) 374-9340
Fax: (360) 374-9130
E-mail: lindamiddleton@concernedcitizenspnw.org
Contact Person: Linda Middleton
Service Modality: Individual Supported Employment
Community Inclusion
Community Information & Education
County Millage: Sequim School District
Quillayute Valley School District
Port Angeles School District

Funding Authority:
DSHS Basic Agreement # 1783-86259
DDA County Services Agreement # 2163-22716
DSHS, DDA Home & Community Based Waiver Program (CMS)
Tax Identification Numbers:
IRS #: 91-1156809
UBI #: 600-600-536

This Contract is comprised of:

Exhibit "A"	Special Terms & Conditions
Exhibit "B"	General Terms & Conditions
Exhibit "C"	Data Security Requirements

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

IN WITNESS WHEREOF, the parties have entered this Contract on this ___day of _____, 2021.

BOARD OF CLALLAM COUNTY COMMISSIONERS:

Mark Ozias, Chair

ATTEST:

Loni Gores, Clerk of the Board

CONCERNED CITIZENS:

Linda Middleton 8-27-21
Linda Middleton, Director Date

APPROVED AS TO FORM:

Brent Baughman

SPECIAL TERMS AND CONDITIONS

1. DEFINITIONS SPECIFIC TO PROGRAM AGREEMENT

The words and phrases listed below, as used in this Program Agreement, shall each have the following definitions:

A. "Acuity Level" means the level of an individual's abilities and needs as determined through the DDA assessment.

B. "AWA" means ALTSA Web Access.

C. "Additional Consumer Services" refers to indirect Client service types as follows:

(1) "Community Information and Education": Activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.

(2) "Training": To increase the job related skills and knowledge of staff, providers, volunteers, or interning students in the provision of services to people with developmental disabilities. Also to enhance program related skills of board or advisory board members.

(3) "Other Activities" reserved for special projects and demonstrations categorized into the following types:

(1) Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search".
(2) Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
(3) Partnership project: Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Supports provided should complement and not replace what the student(s) receive through the Individualized Education Program (IEP).

D. "BARS" means Budget and Accounting Reporting System.

E. "Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the Developmental Disabilities Administration or is an identified PASRR Client.

F. "Competitive Integrated Employment" means work performed by an individual on a part-time or full- time basis, within an integrated setting within the community that meets HCBS settings requirements. The individual must be compensated at minimum wage or higher, using the higher of the Federal, State, or local rate, and at a rate comparable to the wage paid to non-disabled workers performing the same tasks, including receiving the same benefits and opportunities for advancement.

G. "Consumer Support" refers to direct Client service types as follows:

(1) "Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion. These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Employment or Group Supported Employment) for working age individuals who have received nine months of employment support.

(2) "Individual Supported Employment" or "IE": services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities, and promote career development. These are individualized services necessary to help persons with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job.

(3) "Individualized Technical Assistance" or "ITA": services are a part of an individual's pathway to individual employment. This service provides assessment and consultation to the employment provider to identify and address existing barriers to employment. This is in addition to supports received through supported employment services for individuals who have not yet achieved their employment goal.

H. "County" is the political subdivision of the state of Washington and the county or counties entering into this Program Agreement.

I. "CRM" means the DDA Case Resource Manager.

J. "CSA" means County Service Authorization.

K. "DD" means developmental disabilities.

L. "DDA" means the Developmental Disabilities Administration within DSHS.

M. "DDA Region" means the DDA Regional office.

N. "DVR" means the Division of Vocational Rehabilitation.

O. "General Terms and Conditions" means the contractual provisions contained within that agreement, which govern the contractual relationship between DSHS and the county and it's subcontractor(s).

P. "HCBS" means the Medicaid Home and Community Based Services.

Q. "PASRR" means Preadmission Screening and Resident Review.

R. "PCSP" means Person Centered Service Plan, a document that authorizes and identifies the DDA paid services to meet a Client's assessed needs. Formerly referred to as the Individual Support Plan.

S. "Quality Assurance" means an adherence to all Program Agreement requirements, including DDA Policy 6.13, *Employment/Day Program Provider Qualifications,* County Guidelines and the Criteria for Evaluation, as well as a focus on reasonably expected levels of performance, quality, and practice.

T. "Quality Improvement" means a focus on activities to improve performance above minimum standards and reasonably expected levels of performance, quality and practice.

U. "Service Provider" is a qualified Client service vendor who is contracted to provide Employment and Day Program services.

V. "Subcontractor" is the service provider contracted by the County to provide services.

W. "RCW" means Revised Codes of Washington

X. "WAC" means Washington Administrative Code

2. TERM OF CONTRACT

Term of this contract shall be July 1, 2021 through June 30, 2023.

3. PURPOSE

This Contract is entered into between County and Concerned Citizens in accordance with chapter 71A.14 RCW. Its purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disabilities.

4. CLIENT ELIGIBILITY

Client eligibility and service referral are the responsibility of DDA under chapter 388-823 WAC (Eligibility) and chapter 388-825 WAC (Service Rules). Only persons referred by DDA shall be eligible for direct client services under this contract. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. Direct client services provided without authorization by DDA or the County are not reimbursable under this Contract.

5. PROVIDER QUALIFICATIONS

Provider assures they meet the qualifications as outlined in the DDA Policy 6.13, ***Program Provider Qualifications***. Administration of the developmental disabilities County program cannot be subcontracted.

6. HOME AND COMMUNITY BASED WAIVER SERVICES ASSIGNMENT OF MEDICAID BILLING RIGHTS

Provider agrees to assign to DDA its Medicaid billing rights for services to DDA Clients eligible under Title XIX programs in this Contract. Written documentation shall be available to County upon request.

7. REPORTING ABUSE AND NEGLECT

The Provider is a mandated reporters under RCW 74.34.020(13) must comply with reporting requirements described in RCW74.34.035,.040 and chapter 26.44 RCW. If a Provider staff member is cited or on the registry for a substantiated finding, then, that associated staff will be prohibited from providing services under this contract.

8. PROVIDER WILL FOLLOW ALL APPLICABLE FEDERAL, STATE, AND LOCAL POLICIES AND GUIDELINES

DDA policy manual https://www.dshs.wa.gov/dda/policies-and-rules/policy-manual

1992 County Guidelines (https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf)

DDA Guiding Values
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Guiding%20Values%20Booklet.pdf

County Guide to Achieve DDA's Guiding Values

2018-19 Mandatory Requirements

DDA Policy 4.11, County Services for Working Age Adults

Chapter WAC 388-850, chapter 388-828 WAC, WAC 388-845-0001, 0030, 0210, 0215, 0220, 0600-0610, 1030-1040, 2100, 2110

Criteria for Evaluation

IRS Self-Employment Guidelines

Clallam County Supported Self-Employment Manual

DDA Guidelines for Community Assessments within Employment and Vocational Programs

Washington Protection and Advocacy (WPAS) Access Agreement
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/WPAS.pdf

APSE CESP Certification Handbook; http://www.apse.org/wp-content/uploads/docs/CESP%20Candidate%20Handbook.1.12.pdf

COUNTY BEST PRACTICES: Individual Employment Billable Activities, Community Inclusion Billable Activities, Employment Plan/Progress Form Instructions, Community Inclusion Plan/Progress Form Instructions, Criteria for Evaluation 2019-2021, DDA Self-Employment Guidelines, https://www.dshs.wa.gov/dda/county-best-practices and any other requirements established by the Department of Social and Health Services and the County.

Subcontractors: The County will pass on all applicable contractual requirements that are between DDA and the County to the subcontractor. The County shall immediately notify the DDA Region of the County's intent to terminate a subcontractor who is serving a DDA referral. Individuals or agencies contracted with a county or DDA may not subcontract for Employment or Community Inclusion services.

9. SERVICE DESCRIPTION

A. INDIVIDUAL SUPPORTED EMPLOYMENT (568.64)

The Provider shall, under BARS code 568.64, provide services as follows:

(1) **Individual Supported Employment** services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities and promote career development. These are individualized services necessary to help a person with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job (per the Individual Employment Phases & Billable Activities)

Clients in an **employment** program will be supported to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828. Outcomes will be established in accordance with County Guidelines.

Provider employment staff will attend the annual assessment and case manager PCSP development meeting, when properly notified with at least two weeks' advance notice, for each participant the provider serves.

All participants will be contacted by the Provider according to participant need or at least once per month.

At least 40 documented hours of County-approved training per Fiscal Year (July 1 – June 30) will occur for each FTE staff person who provides services in this modality. The provider shall keep track of all training received for each staff person.

The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.

Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

All Clients will be contacted by their service provider according to Client need and at least once per month.

Clients will be assisted in accessing DVR services per the DDA/DVR MOU. Client services shall not be reimbursed under this Program Agreement when the same services are paid for under the Rehabilitation Act of 1973 by DVR, Public Law 94-142 or any other source of public or private funding.

For Individual Employment where the provider is also the client's employer, funding for the service provider will be available for the first 6 months of employment. At the end of the 6 months another service provider, who is not the employer of record, must provide the support unless the county issues a written approval for the provider to continue with long term supports.

(2) **Individual Supported Employment** can include Supported Self-Employment. Supported Self-Employment, if an applicable goal, must meet the following requirements:

(1) Adhere to Washington State DDA Self-Employment Policy Guidelines
(2) Determine that the proposed activity is a business according to IRS Guidelines
(3) Once it has been determined the activity will meet IRS rules for a business, the self-employed person receiving DDA employment supports will:
- Demonstrate the individual receiving services owns and operates the business;
- Provide a Business Plan to the County and DDA demonstrating feasibility as determined by DVR or a neutral, agreed-upon third party business expert;
- Become licensed if required and follow all local, state, and federal regulations and rules;
- Establish benchmarks for profitability and demonstrate progress is being made toward reaching those profit benchmarks; and
- Demonstrate the business will likely provide a living wage.

(4) Adhere to the Clallam County Supported Self-Employment Manual.

B. COMMUNITY INCLUSION

"Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings for individuals in retirement.. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion (per the Community Inclusion Billable Activities). These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Supported Employment) for working age individuals who have received nine (9) months of employment support.

(1) Monthly Community Inclusion (CI) service support hours will be based on the Client's CI service level per WAC 388-828-9310 for all Clients who began receiving CI services July 1, 2011 and forward.

(a) To ensure health and safety, promote positive image and relationships in the community, increase competence and individualized skill-building, and achieve other expected benefits of CI, services will occur individually or in a group of no more than two (2) or three (3) individuals with similar interests and needs.
(b) CI services will focus on activities that are typically experienced by the general public. Support to participate in segregated activities and/or specialized activities will not be reimbursed.
(c) A Client receiving CI services will not receive employment support simultaneously.
(d) A Client receiving CI services may at any time choose to leave CI to pursue work and receive employment support.

(2) The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

(3) All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.

(4) Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

(5) All Clients will be contacted by their service provider according to Client need and at least once per month.

C. TRANSPORTATION (IE and CI)

It is the Provider's responsibility to inform participants that transportation is not the responsibility of the Provider to supply. Transportation training may include coordination of the multiple transportation services, training the individual in use of public transportation, supports for the individual to obtain a driver's license, walking, bicycling or use of the student's family, friends or co-workers to provide transportation. The Provider shall assess and document in the EP/PR each participant's transportation needs.

The Provider shall assist each participant to access public or specialized transportation for any activity sponsored as a part of Individualized Supportive Employment services. It is expected that public or specialized transportation will be utilized, except as detailed in the transportation plan. The cost of transportation is included in the fee for service that a Provider receives.

If no other viable transportation options are available, the Provider may transport participants in Provider or employee vehicles provided that:

(1) Provider complies with the automobile insurance requirement set forth in the Provider Contract;

(2) Automobile insurance specifically indicates that the provider is covered for transporting clients;

(3) Transportation Assessment and Plan indicates this is the only feasible mode of transportation; and

(4) DDA Case Manager agrees to the Transportation Assessment and Plan.

D. COMMUNITY INFORMATION & EDUCATION (568.40) AND COUNTY MILLAGE FUNDS

The Provider shall, under BARS code 568.40, provide services as follows:

Community Information & Education refers to costs incurred by the program for activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services, activities aimed at promoting public awareness and involvement; community consultation, capacity building and organization activities.

In addition, Provider may use Community and Education and Millage funds to accomplish any of the following certifications and/or trainings that support professional development that enables staff to support individuals with developmental disabilities:

Certification as Certified Professional Employment Professionals (CESP)
Assist Clallam County in creating a more effective and professional team of job coaches/developers for persons with developmental disabilities. Increase capacity of local agencies to meet the employment needs of individuals with developmental disabilities. Increase effectiveness in placing and supporting individuals with developmental disabilities as employees in local businesses.

Submit proof of successful passage of the CESP certification exam. One page summary report documenting date, time and location of exam with notification of passage of the exam.

APSE or Other Employment Appropriate National Convention Training
Provider must get approval from County, in writing, of the intended Convention or Conference wanting to attend. Upon approval, Provider shall provide county with all applicable backup documentation for reimbursement. This

includes but is not limited to conference agenda, receipts for travel reimbursement, any handouts applicable to the training or conference, and any other documentation required or requested by the County.

Other Trainings and/or Professional Development
Other trainings and professional development opportunities may be approved (requires prior written approval by the County) and reimbursed that support the Provider access and attain new or continued knowledge that increases the staff's effectiveness in securing, supporting or improving the employment status of client served by Provider.

E. COUNTY MILLAGE FUNDS: SCHOOL DISTRICT TRANSITION SERVICES

Provide Transition services for eligible students authorized by the applicable School District between the ages of eighteen and twenty-one when selected by the student and their family, and referred by the School District. Transition services shall promote collaboration among DVR, school district, county, DDA, and community agencies that support the transition of students from school to employment and/or post-school activities leading to employment, including career exploration.

Transition services will include the following:

(1) Collaborate with School District staff and keep them informed of activities, progress and timelines as outlined in the IEP;

(2) Effectively communicate with the student's family and their case manager also informing them of activities, progress and timelines as outlined in the IEP;

(3) Develop individualized vocational services plan when needed;

(4) Develop individualized budget to implement the vocational services plan and submit to District Administrator and County staff for approval,

(5) Work closely with School District staff for purposes of transportation needs and other supports; and

(6) Provide monthly written progress reports with all billings to the County that include:

(a) Name of School District
(b) Student's name;
(c) Direct service hours to the student;
(d) Dates and hours of service on behalf of the student including but not limited to scheduling transportation, name and date employer(s) contacted (initial and follow-up) and job development;
- Student's wages earned;
- Hours worked; and
- Progress on work skills and behaviors as identified and outlined on IEP.

(7) Approval of billing invoices require the submittal of a monthly progress report and documentation of service dates and hours provided on the County approved form. Billings must be submitted within 45 days of the last day of the service month to be considered for payment.

(8) Services during July and August must be approved by the IEP team and the School District. The school will determine if Extended School Year (ESY) is available for these services and will notify the County in writing of any such approval. A new CSA will be written to cover services during the months of July and August.

(9) Students will not be transported in private staff vehicles. Transportation training may include coordination of the school's transportation services, training the individual in use of public transportation, supports for the individual to obtain a driver's license, walking, bicycling or use of the student's family to provide transportation.

(10) The Provider shall assess and document in the Transportation Assessment and Plan each participant's transportation needs. The Provider shall assist each participant to access public or specialized transportation for any activity sponsored as a part of Transition services. It is expected that public or specialized

transportation will be utilized, except as detailed in the transportation plan. The cost of transportation is included in the fee for service that a Provider receives.

(11) If no other viable transportation options are available, the Provider may transport participants in Provider or employee vehicles provided that

(a) Provider complies with the automobile insurance requirement set forth in the Provider Contract;
(b) Automobile insurance specifically indicates that the provider is covered for transporting clients;
(c) Transportation Assessment and Plan indicates this is the only feasible mode of transportation; and
(d) DDA Case Manager agrees to the Transportation Assessment and Plan.

10. CLIENT'S INDIVIDUALIZED PLAN

The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, the County, guardian and others as appropriate. Semi-annual progress reports that describe the outcomes of activities will be provided by the provider and given to the county, the client, their CRM, and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

Provider shall complete the plan within 30 days of service starting and provide a semi-annual progress report six months after the initial report.

Failure to submit ER/PR within the appropriate time lines will result in billing not being processed until the plans are completed.

All Clients will be contacted by their service provider according to Client need and at least once per month.

If Clients in Individual Employment have not obtained paid employment at minimum wage or better within **six (6) months,** the Provider and County will assure the following steps are taken:

A. Review the progress toward employment goals;
B. Provide evidence of consultation with the Client/guardian; and

C. Develop additional strategies with the Client/guardian, county staff, employment support staff, case manager, and others identified by the Client. Strategies may include providing technical assistance, changing to a new provider, and/or providing additional resources as needed to support the individual's pursuit of employment. The additional strategies will be documented for each Client and kept in the Client's file(s).

If after twelve (12) months the Client remains unemployed, an additional review will be conducted. The provider will address steps outlined in the previous six month progress report in the next six month progress report. The Client may request to participate in Community Inclusion activities or the Client may choose to remain in an employment program. When requesting to participate in CI, the Client shall communicate directly with his or her DDA Case Manager. The DDA Case Manager is responsible for authorizing CI services.

Individual Employment staff hours must be attributed to the "Individual Employment and Billable Activity Phase(s)".

11. SETTINGS

Employment and day services must adhere to the Home and Community Based settings (HCBS) requirements of 42CFR 441 530(a)(1), including that:

A. The setting is integrated in the greater community and supports individuals to have full access to the greater community;

B. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

C. The setting provides opportunities to seek employment and work in competitive integrated settings; and

D. The setting facilitates individual choice regarding services and supports, and who provides them.

12. PROVIDER RESPONSIBILITIES

For State funded services, the Provider agrees to serve only persons referred by DDA who are eligible for direct client services under this Provider Contract. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. The Provider agrees to consider participants for service acceptance upon receipt of referral from County. All referred clients will have the opportunity to participate in vendor interviews and self-select the provider of their choice after interviews. A client may also self-select and waive their participation in interviews but the appropriate form must be completed and signed indicating their selection.

The Provider agrees to provide authorized services, participate in conferences and consult with State DDA Case Managers and County staff to implement changes in participant services if needed. Any change in a participant service including a change in hours of service, will be preceded by an approved and signed County Service Authorization form (CSA).

The Provider will clearly communicate to the client, prior to beginning services, the minimum and maximum service hours per month they can expect to receive. The amount of service hours a client receives is based upon his/her demonstrated need, acuity level, work history and documented special conditions per the Services Level Guidelines. If a change in the minimum and/or maximum service hour(s) is expected, the Provider will inform the client prior to the change. The client minimum and maximum service hour(s) ARE reflected in the County Service Authorization and updated planned rates information will not exceed the client's DDA PCSP. The amount of service the client receives should match the County Service Authorization and updated Planned Rates information.

The Provider will have at least one hour of face-to-face contact with each client they are authorized to serve. This contact must consist of at least one hour per month in order to bill for services during that month.

Services and programs shall be provided consistent with related RCW, WAC, Clallam County Program Contract and County Mandatory Requirements.

The Provider shall participate in regularly scheduled meetings between County DD staff and DDA staff to remain updated and current.

13. PROGRAM/SERVICE FUNDING AND RATES

Funding for services is a fee for service method of payment with each unit billed in accordance with the descriptions below.

STATE FUNDS:

Individual Supported Employment
Community Inclusion
Community Information and Education

COUNTY MILLAGE FUNDS:

Port Angeles School District Transition Services
Sequim School District Transition Services
Quillayute Valley School District Transition Services
Continuing Education and Training

IE Services:

This contract is fee-for-service. Individuals shall be billed at a rate of $75 per hour/unit, per month, from July 1, 2021 – June 30, 2023 unless a specialized rate is agreed upon by the agency, DDA Case Management and the County and

the rate is documented on the County Service Authorization form. One (1) unit equals an "hour" which is at least fifty minutes of service. Partial hour to the quarter may be recorded.

IE hours above 26 hours/month shall be billed at a rate of $40 per hour/unit.

A maximum monthly payment per client will be $3,500.

Reimbursable activities are contained on the *Individual Employment Billable Activities* document located at http://www.dshs.wa.gov/dda/county-best-practices.

The contractor will not be reimbursed for service hours/units provided above the maximum service hours/units documented on the client's DDA ISP or activities outside the scope of the *Employment Phases and Billable Activities* document.

CI Services:

This contract is fee-for-service. Individuals shall be billed at a rate of $35 per hour/unit, per month, from July 1, 2021 – June 30, 2023 unless a specialized rate is agreed upon by the agency, DDA Case Management and the County and the rate is documented on the County Service Authorization form. One (1) unit equals an "hour" which is at least fifty minutes of service. Partial hour to the quarter may be recorded.

Reimbursable activities are contained on the *Community Inclusion Billable Activities* document located at http://www.dshs.wa.gov/dda/county-best-practices.

Community Inclusion service support hours will be based on the participant's community Inclusion acuity as determined per WAC through the participant's DDA PSPC. Individuals receiving service hours above their assessed level of support or activities provided outside the scope of the *Community Inclusion Billable Activities* will not be reimbursed.

Community Information and Education:

568.40 Community Information and Education: Provider, with prior written approval from County, may attend or provide community information and trainings that further the education of the community and/or staff regarding the inclusion of individuals with developmental disabilities into the workforce and/or community. Provider must provide the required documentation of attendance and expenses per county policy and request of the county before reimbursement. The Total Maximum Compensation for completion of all Community Information and Education payment points shall not exceed **$3,500.**

High School Transition Services:

SERVICE CODE	SERVICE UNIT	UNIT RATE
County Millage	1 unit = 1 hour Maximum 20 hours per month 1:1 Ratio Only	$ 60.00/hour $1,200.00/month

14. PAYMENT, BILLING AND REPORTS

Billing shall be submitted no later than the 10th day of the month, following the month in which such expenses were incurred. Billing in December shall be submitted no later than the 3rd day of the month for services provided in November. Later submissions in December will result in payments delayed until the end of January. The County shall pay for services once a month.

Billing reports must be submitted electronically in accordance with requirements of the Washington State AWA Billing System. No payments will be made to the Provider until a timely and accurate billing report is received by the County.

Billing reports requiring corrections must be completed and resubmitted by the 15th day of the month. Failure to satisfy such requirements may result in a delay in payment.

Providers must mail a Contract Certification form with an original signature each month when they submit their billing reports electronically. This form must be received in the County office by the 15th day of the month. No payments will be made to the Provider until this form is received by the County. Failure to satisfy such requirements may result in a delay in payment.

A current Clallam County CSA must be in effect for each participant. Billing for services shall not exceed authorized amounts as indicated on the current form. Authorized units of service are pristine to the individual participant as assigned and noted on the Form. No sharing of hours between participants is allowed.

All initial invoices with documentation must be received by the County within 45 calendar days following the last day of the month in which the service is provided. Corrected invoices and documentation including re-posted billing information will be accepted throughout the fiscal year and long as they are received within 45 calendar days of the associated fiscal year. Payment will not be made on any invoice submitted past 45 calendar days after the program agreement fiscal year.

Late or corrected bills and accompanying documentation will be accepted up until 30 calendar days after the associated contract fiscal year. Payment will not be made on any bill submitted past the 30 calendar days of the associated contract fiscal year.

Client services shall not be reimbursed under this Provider Contract when the same services are paid for under the Rehabilitation Act of 1973 (DVR), Public Law 94-142 (Public Education), or any other source of public or private funding.

15. SERVICE STANDARDS

All providers of employment/day program services contracting with Clallam County to serve eligible individuals with developmental disabilities shall meet the following qualifications:

A. Compliance with APSE CESP Code of Conduct, Sections 1 and 3 regardless of certification status;

B. Assurance that potential conflict of interest (real or apparent) will not arise. Such a conflict would arise when the employee, officer or agent, any member of immediate family, guardian/decision-maker, or an organization which employs, or is about to employ, any of the above has financial or other interest in the client.

C. Documentation of experience, knowledge and performance in providing services to individuals with developmental disabilities will be maintained.

D. The following indicators will be incorporated into an agency's overall written performance plan and the agency will document progress over time. An employment service performance plan must include for each acuity level, the following client data:

   (1) Number of new jobs;

   (2) Number of jobs lost and reason for job loss;

   (3) Percentage of clients employed earning minimum wage or higher; and

   (4) Average number of hours worked by client.

E. Documented history of working cooperatively with community-based organizations including employers, the Division of Vocational Rehabilitation (DVR) and schools;

F. Demonstrated methods for providing services based on individual needs as outlined in a client's plan;

G. Commitment to support integration of individuals with developmental disabilities with people who are not disabled;

H. The administrative capabilities necessary to safeguard public funds including: maintaining accurate accounting books, records, documents and other materials relevant to the provision of goods and services;

I. A management system that provides for systematic accumulation, filing and retention of timely reports to the County, DDA and/or for federal audits;

J. Sufficient Policies and Procedures for establishment and maintenance of adequate internal control systems: The Provider will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail such that operations can continue should staffing change or absences occur;

K. Compliance with the qualifications outlined in DDA Policy 6.13, Program Provider Qualifications;

L. To be a qualified service provider of employment services, an agency must employ at least one or more individuals who:

(1) Have at least two years of experience – or an Employment Professional Certificate from Highline Community College of or CESP Certification and one year of experience - related to the employment services the agency provides to DDA clients;

(2) Experienced staff that have documented current training and/or continued education on best employment practices. Additionally experienced staff must have the skill and ability to impart this information to frontline/direct line staff and maintain evidence of doing so.

(3) Staff core competencies will include the following at minimum:

(a) Developing, obtaining, and maintaining community-based employment placements with minimum wage compensation or greater;
(b) Conducting Discovery assessments;
(c) Goal and career planning;
(d) Job preparation;
(e) Job development;
(f) Work place and job analysis;
(g) Job Coaching, including task design and training, support strategies, and natural support;
(h) Documenting goals and writing reports clearly; and
(i) Knowledge of Social Security benefits.

M. Ensures that direct service staff are 18 years of age or older, have received training and have documented knowledge in the following areas:

Prior to working with clients:

(1) Client Confidentiality;

(2) Current individual instruction and support plans for each client with whom the employee works;

(3) DDA Policy 4.11 Working Age Adult (adult services only);

(4) DDA Policy 5.06 Client Rights;

(5) DDA Policy 5.13 Protection from Abuse; Mandatory Reporting

(6) DDA Policy 6.08 Mandatory Reporting Requirements for Employment and Day Program Service Providers

(7) DDA Policy 9.03 Employee Protection from Bloodborne Pathogens

(8) DDA Policy 9.07 HIV & AIDS

(9) DDA Policy 12.01 Incident Management

(10) DD Policy 13.01 Public Disclosure of Records and Safeguarding of Confidential Information

(11) DDA Policy 14.01 Environmental Safety (First Aid/CPR)

(12) Competencies including:

(a) Values that support the abilities of each individual
(b) Effective Communication – The ability to effectively listen and to make one's self understood
(c) Planning methods
(d) Crisis Prevention and Intervention

Within One Month of Employment Start Date:
Overview of DDA Policies, including:

(1) DDA Policy 3.01 Service Plans

(2) DDA Policy 5.03 Client Complaints

(3) DDA Policy 5.17 Physical Intervention Techniques

Within Three Months of Employment Start Date:

(1) Program skill development

(2) DDA Policy 5.02 Necessary Supplemental Accommodation

(3) DDA Policy 5.05 Limited English Proficient Clients

(4) DDA Policy 5.14 Positive Behavior Support

(5) DDA Policy 5.15 Use of Restrictive Procedures

(6) DDA Policy 13.04 Access to Client Records Maintained by DDA

N. Ensures that all direct service staff review new and updated County and DDA policies when issued. Staff review will be documented in provider's file.

O. Ensures that direct service staff are licensed or registered when appropriate/required.

P. Proof of Background/Criminal History Check: A background/criminal history clearance is required every three years for all employees and/or volunteers who may have unsupervised access to vulnerable DDA Clients, in accordance with RCW 43.43.830-845, RCW 74.15.030, and chapter 388 WAC. If the Provider reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the Provider. The DSHS Background Check Central Unit (BCCU) must be utilized to obtain background clearance.

Q. The Provider and all their staff members are mandated reporters under RCW 74.34.020(1) and must comply with reporting requirements described in RCW 74.34.035, RCW 74.34.040 and RCW 26.44. If the County is notified that a Provider staff member is cited or on the registry for a substantiated finding, then that staff member will be prohibited from providing services under the Clallam County Provider Contract.

R. The Provider will promptly report to DSHS and the County per DDA Policy 5.13, *Protection from Abuse: Mandatory Reporting,* if:

(1) They have reasonable cause to believe that abandonment, abuse, financial exploitation or neglect (as defined in RCW 74.34.020) of a person who has a developmental disability (as defined in RCW 71A.10.020) has occurred, and,
(2) If they have reason to suspect that sexual or physical assault of such a person has occurred they shall also immediately report to the appropriate law enforcement agency.

S. The Provider will assure adequate staffing levels to provide all services and when staffing is not adequate will inform the County when staffing is not adequate to serving potential clients.

GENERAL TERMS & CONDITIONS

1. SCOPE OF PROVIDER'S SERVICES

The Provider agrees to provide to the County services and any materials set forth in the Special Terms & Conditions [Exhibit "A"] during the Contract period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Contract.

2. ASSIGNMENT

The Provider may not assign any of the Provider's Contract rights or obligations to a third party without the prior, written consent of the County and the written assumption of the Provider's obligations by the third party.

3. COMPLIANCE WITH APPLICABLE LAW

At all times during the term of the Contract, the Provider shall comply with all applicable federal, state and local laws, regulations, and rules.

4. CONFIDENTIALITY OF PARTICIPANT INFORMATION

A. The Provider shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the Provider's performance of the services contemplated hereunder, except:

(1) As provided by law; or

(2) In the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

B. The Provider shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Provider to employ reasonable security measures, which include restricting access to the Confidential Information by:

(1) Each Provider will have a written policy for the appropriate use, storage, disclosure, modification and loss of Confidential Information in all formats and all staff will be trained in this policy. Documentation of training will be maintained by Provider.

(2) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

(3) Physically securing any computers, documents, portable devices such as smart phones, tablets, flash memory devices, portable hard disks and laptop/notebook/netbook computers if those items or other media containing Confidential Information may be transported out of a Secured area. Data will not be stored on portable devices or media unless:

(a) It is appropriately encrypted with a key length of at least 128 bits;
(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method;
(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity. Maximum period of inactivity is 20 minutes;
(d) Properly inventoried and controlled;
(e) Stored in a secured area;
(f) Under the control of Contractor staff at all times when in an unsecured location.

(4) Ensuring the security of Confidential Information transmitted via fax (facsimile) by:

(a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
(b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
(c) Verifying after transmittal that the fax was received by the intended recipient.

(5) When transporting DSHS Confidential Information electronically, including via email, the Data will be protected by:

(a) Transporting the data within the (State Government Network) SGN or Contractor's internal network, or;
(b) Encrypting any Data that will be in transit outside the SGN or Contractor's internal network. This includes transit over the public internet.

(6) When transporting six (6) or more records containing Confidential Information, outside a Secure Area, do one or more of the following as appropriate:

(a) Use a Trusted System
(b) Encrypt the Confidential Information, including:
- Encrypting email and/or email attachments which contain Confidential Information
- Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

(7) Send paper documents containing Confidential Information via a Trusted System. When not in use, such records must be stored in a locked container such as a file cabinet, locking drawer or safe in a secured area accessible only to authorized personnel.

(8) DSHS data may be stored on portable or non-portable media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery process. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If so, such media will be protected as otherwise described in this contract. If this media is retired while DSHS Confidential Information still exists upon it, that data will be destroyed at that time in accordance with the approved destruction methods obtained from the County contact identified on the cover page of this Contract.

C. DSHS Data must be desegregated or otherwise distinguished from non-DSHS data. This is to ensure that when no longer needed by Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation:

(1) DSHS Data will be kept on media which will contain no non-DSHS Data. And/or,

(2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,

(3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

(4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS Data by the value of a specific field or fields within database records.

(5) When stored as physical paper documents, DSHS Data will be physically separated from non-DSHS Data in a drawer, folder or other container.
(6) When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS Data with which it is comingled must be protected as described in the preceding paragraphs.

D. Upon request of the County or at the end of the Contract term, or when no longer needed, the Provider shall return the Confidential Information or certify in writing that the Provider employed a DSHS approved method to

destroy the information. The Provider may obtain information regarding approved destruction methods from the County contact identified on the cover page of this Contract.

E. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping or incineration.

5. PROVIDER CERTIFICATION REGARDING ETHICS

Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the County Coordinator and DSHS Contact designated on the contract within one (1) business day of discovery. The Provider must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by the county, law or DSHS.

The Provider certifies that the Provider is in compliance with RCW Chapter 42.23 and 42.20; and shall comply with said RCW Chapters throughout the term of the Contract.

6. PROVIDER NOT AN EMPLOYEE OF COUNTY

The Provider's services shall be furnished by the Provider as an independent Provider and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

For purposes of the Contract, the Provider acknowledges that the Provider is not an officer, employee, or agent of the County. The Provider acknowledges that the entire compensation for this Contract is specified in Special Terms & Conditions [Exhibit "A"] and the Provider is not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Provider represents that it maintains a separate place of business, serves participants other than the County, will report all income and expense accrued under this Contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent Provider relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Provider agrees to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any overpayments be made to the Provider pursuant to this Contract, the Provider agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.

Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Provider, its officers, employees and/or agents, shall not be entitled to any benefits which Clallam County provides to its employees.

7. NO GUARANTEE OF EMPLOYMENT

The performance of all or part of this Contract by the Provider shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Provider or any employee of the Provider or any Subcontractor or any employee of any Subcontractor by the County at the present time or in the future.

8. REGULATIONS AND REQUIREMENTS

This Contract shall be subject to all federal, state and local laws, rules, and regulations.

9. RIGHT TO REVIEW

This Contract is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County Project Manager. Each subcontractor will be evaluated at least once per contract biennium. The evaluation system will incorporate Quality Assurance items and Quality Improvement measures incorporated with it. A copy of

this evaluation system shall be made available to all subcontractors and the DDA upon request. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Contract and its performance, and any and all communications with or evaluations by service recipients under this Contract. The Provider shall preserve and maintain all financial records and records relating to the performance of work under this Contract for six (6) years after Contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.

The Provider shall maintain records sufficient to:

A. document performance of all acts required by statute, regulation, rule, or the Contract;
B. substantiate the provider's statement of its organization's structure, tax status, capabilities, and performance;
C. demonstrate accounting procedures, practices and records which sufficiently and properly document the Provider's invoices to the County and all expenditures made by the Provider to perform as required by the Contract; and
D. establish and maintain adequate internal control systems: The Provider will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail that, operations can continue should staffing change or absences occur.

Documentation, books, records, and other evidence shall be kept at the company's Clallam County Office and will be available for examination by the County at reasonable times.

10. MODIFICATIONS

Either party may request changes in the Contract. Any and all agreed modifications shall be in writing, signed by each of the parties.

11. TERMINATION FOR DEFAULT

The County may terminate the Contract in whole or in part, by written notice to the Provider, if the County has a reasonable basis to believe that the Provider has:

A. failed to meet or maintain any requirement for contracting with the County;

B. failed to perform under any provision of the Contract;

C. becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors; and/or

D. otherwise breached any provision or condition of the Contract.

Before the County may terminate the Contract, the County may, by depositing written notice to the Provider in the U.S. Mail, postage prepaid, terminate the Contract, and at the County's option, obtain performance of the work elsewhere. If the Contract is terminated for default, the Provider shall not be entitled to receive any further payments under the Contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Provider. The Provider agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

However, the County may terminate the Contract without written notice and without opportunity for correction, if the County has a reasonable basis to believe that the Provider has failed to ensure the health or safety of any participant for whom services are being provided under the Contract or the Provider has violated any law, regulation, rule, or ordinance.

If a notice of termination for default has been issued and it is later determined for any reason that the Provider was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience paragraph hereof.

12. TERMINATION FOR CONVENIENCE

The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interest of the County. Whenever the Contract is terminated in accordance with this paragraph, the Provider shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the Contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of Contract by the County.

The Provider may terminate the Contract by giving the County at least thirty (30) calendar days' written notice addressed to: Director, Clallam County Department of Health and Human Services, 111 E 3rd Street · Port Angeles, WA 98362.

13. TERMINATION DUE TO INSUFFICIENT FUNDS

If sufficient funds for payment under this Contract are not appropriated or allocated or are withdrawn, reduced or otherwise limited, the County may terminate this Contract upon five (5) days written notice to the Provider. No penalty or expense shall accrue to the County in the event this provision applies.

14. TERMINATION PROCEDURE

The following provisions apply in the event that this Contract is terminated:

A. The Provider shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
B. The Provider shall provide the County with an accounting of authorized services provided through the effective date of termination.
C. If the Contract has been terminated for default, the County may withhold a sum from the final payment to the Provider that the County determines necessary to protect itself against loss or liability.

15. DEFENSE AND INDEMNITY CONTRACT

The Provider agrees to defend, indemnify and hold harmless the County, its appointed and elected officers, officials, agents and/or employees, from and against any and all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorney's fees and/or costs by reason of any and all claims and demands upon the County, its appointed and elected officers, officials, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Provider, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed and elected officers, officials, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed and elected officers, officials, agents and/or employees. It is further provided that no liability shall attach to the County by reason of entering into this Contract, except as expressly provided herein.

16. INDUSTRIAL INSURANCE WAIVER

With respect to the performance of this Contract and as to claims against the County, its appointed and/or elected officers, officials, agents and/or employees, the Provider expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Contract extend to any claim brought by or on behalf of any employee of the Provider. Along with the other provisions of this Contract, this waiver is mutually negotiated by the parties to this Contract.

17. VENUE AND CHOICE OF LAW

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Contract, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Contract shall be governed by the law of the State of Washington.

18. WITHOLDING PAYMENT

In the event the County Project Manager determines that the Provider has failed to perform any obligation under this Contract within the times set forth in this Contract, then the County may withhold from amounts otherwise due and payable to Provider the amount determined by the County as necessary to cure the default, until the County Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Provider to termination or damages, provided that the County promptly gives notice in writing to the Provider of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the County Project Manager set forth in a notice to the Provider of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Provider acts within the times and in strict accord with the provision of the Disputes clause of this Contract. The County may act in accordance with any determination of the County Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Provider, (3) to set off any amount paid or incurred from amounts due or to become due the Provider. In the event the Provider obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Provider by reason of good faith withholding by the County under this clause.

19. RIGHTS AND REMEDIES

The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

20. PROVIDER'S COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment received from the Provider concerning this Contract shall be binding upon the Provider, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Provider to fulfill such a commitment shall render the Provider liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Contract, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

21. PATENT/COPYRIGHT INFRINGEMENT

Provider will defend, indemnify and hold harmless the County, its appointed and elected officers, officials, agents and/or employees from and against any and all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its appointed and elected officers, officials, agents and/or employees for damages because of the Provider's alleged infringement of any patent or copyright. The Provider will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers, officials, agents and/or employees in any action. Such defense and payments are conditioned upon the following:

A. That Provider shall be notified promptly in writing by County of any notice of such claim.

B. Provider shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County

22. DISPUTES

A. The parties to this Agreement shall resolve all disputes at the most relevant level. The Contractor shall bear responsibility for resolving any dispute that occurs between a client and the Contractor.

B. Differences between the Contractor and the County, arising under and by virtue of the contract documents shall be brought to the attention of the County Coordinator at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County Coordinator shall be final and conclusive thirty (30) days from the date of mailing unless the Contractor mails or otherwise furnishes to the County Coordinator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County Coordinator are in error.

(1) In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral

argument and live testimony will not be permitted. The original written materials will be submitted to the County Coordinator, who will then deliver the materials to a Dispute Resolution Board as described below. Copies of all written materials will be served upon the parties.

(2) If an appeal of the County Coordinator decision is timely received, the County and the Contractor shall convene a dispute resolution board comprised of one member nominated separately by each party, and a third member identified and agreed upon by the two members. If the two members together cannot agree upon the third member, the Contractor and County are to petition the Clallam County Superior Court to designate a third member. The Dispute Resolution Board will then attempt to resolve the dispute based upon the written materials provided by the County Coordinator.

(3) Reviews of the Dispute Resolution Board's determination may be brought in the Superior Court of Clallam County within fifteen (15) days of mailing of the Dispute Resolution Board's written decision. Pending a final decision in the Superior Court of Clallam County, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

C. Notice of Potential Claims: The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the County Coordinator or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

D. Detailed Claim: The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

23. OWNERSHIP OF ITEMS PRODUCED

All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Provider and/or its consultants or Subcontractors, in connection with the performance of this Contract shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws and Provider and/or its agents shall have no ownership or use rights in the work.

24. RECOVERY OF PAYMENTS TO PROVIDER

The right of the Provider to retain monies paid to it is contingent upon satisfactory performance of this Contract, including the satisfactory completion of the project described in the Special Terms & Conditions [Exhibit "A"]. In the event that the Provider fails, for any reason, to perform obligations required of it by this Contract, the Provider may, at the County Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Provider for those parts of the project that are rendered worthless in the opinion of the County Project Manager by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the County Project Manager demands repayment of funds.

25. PROJECT APPROVAL

The extent and character of all work and services to be performed under this Contract by the Provider shall be subject to the review and approval of the County Project Manager. For purposes of this Contract, the County Project Manager is:

Name:	Kelley Lawrence
Title:	Clallam County Coordinator for Developmental Disabilities
Address:	111 E 3rd Street · Port Angeles, WA 98362
Telephone:	360-417-2407

E-mail: klawrence@co.clallam.wa.us
Fax: 360-452-9605

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County Project Manager as to the extent and character of the work to be done shall govern subject to the Provider's right to appeal that decision as provided herein.

26. NON-DISCRIMINATION

The Provider shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.

27. SUBCONTRACTORS

This is a fee-for-service Contract and the Provider will not enter into subcontracts for any of the work expected by this Contract without first obtaining review and written approval of the subcontract by the County.

In the event that the Provider employs the use of any Subcontractors with the written approval of the County, the Contract between the Provider and the Subcontractor shall provide that the Subcontractor bound by the terms of this Contract between the County and the Provider. The Provider shall ensure that in all subcontracts entered into, Clallam County is named as an express third-party beneficiary of such contracts with full rights as such.

28. THIRD PARTY BENEFICIARIES

This Contract is intended for the benefit of the County and Provider and not for the benefit of any third parties.

29. STANDARD OF CARE

The Provider shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Provider currently practicing under similar circumstances. The Provider shall, without additional compensation, correct those services not meeting such a standard.

30. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Contract unless a more specific time period is set forth in either the Special Terms & Conditions or Scope of Work

31. NOTICE

Except as set forth elsewhere in the Contract, for all purposes under this Contract, except service of process, any notices shall be given by the Provider to the County Project Manager. Notice to the Provider for all purposes under this Contract shall be given to the person executing the Contract on behalf of the Provider at the address identified on the signature page.

32. SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

33. PRECEDENCE

In the event of an inconsistency in the Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:

A. Applicable federal, state, and local law, regulations, rules, and ordinances;

B. the DSHS Basic Agreement;

C. this Contract, including Exhibits;

D. these General Terms & Conditions; and

E. any document incorporated in the Contract by reference.

34. WAIVER

Waiver of any breach or condition of this Contract shall not be deemed a waiver of any prior to subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

35. ATTORNEY FEES

In the event that litigation must be brought to enforce the terms of this Contract, the prevailing party shall be entitled to be paid reasonable attorney fees.

36. CONSTRUCTION

This Contract has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.

37. CORRECTIVE ACTION PROCESS

If the County finds evidence of potential non-compliance during the monitoring process or learns that the Provider is out of compliance with any of the terms or conditions of this Contract, the following process will be pursued:

A. The County's DD Coordinator notifies the appropriate Provider staff of the potential non-compliance and an agreeable solution is reached.

B. If the process described in (A) does not result in resolution, the County will establish a date when representatives of the County and Provider shall meet and discuss areas of contention and attempt to resolve the issues involved.

The County will provide by registered mail to the Provider's Director and Board President a written summary of the areas of non-compliance or potential non-compliance.

C. Within twenty (20) calendar days of the date the written notification was mailed, a discussion between County and the Provider's Director of Board designee of the areas of non compliance or potential non-compliance shall be conducted.

D. If the County and the Provider cannot agree upon a resolution, the County shall withhold payments related to the area(s) of non-compliance or potential non- compliance, unless a written extension of the period to agree upon corrective action is issued by the County.

E. Nothing in this section shall preclude audits by other duly authorized representatives of the County, the Department of Social and Health Services or other departments of State government, nor shall it preclude the recoupment of overpayments identified through those audit procedures.

38. EXECUTION, AMENDMENT AND WAIVER

The Contract shall be binding on the County only upon signature by the County Commissioners. The Contract may only be altered, amended, or waived by a written amendment executed by both parties. Only the County Commissioners have authority to alter, amend or waive the Contract on behalf of the County.

39. INSURANCE

The Provider shall maintain insurance as specified and shall pay for losses for which it is found liable. Without limiting the Provider's indemnification, it is agreed that the Provider shall maintain in force, at all times during the performance

of this Contract, a policy or policies of insurance covering its operations and shall in each policy, name the County, its appointed and/or elected officers, officials, agents and/or employees as additional insureds.

The Provider shall maintain continuously during the term of this Contract public liability insurance with limits of liability not less than:

$ 500,000	each person, personal injury, including death
$1,000,000	each occurrence, personal injury, including death
$ 250,000	each occurrence, property damage liability
$2,000,000	aggregate
$1,000,000	Errors and Omissions per occurrence
$2,000,000	Errors and Omissions aggregate

The Provider shall inform the County in writing of any changes in insurance and provide County with a new certificate of insurance within twenty days of the change.

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such policy of insurance the Provider is required to obtain and maintain pursuant to this Agreement shall be primary over any third-party liability coverage provided to Clallam County by and through its membership in the Washington Counties Risk Pool or WCRP. The third-party liability coverage provided by the WCRP to Clallam County shall be non-contributory with respect to any policy of insurance the Provider is required to obtain and maintain pursuant to this Agreement. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within 20 days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

If the proof of insurance or certificate of coverage indicating the County is an "additional insured" to a policy obtained by the Consultant in order to comply with this agreement refers to an endorsement (by number, abbreviation or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Consultant to obtain the full text of that endorsement and forward that full text to the County within 30 days of the execution of this Agreement.

The coverage limits identified herein shall not limit the potential liability of the Provider and the Provider's duty to defend, indemnify, and hold harmless shall apply to any liability beyond the scope of insurance coverage.

The County retains the right to withhold payment if the Provider does not provide timely and adequate proof of the insurance required by this Section.

The Provider shall ensure that vehicles used to transport participants as a part of services provided under this Contract are covered by a commercial vehicle insurance policy with a clear indication that clients may be transported by the provider and are covered under the policy. Further, each employee driving clients shall have their personal automobile insurance, driver's license and current driving abstract on file at the Provider's administrative office.

The Provider shall maintain Worker's Compensation coverage as required by the Industrial Insurance Act of the State of Washington.

The Provider agrees to maintain a fidelity bond in the amount of Twenty Thousand Dollars ($20,000) which covers all individuals responsible for the administration of funds. Evidence of the fidelity bond shall be provided to the County within thirty (30) calendar days of the date of this Contract. The Provider will inform the County in writing of any change in the bond and provide evidence of continuing bonding coverage within thirty (30) calendar days of the change.

40. AUDITS

The Provider shall demonstrate the ability to safeguard public funds including maintaining books, records, documents and other materials relevant to the provision of goods and services.

Except as set forth herein, for contracts up to and including one year in length, an independent financial audit ("audit") of funds shall be performed. For contracts in excess of one year and up to and including two years, an independent financial review ("review") of funds shall be performed in the first year of the Contract and an audit shall be performed in the second year.

The Provider is required to submit to the County a copy of the independent auditor's or reviewer's final report within thirty (30) days following the issuance of the report. Additionally, the Provider shall provide comments on the findings and recommendations in the report, including a plan for Corrective Action.

The Provider will submit their plan for audit or review to the County by **September 1, 2021,** including time frame for completion of audit or review, standards by which they will be audited or reviewed, and the name of the individual or organization who will complete the audit or review, the Provider's total federal funding, and determination of the applicability of a Single Audit.

Audits and reviews must be submitted within the time frame described in the Provider's plan. Any audit or review must be in accordance with all applicable Federal and State statutes, as well as the State to County Basic Agreement.

Documentation and records shall be maintained to support levels of service billed. These records and supportive materials shall be available to the County upon request. Audits and reviews shall be conducted to determine compliance with the rules and regulations of each program service. In accordance with RCW 74.09.200, only those participant records or portions thereof, for which services were reimbursed by the County, may be examined.

If the Provider is a subrecipient of federal awards as defined by the Office of Management and Budget (OMB), the Provider shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance numbers. The Provider shall make the Provider's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DSHS and the County. The Provider shall incorporate audit requirements into all contracts between the Provider and its Subcontractors who are subrecipients. The Provider shall comply with any future amendments to the Federal Code of Regulation for Single Audits and any successor or replacement Circular or regulation.

If the Provider expends $750,000 or more in federal awards from any and/or all sources in any fiscal year beginning after June 30, 1996, the Provider shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Provider shall submit to the County contact person the data collections form and reporting package specified in the Federal Code of Regulation for Single Audits, reports required by the program specific audit guide, if applicable, and a copy of any management letters issued by the auditor.

41. TREATMENT OF ASSETS PURCHASED BY PROVIDER

Except as provided in the Contract, title to all assets (property) purchased or furnished by the Provider is vested in the Provider and the County waives all claim of ownership to such property.

42. TREATMENT OF PARTICIPANT ASSETS

Except as otherwise provided by court order, the Provider shall ensure that any participant for whom the Provider is providing services under the Contract shall have unrestricted access to the participant's personal property. The Provider shall not interfere with the participant's ownership, possession, or use of such property. Upon termination of the Contract, the Provider shall immediately release to the participant all of the participant's personal property.

43. TREATMENT OF COUNTY ASSETS

Except as otherwise provided in the Contract, title to all assets (property) purchased or furnished by the County for use by the Provider during the Contract term shall remain with the County. During the term of the Contract, the Provider shall protect, maintain, and insure all County property in the Provider's possession against loss or damage.

44. TITLE XIX WAIVER PROVISO

Participants identified as covered under Division of Developmental Disabilities' home and community-based waiver programs shall not be funded under this Contract when services are available from the Division of Vocational Rehabilitation under PL 94-142, Title V, Section 504 of the Rehabilitation Act of 1973 or under Social Security

programs which assist with employment options under PL 99-643, Section 1619(a) Employment Opportunities for Disabled Americans Act, 1986, PASS or IRWE plans.

The Provider assures that documentation is on file with the County assigning to the County its Medicaid billing rights for services to participants eligible under DDA's home and community-based waivers. Such services must be purchased no differently from the way services are purchased for participants not eligible under the waiver. Services must be purchased on a Fee for Service basis to satisfy the Title XIX Contract.

45. HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT of 1996 (HIPAA)

In addition to any other confidentiality requirements set forth herein, the Provider shall comply with the following provisions if it constitutes a "business associate" as that term is defined in 45 CFR §160.103, as now or hereafter amended.

A. The Provider is not authorized to use or further disclose "Protected Health Information" (PHI) as that phrase is defined in 45 CFR § 164.501, as now or hereafter amended, in a manner that would violate the requirements of 45 CFR § 165.504(e), as now or hereafter amended, if done by the Clallam County, except that:

(1) The Provider may use and disclose PHI for the proper management and administration of the Provider, as provided in paragraph 45 CFR § 164.504(e) (4); and

(2) The Provider may provide data aggregation services relating to the health care operations of Clallam County.

B. The Provider will:

(1) Not use or further disclose the information other than as permitted or required by this Contract or as required by law;

(2) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Contract;

(3) Report to Clallam County any use or disclosure of the information not provided for by this Contract of which it becomes aware;

(4) Ensure that any agents, including a Subcontractor to whom it provides PHI received from, or created or received by the Provider on behalf of, Clallam County agrees to the same restrictions and conditions that apply to the Provider with respect to such information;

(5) Make available PHI in accordance with 45 CFR § 164.524;

(6) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526;

(7) Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(8) Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Provider on behalf of, Clallam County available to the Secretary for purposes of determining Clallam County's compliance with this subpart; and

(9) At termination of the Contract, if feasible, return or destroy all PHI received from, or created or received by the Provider on behalf of, Clallam County that the Provider still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the Contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

C. In addition to any other termination clause herein, this Contract may be terminated by Clallam County if Clallam County determines that the Provider has violated a material term of this provision.

D. The Provider may use the information it has received in its capacity as a business associate to Clallam County, if necessary:

(1) For the proper management and administration of the Provider; or

(2) To carry out the legal responsibilities of the Provider.

E. The Provider may disclose the information it has received in its capacity as a business associate for the purposes described in 4 of this section, if:

(1) The disclosure is required by law; or

(2) (a) The Provider obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and

(b) The person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.

46. SURVIVAL

Without being exclusive, Paragraphs 7, 10, 16-22, 24-25 and 34-37 of these General Terms & Conditions shall survive any termination, expiration or determination of invalidity of this Contract in whole or in part. Any other Paragraphs of this Contract which, by their sense and context, are intended to survive shall also survive.

47. ENTIRE CONTRACT

This written Contract represents the entire Contract between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

48. DEBARMENT CERTIFICATION

The Provider, by signature to this Agreement, certifies that the Provider is not presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any Federal or State department or agency.

49. BACKGROUND/CRIMINAL HISTORY CHECK

A background criminal history clearance is required every three years for all employees, subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS participants, in accordance with RCW 43.43.830-845, RCW 74.15.030 and chapter 388.06 WAC. Character Competence and Suitability Reviews, if required, will be updated every three years.

If the entity reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in Chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the disqualified individual provider.

It is required that the DSHS Background Check Central Unit (BCCU) be utilized to obtain background clearance.

50. REPORTING ABUSE AND NEGLECT

The Provider and its subcontractors under this contract will comply with RCW 74.34 and RCW 26.44 to the extent required by law. If the County is notified by DSHS that a Provider (or any of their staff, volunteers or authorized agents) is cited or on the registry for a substantiated finding, then associated staff will be prohibited from providing services under this contract.

DATA SECURITY REQUIREMENTS

1. DEFINITIONS

The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:

A. "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf).

B. "Authorized Users(s)" means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.

C. "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. For purposes of this contract, data classified as Category 4 refers to data protected by: the Health Insurance Portability and Accountability Act (HIPAA).

D. "Cloud" means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iCloud, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, O365, and Rackspace.

E. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits (256 preferred) for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

F. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

G. "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, orWindows Phone. Mobile Devices include smart phones, most tablets, and other form factors.

H. "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.

I. "Portable Device" means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.

J. Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.

K. "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.

L. "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.

M. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.

2. AUTHORITY

The security requirements described in this document reflect the applicable requirements of Standard 141.10 (https://ocio.wa.gov/policies) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: https://www.dshs.wa.gov/ffa/keeping-dshs- client-information-private-and-secure, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.

3. ADMINISTRATIVE CONTOLS

The Contractor must have the following controls in place:

A. A documented security policy governing the secure use of its computer network and systems, and which defines sanctions that may be applied to Contractor staff for violating that policy.

B. If the Data shared under this agreement is classified as Category 4 data, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.

C. If Confidential Information shared under this agreement is classified as Category 4 data, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.

4. AUTHORIZATION, AUTHENTICATION, AND ACCESS

In order to ensure that access to the Data is limited to authorized staff, the Contractor must:

A. Have documented policies and procedures governing access to systems with the shared Data

B. Restrict access through administrative, physical, and technical controls to authorized staff.

C. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action

D. Ensure that only authorized users are capable of accessing the Data.

E. Ensure that an employee's access to the Data is removed immediately:

(1) Upon suspected compromise of the user credentials.

(2) When their employment, or the contract under which the Data is made available to them, is terminated.

(3) When they no longer need access to the Data to fulfill the requirements of the contract.

F. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.

G. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:

(1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.

(2) That a password does not contain a user's name, logon ID, or any form of their full name.

(3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.

(4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.

H. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:

(1) Ensuring mitigations applied to the system don't allow end-user modification.

(2) Not allowing the use of dial-up connections.

(3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.

(4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.

(5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.

(6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.

I. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:

(1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor

(2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)

(3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)

J. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:

(1) Be a minimum of six alphanumeric characters.

(2) Contain at least three unique character classes (upper case, lower case, letter, number).

(3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.

K. Render the device unusable after a maximum of 10 failed logon attempts.

5. PROTECTION OF DATA

The Contractor agrees to store Data on one or more of the following media and protect the Data as described:

A. **Hard disk drives**. For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms, which provide equal or greater security, such as biometrics or smart cards.

B. **Network server disks**. For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secure Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data, as outlined below in Section 8 Data Disposition, may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

C. **Optical discs (CDs or DVDs) in local workstation optical disc drives**. Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

D. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

E. **Paper documents**. Any paper records must be protected by storing the records in a Secure Area, which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.

F. **Remote Access**. Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

G. **Data storage on portable devices or media**.

(1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections::

(a) Encrypt the Data.
(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
(d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
- Keeping them in a Secure Area when not in use,
- Using check-in/check-out procedures when they are shared, and
- Taking frequent inventories.

(2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

H. **Data stored for backup purposes.**

(1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition.

(2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition

I. **Cloud storage**. DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:

(1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:

(a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attest to the contact listed in the contract and keep a copy of that attestation for your records in writing that all such procedures will be uniformly followed.
(b) The Data will be Encrypted while within the Contractor network.
(c) The Data will remain Encrypted during transmission to the Cloud.
(d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
(e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor.
(f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on the contractor network
(g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.

(2) Data will not be stored on an Enterprise Cloud storage solution unless either:

(a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,
(b) The Cloud storage solution used is HIPAA compliant.

(3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.

6. SYSTEM PROTECTION

To prevent compromise of systems which contain DSHS Data or through which that Data passes:

A. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.

B. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.

C. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.

D. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

7. DATA SEGREGATION

A. DSHS category 4 data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation

(1) DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data.

(2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data.

(3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

(4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.

(5) When stored as physical paper documents, DSHS Data will be physically segregated from non- DSHS data in a drawer, folder, or other container.

B. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

8. DATA DISPOSITION

When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or
Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.

Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse
Magnetic tape	Degaussing, incinerating or crosscut shredding

9. NOTIFICATION OF COMPROMISE OR POTENTIAL COMPROMISE

The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

10. DATA SHARED WITH SUBCONTRACTORS

If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub- Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

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9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Health & Human Services

WORK SESSION ☒ **Meeting Date:** September 20, 2021

REGULAR AGENDA ☒ **Meeting Date:** September 28, 2021

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing ☐ Contract/Agreement/MOU ☒ Contract # 11331-21-MISIDE

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

These contracts are between Clallam County HHS and Concerned Citizens, Morningside and Pierce Jones & Associates for adult developmental disability services. The purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons who experience intellectual and developmental disabilities. Contract Agreement period is July 1, 2021 thru June 30, 2023.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Funds are already in the budget.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Please approve and sign.

County Official signature & print name: Kevin LoPiccolo

Name of Employee/Stakeholder attending meeting: Kevin LoPiccolo & Kelley Lawrence

Relevant Departments: Health & Human Services

Date submitted: September 14, 2021

11331-21-MSIDE

PROVIDER CONTRACT
Morningside

This PROVIDER CONTRACT is entered into and effective July 1, 2021 through June 30, 2023 between CLALLAM COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, hereinafter referred to as "County" and Morningside, hereinafter referred to as "Provider".

CLALLAM COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES

Address: 111 E 3rd Street
Port Angeles, WA 98362

Main Phone: (360) 417-2303
Fax: (360) 452-9605

Contact Person: Kelley Lawrence, Clallam County Coordinator for Developmental Disabilities
Contact Phone: (360) 417-2407
Contact E-Mail: klawrence@co.clallam.wa.us

Provider: Morningside
809 Legion Way SE/PO Box 7936
Olympia, WA 98507
Phone: (360) 493-0512
Fax: (360) 596-3552
E-mail: jpleger@mside.org
Contact Person: Jonathan Pleger, President/CEO
Service Modality: Individual Supported Employment
Community Inclusion
Community Information & Education
County Millage: Sequim School District
Quillayute Valley School District
Port Angeles School District

Funding Authority:
DSHS Basic Agreement # 1783-86259
DDA County Services Agreement # 2163-22716
DSHS, DDA Home & Community Based
Waiver Program (CMS)
Tax Identification Numbers:
IRS #: 91-0757099
UBI #: 324-010-568

This Contract is comprised of:

Exhibit "A"	Special Terms & Conditions
Exhibit "B"	General Terms & Conditions
Exhibit "C"	Data Security Requirements

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

IN WITNESS WHEREOF, the parties have entered this Contract on this ___day of _____, 2021.

BOARD OF CLALLAM COUNTY COMMISSIONERS:

Mark Ozias, Chair

ATTEST:

Loni Gores, Clerk of the Board

MORNINGSIDE:

Jonathan Pleger, President/CEO Date 9/7/2021

APPROVED AS TO FORM:

SPECIAL TERMS AND CONDITIONS

1. DEFINITIONS SPECIFIC TO PROGRAM AGREEMENT

The words and phrases listed below, as used in this Program Agreement, shall each have the following definitions:

A. "Acuity Level" means the level of an individual's abilities and needs as determined through the DDA assessment.

B. "AWA" means ALTSA Web Access.

C. "Additional Consumer Services" refers to indirect Client service types as follows:

(1) "Community Information and Education": Activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.

(2) "Training": To increase the job related skills and knowledge of staff, providers, volunteers, or interning students in the provision of services to people with developmental disabilities. Also to enhance program related skills of board or advisory board members.

(3) "Other Activities" reserved for special projects and demonstrations categorized into the following types:

(1) Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search".
(2) Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
(3) Partnership project: Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Supports provided should complement and not replace what the student(s) receive through the Individualized Education Program (IEP).

D. "BARS" means Budget and Accounting Reporting System.

E. "Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the Developmental Disabilities Administration or is an identified PASRR Client.

F. "Competitive Integrated Employment" means work performed by an individual on a part-time or full- time basis, within an integrated setting within the community that meets HCBS settings requirements. The individual must be compensated at minimum wage or higher, using the higher of the Federal, State, or local rate, and at a rate comparable to the wage paid to non-disabled workers performing the same tasks, including receiving the same benefits and opportunities for advancement.

G. "Consumer Support" refers to direct Client service types as follows:

(1) "Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion. These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Employment or Group Supported Employment) for working age individuals who have received nine months of employment support.

(2) "Individual Supported Employment" or "IE": services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities, and promote career development. These are individualized services necessary to help persons with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job.

(3) "Individualized Technical Assistance" or "ITA": services are a part of an individual's pathway to individual employment. This service provides assessment and consultation to the employment provider to identify and address existing barriers to employment. This is in addition to supports received through supported employment services for individuals who have not yet achieved their employment goal.

H. "County" is the political subdivision of the state of Washington and the county or counties entering into this Program Agreement.

I. "CRM" means the DDA Case Resource Manager.

J. "CSA" means County Service Authorization.

K. "DD" means developmental disabilities.

L. "DDA" means the Developmental Disabilities Administration within DSHS.

M. "DDA Region" means the DDA Regional office.

N. "DVR" means the Division of Vocational Rehabilitation.

O. "General Terms and Conditions" means the contractual provisions contained within that agreement, which govern the contractual relationship between DSHS and the county and it's subcontractor(s).

P. "HCBS" means the Medicaid Home and Community Based Services.

Q. "PASRR" means Preadmission Screening and Resident Review.

R. "PCSP" means Person Centered Service Plan, a document that authorizes and identifies the DDA paid services to meet a Client's assessed needs. Formerly referred to as the Individual Support Plan.

S. "Quality Assurance" means an adherence to all Program Agreement requirements, including DDA Policy 6.13, *Employment/Day Program Provider Qualifications,* County Guidelines and the Criteria for Evaluation, as well as a focus on reasonably expected levels of performance, quality, and practice.

T. "Quality Improvement" means a focus on activities to improve performance above minimum standards and reasonably expected levels of performance, quality and practice.

U. "Service Provider" is a qualified Client service vendor who is contracted to provide Employment and Day Program services.

V. "Subcontractor" is the service provider contracted by the County to provide services.

W. "RCW" means Revised Codes of Washington

X. "WAC" means Washington Administrative Code

2. TERM OF CONTRACT

Term of this contract shall be July 1, 2021 through June 30, 2023.

3. PURPOSE

This Contract is entered into between County and Morningside in accordance with chapter 71A.14 RCW. Its purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disabilities.

4. CLIENT ELIGIBILITY

Client eligibility and service referral are the responsibility of DDA under chapter 388-823 WAC (Eligibility) and chapter 388-825 WAC (Service Rules). Only persons referred by DDA shall be eligible for direct client services under this contract. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. Direct client services provided without authorization by DDA or the County are not reimbursable under this Contract.

5. PROVIDER QUALIFICATIONS

Provider assures they meet the qualifications as outlined in the DDA Policy 6.13, ***Program Provider Qualifications***. Administration of the developmental disabilities County program cannot be subcontracted.

6. HOME AND COMMUNITY BASED WAIVER SERVICES ASSIGNMENT OF MEDICAID BILLING RIGHTS

Provider agrees to assign to DDA its Medicaid billing rights for services to DDA Clients eligible under Title XIX programs in this Contract. Written documentation shall be available to County upon request.

7. REPORTING ABUSE AND NEGLECT

The Provider is a mandated reporters under RCW 74.34.020(13) must comply with reporting requirements described in RCW74.34.035,.040 and chapter 26.44 RCW. If a Provider staff member is cited or on the registry for a substantiated finding, then, that associated staff will be prohibited from providing services under this contract.

8. PROVIDER WILL FOLLOW ALL APPLICABLE FEDERAL, STATE, AND LOCAL POLICIES AND GUIDELINES

DDA policy manual https://www.dshs.wa.gov/dda/policies-and-rules/policy-manual

1992 County Guidelines (https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf)

DDA Guiding Values
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Guiding%20Values%20Booklet.pdf

County Guide to Achieve DDA's Guiding Values

2018-19 Mandatory Requirements

DDA Policy 4.11, County Services for Working Age Adults

Chapter WAC 388-850, chapter 388-828 WAC, WAC 388-845-0001, 0030, 0210, 0215, 0220, 0600-0610, 1030-1040, 2100, 2110

Criteria for Evaluation

IRS Self-Employment Guidelines

Clallam County Supported Self-Employment Manual

DDA Guidelines for Community Assessments within Employment and Vocational Programs

Washington Protection and Advocacy (WPAS) Access Agreement
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/WPAS.pdf

APSE CESP Certification Handbook; http://www.apse.org/wp-content/uploads/docs/CESP%20Candidate%20Handbook.1.12.pdf

COUNTY BEST PRACTICES: Individual Employment Billable Activities, Community Inclusion Billable Activities, Employment Plan/Progress Form Instructions, Community Inclusion Plan/Progress Form Instructions, Criteria for Evaluation 2019-2021, DDA Self-Employment Guidelines, https://www.dshs.wa.gov/dda/county-best-practices and any other requirements established by the Department of Social and Health Services and the County.

Subcontractors: The County will pass on all applicable contractual requirements that are between DDA and the County to the subcontractor. The County shall immediately notify the DDA Region of the County's intent to terminate a subcontractor who is serving a DDA referral. Individuals or agencies contracted with a county or DDA may not subcontract for Employment or Community Inclusion services.

9. SERVICE DESCRIPTION

A. INDIVIDUAL SUPPORTED EMPLOYMENT (568.64)

The Provider shall, under BARS code 568.64, provide services as follows:

(1) **Individual Supported Employment** services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities and promote career development. These are individualized services necessary to help a person with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job (per the Individual Employment Phases & Billable Activities)

Clients in an **employment** program will be supported to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828. Outcomes will be established in accordance with County Guidelines.

Provider employment staff will attend the annual assessment and case manager PCSP development meeting, when properly notified with at least two weeks' advance notice, for each participant the provider serves.

All participants will be contacted by the Provider according to participant need or at least once per month.

At least 40 documented hours of County-approved training per Fiscal Year (July 1 – June 30) will occur for each FTE staff person who provides services in this modality. The provider shall keep track of all training received for each staff person.

The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.

Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

All Clients will be contacted by their service provider according to Client need and at least once per month.

Clients will be assisted in accessing DVR services per the DDA/DVR MOU. Client services shall not be reimbursed under this Program Agreement when the same services are paid for under the Rehabilitation Act of 1973 by DVR, Public Law 94-142 or any other source of public or private funding.

For Individual Employment where the provider is also the client's employer, funding for the service provider will be available for the first 6 months of employment. At the end of the 6 months another service provider, who is not the employer of record, must provide the support unless the county issues a written approval for the provider to continue with long term supports.

(2) **Individual Supported Employment** can include Supported Self-Employment. Supported Self-Employment, if an applicable goal, must meet the following requirements:

(1) Adhere to Washington State DDA Self-Employment Policy Guidelines
(2) Determine that the proposed activity is a business according to IRS Guidelines
(3) Once it has been determined the activity will meet IRS rules for a business, the self-employed person receiving DDA employment supports will:
- Demonstrate the individual receiving services owns and operates the business;
- Provide a Business Plan to the County and DDA demonstrating feasibility as determined by DVR or a neutral, agreed-upon third party business expert;
- Become licensed if required and follow all local, state, and federal regulations and rules;
- Establish benchmarks for profitability and demonstrate progress is being made toward reaching those profit benchmarks; and
- Demonstrate the business will likely provide a living wage.

(4) Adhere to the Clallam County Supported Self-Employment Manual.

B. COMMUNITY INCLUSION

"Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings for individuals in retirement.. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion (per the Community Inclusion Billable Activities). These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Supported Employment) for working age individuals who have received nine (9) months of employment support.

(1) Monthly Community Inclusion (CI) service support hours will be based on the Client's CI service level per WAC 388-828-9310 for all Clients who began receiving CI services July 1, 2011 and forward.

(a) To ensure health and safety, promote positive image and relationships in the community, increase competence and individualized skill-building, and achieve other expected benefits of CI, services will occur individually or in a group of no more than two (2) or three (3) individuals with similar interests and needs.
(b) CI services will focus on activities that are typically experienced by the general public. Support to participate in segregated activities and/or specialized activities will not be reimbursed.
(c) A Client receiving CI services will not receive employment support simultaneously.
(d) A Client receiving CI services may at any time choose to leave CI to pursue work and receive employment support.

(2) The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

(3) All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.

(4) Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

(5) All Clients will be contacted by their service provider according to Client need and at least once per month.

C. TRANSPORTATION (IE and CI)

It is the Provider's responsibility to inform participants that transportation is not the responsibility of the Provider to supply. Transportation training may include coordination of the multiple transportation services, training the individual in use of public transportation, supports for the individual to obtain a driver's license, walking, bicycling or use of the student's family, friends or co-workers to provide transportation. The Provider shall assess and document in the EP/PR each participant's transportation needs.

The Provider shall assist each participant to access public or specialized transportation for any activity sponsored as a part of Individualized Supportive Employment services. It is expected that public or specialized transportation will be utilized, except as detailed in the transportation plan. The cost of transportation is included in the fee for service that a Provider receives.

If no other viable transportation options are available, the Provider may transport participants in Provider or employee vehicles provided that:

(1) Provider complies with the automobile insurance requirement set forth in the Provider Contract;

(2) Automobile insurance specifically indicates that the provider is covered for transporting clients;

(3) Transportation Assessment and Plan indicates this is the only feasible mode of transportation; and

(4) DDA Case Manager agrees to the Transportation Assessment and Plan.

D. COMMUNITY INFORMATION & EDUCATION (568.40) AND COUNTY MILLAGE FUNDS

The Provider shall, under BARS code 568.40, provide services as follows:

Community Information & Education refers to costs incurred by the program for activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services, activities aimed at promoting public awareness and involvement; community consultation, capacity building and organization activities.

In addition, Provider may use Community and Education and Millage funds to accomplish any of the following certifications and/or trainings that support professional development that enables staff to support individuals with developmental disabilities:

Certification as Certified Professional Employment Professionals (CESP)
Assist Clallam County in creating a more effective and professional team of job coaches/developers for persons with developmental disabilities. Increase capacity of local agencies to meet the employment needs of individuals with developmental disabilities. Increase effectiveness in placing and supporting individuals with developmental disabilities as employees in local businesses.

Submit proof of successful passage of the CESP certification exam. One page summary report documenting date, time and location of exam with notification of passage of the exam.

APSE or Other Employment Appropriate National Convention Training
Provider must get approval from County, in writing, of the intended Convention or Conference wanting to attend. Upon approval, Provider shall provide county with all applicable backup documentation for reimbursement. This

includes but is not limited to conference agenda, receipts for travel reimbursement, any handouts applicable to the training or conference, and any other documentation required or requested by the County.

Other Trainings and/or Professional Development
Other trainings and professional development opportunities may be approved (requires prior written approval by the County) and reimbursed that support the Provider access and attain new or continued knowledge that increases the staff's effectiveness in securing, supporting or improving the employment status of client served by Provider.

E. COUNTY MILLAGE FUNDS: SCHOOL DISTRICT TRANSITION SERVICES

Provide Transition services for eligible students authorized by the applicable School District between the ages of eighteen and twenty-one when selected by the student and their family, and referred by the School District. Transition services shall promote collaboration among DVR, school district, county, DDA, and community agencies that support the transition of students from school to employment and/or post-school activities leading to employment, including career exploration.

Transition services will include the following:

(1) Collaborate with School District staff and keep them informed of activities, progress and timelines as outlined in the IEP;

(2) Effectively communicate with the student's family and their case manager also informing them of activities, progress and timelines as outlined in the IEP;

(3) Develop individualized vocational services plan when needed;

(4) Develop individualized budget to implement the vocational services plan and submit to District Administrator and County staff for approval,

(5) Work closely with School District staff for purposes of transportation needs and other supports; and

(6) Provide monthly written progress reports with all billings to the County that include:

(a) Name of School District
(b) Student's name;
(c) Direct service hours to the student;
(d) Dates and hours of service on behalf of the student including but not limited to scheduling transportation, name and date employer(s) contacted (initial and follow-up) and job development;
- Student's wages earned;
- Hours worked; and
- Progress on work skills and behaviors as identified and outlined on IEP.

(7) Approval of billing invoices require the submittal of a monthly progress report and documentation of service dates and hours provided on the County approved form. Billings must be submitted within 45 days of the last day of the service month to be considered for payment.

(8) Services during July and August must be approved by the IEP team and the School District. The school will determine if Extended School Year (ESY) is available for these services and will notify the County in writing of any such approval. A new CSA will be written to cover services during the months of July and August.

(9) Students will not be transported in private staff vehicles. Transportation training may include coordination of the school's transportation services, training the individual in use of public transportation, supports for the individual to obtain a driver's license, walking, bicycling or use of the student's family to provide transportation.

(10) The Provider shall assess and document in the Transportation Assessment and Plan each participant's transportation needs. The Provider shall assist each participant to access public or specialized transportation for any activity sponsored as a part of Transition services. It is expected that public or specialized

transportation will be utilized, except as detailed in the transportation plan. The cost of transportation is included in the fee for service that a Provider receives.

(11) If no other viable transportation options are available, the Provider may transport participants in Provider or employee vehicles provided that

(a) Provider complies with the automobile insurance requirement set forth in the Provider Contract;
(b) Automobile insurance specifically indicates that the provider is covered for transporting clients;
(c) Transportation Assessment and Plan indicates this is the only feasible mode of transportation; and
(d) DDA Case Manager agrees to the Transportation Assessment and Plan.

10. CLIENT'S INDIVIDUALIZED PLAN

The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, the County, guardian and others as appropriate. Semi-annual progress reports that describe the outcomes of activities will be provided by the provider and given to the county, the client, their CRM, and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

Provider shall complete the plan within 30 days of service starting and provide a semi-annual progress report six months after the initial report.

Failure to submit ER/PR within the appropriate time lines will result in billing not being processed until the plans are completed.

All Clients will be contacted by their service provider according to Client need and at least once per month.

If Clients in Individual Employment have not obtained paid employment at minimum wage or better within **six (6) months,** the Provider and County will assure the following steps are taken:

A. Review the progress toward employment goals;
B. Provide evidence of consultation with the Client/guardian; and

C. Develop additional strategies with the Client/guardian, county staff, employment support staff, case manager, and others identified by the Client. Strategies may include providing technical assistance, changing to a new provider, and/or providing additional resources as needed to support the individual's pursuit of employment. The additional strategies will be documented for each Client and kept in the Client's file(s).

If after twelve (12) months the Client remains unemployed, an additional review will be conducted. The provider will address steps outlined in the previous six month progress report in the next six month progress report. The Client may request to participate in Community Inclusion activities or the Client may choose to remain in an employment program. When requesting to participate in CI, the Client shall communicate directly with his or her DDA Case Manager. The DDA Case Manager is responsible for authorizing CI services.

Individual Employment staff hours must be attributed to the "Individual Employment and Billable Activity Phase(s)".

11. SETTINGS

Employment and day services must adhere to the Home and Community Based settings (HCBS) requirements of 42CFR 441 530(a)(1), including that:

A. The setting is integrated in the greater community and supports individuals to have full access to the greater community;

B. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

C. The setting provides opportunities to seek employment and work in competitive integrated settings; and

D. The setting facilitates individual choice regarding services and supports, and who provides them.

12. PROVIDER RESPONSIBILITIES

For State funded services, the Provider agrees to serve only persons referred by DDA who are eligible for direct client services under this Provider Contract. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. The Provider agrees to consider participants for service acceptance upon receipt of referral from County. All referred clients will have the opportunity to participate in vendor interviews and self-select the provider of their choice after interviews. A client may also self-select and waive their participation in interviews but the appropriate form must be completed and signed indicating their selection.

The Provider agrees to provide authorized services, participate in conferences and consult with State DDA Case Managers and County staff to implement changes in participant services if needed. Any change in a participant service including a change in hours of service, will be preceded by an approved and signed County Service Authorization form (CSA).

The Provider will clearly communicate to the client, prior to beginning services, the minimum and maximum service hours per month they can expect to receive. The amount of service hours a client receives is based upon his/her demonstrated need, acuity level, work history and documented special conditions per the Services Level Guidelines. If a change in the minimum and/or maximum service hour(s) is expected, the Provider will inform the client prior to the change. The client minimum and maximum service hour(s) ARE reflected in the County Service Authorization and updated planned rates information will not exceed the client's DDA PCSP. The amount of service the client receives should match the County Service Authorization and updated Planned Rates information.

The Provider will have at least one hour of face-to-face contact with each client they are authorized to serve. This contact must consist of at least one hour per month in order to bill for services during that month.

Services and programs shall be provided consistent with related RCW, WAC, Clallam County Program Contract and County Mandatory Requirements.

The Provider shall participate in regularly scheduled meetings between County DD staff and DDA staff to remain updated and current.

13. PROGRAM/SERVICE FUNDING AND RATES

Funding for services is a fee for service method of payment with each unit billed in accordance with the descriptions below.

STATE FUNDS:

Individual Supported Employment
Community Inclusion
Community Information and Education

COUNTY MILLAGE FUNDS:

Port Angeles School District Transition Services
Sequim School District Transition Services
Quillayute Valley School District Transition Services
Continuing Education and Training

IE Services:

This contract is fee-for-service. Individuals shall be billed at a rate of $75 per hour/unit, per month, from July 1, 2021 – June 30, 2023 unless a specialized rate is agreed upon by the agency, DDA Case Management and the County and

the rate is documented on the County Service Authorization form. One (1) unit equals an "hour" which is at least fifty minutes of service. Partial hour to the quarter may be recorded.

IE hours above 26 hours/month shall be billed at a rate of $40 per hour/unit.

A maximum monthly payment per client will be $3,500.

Reimbursable activities are contained on the *Individual Employment Billable Activities* document located at http://www.dshs.wa.gov/dda/county-best-practices.

The contractor will not be reimbursed for service hours/units provided above the maximum service hours/units documented on the client's DDA ISP or activities outside the scope of the *Employment Phases and Billable Activities* document.

CI Services:

This contract is fee-for-service. Individuals shall be billed at a rate of $35 per hour/unit, per month, from July 1, 2021 – June 30, 2023 unless a specialized rate is agreed upon by the agency, DDA Case Management and the County and the rate is documented on the County Service Authorization form. One (1) unit equals an "hour" which is at least fifty minutes of service. Partial hour to the quarter may be recorded.

Reimbursable activities are contained on the *Community Inclusion Billable Activities* document located at http://www.dshs.wa.gov/dda/county-best-practices.

Community Inclusion service support hours will be based on the participant's community Inclusion acuity as determined per WAC through the participant's DDA PSPC. Individuals receiving service hours above their assessed level of support or activities provided outside the scope of the *Community Inclusion Billable Activities* will not be reimbursed.

Community Information and Education:

568.40 Community Information and Education:

Provider, with prior written approval from County, may attend or provide community information and trainings that further the education of the community and/or staff regarding the inclusion of individuals with developmental disabilities into the workforce and/or community. Provider must provide the required documentation of attendance and expenses per county policy and request of the county before reimbursement.

The Total Maximum Compensation for completion of all Community Information and Education payment points shall not exceed **$3,500.**

High School Transition Services:

SERVICE CODE	SERVICE UNIT	UNIT RATE
County Millage	1 unit = 1 hour Maximum 20 hours per month 1:1 Ratio Only	$ 60.00/hour $1,200.00/month

14. PAYMENT, BILLING AND REPORTS

Billing shall be submitted no later than the 10th day of the month, following the month in which such expenses were incurred. Billing in December shall be submitted no later than the 3rd day of the month for services provided in November. Later submissions in December will result in payments delayed until the end of January. The County shall pay for services once a month.

Billing reports must be submitted electronically in accordance with requirements of the Washington State AWA Billing System. No payments will be made to the Provider until a timely and accurate billing report is received by the County.

Billing reports requiring corrections must be completed and resubmitted by the 15th day of the month. Failure to satisfy such requirements may result in a delay in payment.

Providers must mail a Contract Certification form with an original signature each month when they submit their billing reports electronically. This form must be received in the County office by the 15th day of the month. No payments will be made to the Provider until this form is received by the County. Failure to satisfy such requirements may result in a delay in payment.

A current Clallam County CSA must be in effect for each participant. Billing for services shall not exceed authorized amounts as indicated on the current form. Authorized units of service are pristine to the individual participant as assigned and noted on the Form. No sharing of hours between participants is allowed.

All initial invoices with documentation must be received by the County within 45 calendar days following the last day of the month in which the service is provided. Corrected invoices and documentation including re-posted billing information will be accepted throughout the fiscal year and long as they are received within 45 calendar days of the associated fiscal year. Payment will not be made on any invoice submitted past 45 calendar days after the program agreement fiscal year.

Late or corrected bills and accompanying documentation will be accepted up until 30 calendar days after the associated contract fiscal year. Payment will not be made on any bill submitted past the 30 calendar days of the associated contract fiscal year.

Client services shall not be reimbursed under this Provider Contract when the same services are paid for under the Rehabilitation Act of 1973 (DVR), Public Law 94-142 (Public Education), or any other source of public or private funding.

15. SERVICE STANDARDS

All providers of employment/day program services contracting with Clallam County to serve eligible individuals with developmental disabilities shall meet the following qualifications:

A. Compliance with APSE CESP Code of Conduct, Sections 1 and 3 regardless of certification status;

B. Assurance that potential conflict of interest (real or apparent) will not arise. Such a conflict would arise when the employee, officer or agent, any member of immediate family, guardian/decision-maker, or an organization which employs, or is about to employ, any of the above has financial or other interest in the client.

C. Documentation of experience, knowledge and performance in providing services to individuals with developmental disabilities will be maintained.

D. The following indicators will be incorporated into an agency's overall written performance plan and the agency will document progress over time. An employment service performance plan must include for each acuity level, the following client data:

   (1) Number of new jobs;

   (2) Number of jobs lost and reason for job loss;

   (3) Percentage of clients employed earning minimum wage or higher; and

   (4) Average number of hours worked by client.

E. Documented history of working cooperatively with community-based organizations including employers, the Division of Vocational Rehabilitation (DVR) and schools;

F. Demonstrated methods for providing services based on individual needs as outlined in a client's plan;

G. Commitment to support integration of individuals with developmental disabilities with people who are not disabled;

H. The administrative capabilities necessary to safeguard public funds including: maintaining accurate accounting books, records, documents and other materials relevant to the provision of goods and services;

I. A management system that provides for systematic accumulation, filing and retention of timely reports to the County, DDA and/or for federal audits;

J. Sufficient Policies and Procedures for establishment and maintenance of adequate internal control systems: The Provider will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail such that operations can continue should staffing change or absences occur;

K. Compliance with the qualifications outlined in DDA Policy 6.13, Program Provider Qualifications;

L. To be a qualified service provider of employment services, an agency must employ at least one or more individuals who:

(1) Have at least two years of experience – or an Employment Professional Certificate from Highline Community College of or CESP Certification and one year of experience - related to the employment services the agency provides to DDA clients;

(2) Experienced staff that have documented current training and/or continued education on best employment practices. Additionally experienced staff must have the skill and ability to impart this information to frontline/direct line staff and maintain evidence of doing so.

(3) Staff core competencies will include the following at minimum:

(a) Developing, obtaining, and maintaining community-based employment placements with minimum wage compensation or greater;
(b) Conducting Discovery assessments;
(c) Goal and career planning;
(d) Job preparation;
(e) Job development;
(f) Work place and job analysis;
(g) Job Coaching, including task design and training, support strategies, and natural support;
(h) Documenting goals and writing reports clearly; and
(i) Knowledge of Social Security benefits.

M. Ensures that direct service staff are 18 years of age or older, have received training and have documented knowledge in the following areas:

Prior to working with clients:

(1) Client Confidentiality;

(2) Current individual instruction and support plans for each client with whom the employee works;

(3) DDA Policy 4.11 Working Age Adult (adult services only);

(4) DDA Policy 5.06 Client Rights;

(5) DDA Policy 5.13 Protection from Abuse; Mandatory Reporting

(6) DDA Policy 6.08 Mandatory Reporting Requirements for Employment and Day Program Service Providers

(7) DDA Policy 9.03 Employee Protection from Bloodborne Pathogens

(8) DDA Policy 9.07 HIV & AIDS

(9) DDA Policy 12.01 Incident Management

(10) DD Policy 13.01 Public Disclosure of Records and Safeguarding of Confidential Information

(11) DDA Policy 14.01 Environmental Safety (First Aid/CPR)

(12) Competencies including:

(a) Values that support the abilities of each individual
(b) Effective Communication – The ability to effectively listen and to make one's self understood
(c) Planning methods
(d) Crisis Prevention and Intervention

Within One Month of Employment Start Date:
Overview of DDA Policies, including:

(1) DDA Policy 3.01 Service Plans

(2) DDA Policy 5.03 Client Complaints

(3) DDA Policy 5.17 Physical Intervention Techniques

Within Three Months of Employment Start Date:

(1) Program skill development

(2) DDA Policy 5.02 Necessary Supplemental Accommodation

(3) DDA Policy 5.05 Limited English Proficient Clients

(4) DDA Policy 5.14 Positive Behavior Support

(5) DDA Policy 5.15 Use of Restrictive Procedures

(6) DDA Policy 13.04 Access to Client Records Maintained by DDA

N. Ensures that all direct service staff review new and updated County and DDA policies when issued. Staff review will be documented in provider's file.

O. Ensures that direct service staff are licensed or registered when appropriate/required.

P. Proof of Background/Criminal History Check: A background/criminal history clearance is required every three years for all employees and/or volunteers who may have unsupervised access to vulnerable DDA Clients, in accordance with RCW 43.43.830-845, RCW 74.15.030, and chapter 388 WAC. If the Provider reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the Provider. The DSHS Background Check Central Unit (BCCU) must be utilized to obtain background clearance.

Q. The Provider and all their staff members are mandated reporters under RCW 74.34.020(1) and must comply with reporting requirements described in RCW 74.34.035, RCW 74.34.040 and RCW 26.44. If the County is notified that a Provider staff member is cited or on the registry for a substantiated finding, then that staff member will be prohibited from providing services under the Clallam County Provider Contract.

R. The Provider will promptly report to DSHS and the County per DDA Policy 5.13, *Protection from Abuse: Mandatory Reporting,* if:

(1) They have reasonable cause to believe that abandonment, abuse, financial exploitation or neglect (as defined in RCW 74.34.020) of a person who has a developmental disability (as defined in RCW 71A.10.020) has occurred, and,
(2) If they have reason to suspect that sexual or physical assault of such a person has occurred they shall also immediately report to the appropriate law enforcement agency.

S. The Provider will assure adequate staffing levels to provide all services and when staffing is not adequate will inform the County when staffing is not adequate to serving potential clients.

GENERAL TERMS & CONDITIONS

1. SCOPE OF PROVIDER'S SERVICES

The Provider agrees to provide to the County services and any materials set forth in the Special Terms & Conditions [Exhibit "A"] during the Contract period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Contract.

2. ASSIGNMENT

The Provider may not assign any of the Provider's Contract rights or obligations to a third party without the prior, written consent of the County and the written assumption of the Provider's obligations by the third party.

3. COMPLIANCE WITH APPLICABLE LAW

At all times during the term of the Contract, the Provider shall comply with all applicable federal, state and local laws, regulations, and rules.

4. CONFIDENTIALITY OF PARTICIPANT INFORMATION

A. The Provider shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the Provider's performance of the services contemplated hereunder, except:

(1) As provided by law; or

(2) In the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

B. The Provider shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Provider to employ reasonable security measures, which include restricting access to the Confidential Information by:

(1) Each Provider will have a written policy for the appropriate use, storage, disclosure, modification and loss of Confidential Information in all formats and all staff will be trained in this policy. Documentation of training will be maintained by Provider.

(2) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

(3) Physically securing any computers, documents, portable devices such as smart phones, tablets, flash memory devices, portable hard disks and laptop/notebook/netbook computers if those items or other media containing Confidential Information may be transported out of a Secured area. Data will not be stored on portable devices or media unless:

(a) It is appropriately encrypted with a key length of at least 128 bits;
(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method;
(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity. Maximum period of inactivity is 20 minutes;
(d) Properly inventoried and controlled;
(e) Stored in a secured area;
(f) Under the control of Contractor staff at all times when in an unsecured location.

(4) Ensuring the security of Confidential Information transmitted via fax (facsimile) by:

(a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
(b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
(c) Verifying after transmittal that the fax was received by the intended recipient.

(5) When transporting DSHS Confidential Information electronically, including via email, the Data will be protected by:

(a) Transporting the data within the (State Government Network) SGN or Contractor's internal network, or;
(b) Encrypting any Data that will be in transit outside the SGN or Contractor's internal network. This includes transit over the public internet.

(6) When transporting six (6) or more records containing Confidential Information, outside a Secure Area, do one or more of the following as appropriate:

(a) Use a Trusted System
(b) Encrypt the Confidential Information, including:
- Encrypting email and/or email attachments which contain Confidential Information
- Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

(7) Send paper documents containing Confidential Information via a Trusted System. When not in use, such records must be stored in a locked container such as a file cabinet, locking drawer or safe in a secured area accessible only to authorized personnel.

(8) DSHS data may be stored on portable or non-portable media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery process. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If so, such media will be protected as otherwise described in this contract. If this media is retired while DSHS Confidential Information still exists upon it, that data will be destroyed at that time in accordance with the approved destruction methods obtained from the County contact identified on the cover page of this Contract.

C. DSHS Data must be desegregated or otherwise distinguished from non-DSHS data. This is to ensure that when no longer needed by Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation:

(1) DSHS Data will be kept on media which will contain no non-DSHS Data. And/or,

(2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,

(3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

(4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS Data by the value of a specific field or fields within database records.

(5) When stored as physical paper documents, DSHS Data will be physically separated from non-DSHS Data in a drawer, folder or other container.
(6) When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS Data with which it is comingled must be protected as described in the preceding paragraphs.

D. Upon request of the County or at the end of the Contract term, or when no longer needed, the Provider shall return the Confidential Information or certify in writing that the Provider employed a DSHS approved method to

destroy the information. The Provider may obtain information regarding approved destruction methods from the County contact identified on the cover page of this Contract.

E. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping or incineration.

5. PROVIDER CERTIFICATION REGARDING ETHICS

Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the County Coordinator and DSHS Contact designated on the contract within one (1) business day of discovery. The Provider must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by the county, law or DSHS.

The Provider certifies that the Provider is in compliance with RCW Chapter 42.23 and 42.20; and shall comply with said RCW Chapters throughout the term of the Contract.

6. PROVIDER NOT AN EMPLOYEE OF COUNTY

The Provider's services shall be furnished by the Provider as an independent Provider and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

For purposes of the Contract, the Provider acknowledges that the Provider is not an officer, employee, or agent of the County. The Provider acknowledges that the entire compensation for this Contract is specified in Special Terms & Conditions [Exhibit "A"] and the Provider is not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Provider represents that it maintains a separate place of business, serves participants other than the County, will report all income and expense accrued under this Contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent Provider relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Provider agrees to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any overpayments be made to the Provider pursuant to this Contract, the Provider agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.

Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Provider, its officers, employees and/or agents, shall not be entitled to any benefits which Clallam County provides to its employees.

7. NO GUARANTEE OF EMPLOYMENT

The performance of all or part of this Contract by the Provider shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Provider or any employee of the Provider or any Subcontractor or any employee of any Subcontractor by the County at the present time or in the future.

8. REGULATIONS AND REQUIREMENTS

This Contract shall be subject to all federal, state and local laws, rules, and regulations.

9. RIGHT TO REVIEW

This Contract is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County Project Manager. Each subcontractor will be evaluated at least once per contract biennium. The evaluation system will incorporate Quality Assurance items and Quality Improvement measures incorporated with it. A copy of

this evaluation system shall be made available to all subcontractors and the DDA upon request. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Contract and its performance, and any and all communications with or evaluations by service recipients under this Contract. The Provider shall preserve and maintain all financial records and records relating to the performance of work under this Contract for six (6) years after Contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.

The Provider shall maintain records sufficient to:

A. document performance of all acts required by statute, regulation, rule, or the Contract;
B. substantiate the provider's statement of its organization's structure, tax status, capabilities, and performance;
C. demonstrate accounting procedures, practices and records which sufficiently and properly document the Provider's invoices to the County and all expenditures made by the Provider to perform as required by the Contract; and
D. establish and maintain adequate internal control systems: The Provider will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail that, operations can continue should staffing change or absences occur.

Documentation, books, records, and other evidence shall be kept at the company's Clallam County Office and will be available for examination by the County at reasonable times.

10. MODIFICATIONS

Either party may request changes in the Contract. Any and all agreed modifications shall be in writing, signed by each of the parties.

11. TERMINATION FOR DEFAULT

The County may terminate the Contract in whole or in part, by written notice to the Provider, if the County has a reasonable basis to believe that the Provider has:

A. failed to meet or maintain any requirement for contracting with the County;

B. failed to perform under any provision of the Contract;

C. becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors; and/or

D. otherwise breached any provision or condition of the Contract.

Before the County may terminate the Contract, the County may, by depositing written notice to the Provider in the U.S. Mail, postage prepaid, terminate the Contract, and at the County's option, obtain performance of the work elsewhere. If the Contract is terminated for default, the Provider shall not be entitled to receive any further payments under the Contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Provider. The Provider agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

However, the County may terminate the Contract without written notice and without opportunity for correction, if the County has a reasonable basis to believe that the Provider has failed to ensure the health or safety of any participant for whom services are being provided under the Contract or the Provider has violated any law, regulation, rule, or ordinance.

If a notice of termination for default has been issued and it is later determined for any reason that the Provider was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience paragraph hereof.

12. TERMINATION FOR CONVENIENCE

The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interest of the County. Whenever the Contract is terminated in accordance with this paragraph, the Provider shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the Contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of Contract by the County.

The Provider may terminate the Contract by giving the County at least thirty (30) calendar days' written notice addressed to: Director, Clallam County Department of Health and Human Services, 111 E 3rd Street · Port Angeles, WA 98362.

13. TERMINATION DUE TO INSUFFICIENT FUNDS

If sufficient funds for payment under this Contract are not appropriated or allocated or are withdrawn, reduced or otherwise limited, the County may terminate this Contract upon five (5) days written notice to the Provider. No penalty or expense shall accrue to the County in the event this provision applies.

14. TERMINATION PROCEDURE

The following provisions apply in the event that this Contract is terminated:

A. The Provider shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
B. The Provider shall provide the County with an accounting of authorized services provided through the effective date of termination.
C. If the Contract has been terminated for default, the County may withhold a sum from the final payment to the Provider that the County determines necessary to protect itself against loss or liability.

15. DEFENSE AND INDEMNITY CONTRACT

The Provider agrees to defend, indemnify and hold harmless the County, its appointed and elected officers, officials, agents and/or employees, from and against any and all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorney's fees and/or costs by reason of any and all claims and demands upon the County, its appointed and elected officers, officials, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Provider, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed and elected officers, officials, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed and elected officers, officials, agents and/or employees. It is further provided that no liability shall attach to the County by reason of entering into this Contract, except as expressly provided herein.

16. INDUSTRIAL INSURANCE WAIVER

With respect to the performance of this Contract and as to claims against the County, its appointed and/or elected officers, officials, agents and/or employees, the Provider expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Contract extend to any claim brought by or on behalf of any employee of the Provider. Along with the other provisions of this Contract, this waiver is mutually negotiated by the parties to this Contract.

17. VENUE AND CHOICE OF LAW

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Contract, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Contract shall be governed by the law of the State of Washington.

18. WITHOLDING PAYMENT

In the event the County Project Manager determines that the Provider has failed to perform any obligation under this Contract within the times set forth in this Contract, then the County may withhold from amounts otherwise due and payable to Provider the amount determined by the County as necessary to cure the default, until the County Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Provider to termination or damages, provided that the County promptly gives notice in writing to the Provider of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the County Project Manager set forth in a notice to the Provider of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Provider acts within the times and in strict accord with the provision of the Disputes clause of this Contract. The County may act in accordance with any determination of the County Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Provider, (3) to set off any amount paid or incurred from amounts due or to become due the Provider. In the event the Provider obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Provider by reason of good faith withholding by the County under this clause.

19. RIGHTS AND REMEDIES

The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

20. PROVIDER'S COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment received from the Provider concerning this Contract shall be binding upon the Provider, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Provider to fulfill such a commitment shall render the Provider liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Contract, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

21. PATENT/COPYRIGHT INFRINGEMENT

Provider will defend, indemnify and hold harmless the County, its appointed and elected officers, officials, agents and/or employees from and against any and all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its appointed and elected officers, officials, agents and/or employees for damages because of the Provider's alleged infringement of any patent or copyright. The Provider will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers, officials, agents and/or employees in any action. Such defense and payments are conditioned upon the following:

A. That Provider shall be notified promptly in writing by County of any notice of such claim.

B. Provider shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County

22. DISPUTES

A. The parties to this Agreement shall resolve all disputes at the most relevant level. The Contractor shall bear responsibility for resolving any dispute that occurs between a client and the Contractor.

B. Differences between the Contractor and the County, arising under and by virtue of the contract documents shall be brought to the attention of the County Coordinator at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County Coordinator shall be final and conclusive thirty (30) days from the date of mailing unless the Contractor mails or otherwise furnishes to the County Coordinator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County Coordinator are in error.

(1) In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral

argument and live testimony will not be permitted. The original written materials will be submitted to the County Coordinator, who will then deliver the materials to a Dispute Resolution Board as described below. Copies of all written materials will be served upon the parties.

(2) If an appeal of the County Coordinator decision is timely received, the County and the Contractor shall convene a dispute resolution board comprised of one member nominated separately by each party, and a third member identified and agreed upon by the two members. If the two members together cannot agree upon the third member, the Contractor and County are to petition the Clallam County Superior Court to designate a third member. The Dispute Resolution Board will then attempt to resolve the dispute based upon the written materials provided by the County Coordinator.

(3) Reviews of the Dispute Resolution Board's determination may be brought in the Superior Court of Clallam County within fifteen (15) days of mailing of the Dispute Resolution Board's written decision. Pending a final decision in the Superior Court of Clallam County, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

C. Notice of Potential Claims: The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the County Coordinator or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

D. Detailed Claim: The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

23. OWNERSHIP OF ITEMS PRODUCED

All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Provider and/or its consultants or Subcontractors, in connection with the performance of this Contract shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws and Provider and/or its agents shall have no ownership or use rights in the work.

24. RECOVERY OF PAYMENTS TO PROVIDER

The right of the Provider to retain monies paid to it is contingent upon satisfactory performance of this Contract, including the satisfactory completion of the project described in the Special Terms & Conditions [Exhibit "A"]. In the event that the Provider fails, for any reason, to perform obligations required of it by this Contract, the Provider may, at the County Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Provider for those parts of the project that are rendered worthless in the opinion of the County Project Manager by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the County Project Manager demands repayment of funds.

25. PROJECT APPROVAL

The extent and character of all work and services to be performed under this Contract by the Provider shall be subject to the review and approval of the County Project Manager. For purposes of this Contract, the County Project Manager is:

Name:	Kelley Lawrence
Title:	Clallam County Coordinator for Developmental Disabilities
Address:	111 E 3rd Street · Port Angeles, WA 98362
Telephone:	360-417-2407

E-mail: klawrence@co.clallam.wa.us
Fax: 360-452-9605

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County Project Manager as to the extent and character of the work to be done shall govern subject to the Provider's right to appeal that decision as provided herein.

26. NON-DISCRIMINATION

The Provider shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.

27. SUBCONTRACTORS

This is a fee-for-service Contract and the Provider will not enter into subcontracts for any of the work expected by this Contract without first obtaining review and written approval of the subcontract by the County.

In the event that the Provider employs the use of any Subcontractors with the written approval of the County, the Contract between the Provider and the Subcontractor shall provide that the Subcontractor bound by the terms of this Contract between the County and the Provider. The Provider shall ensure that in all subcontracts entered into, Clallam County is named as an express third-party beneficiary of such contracts with full rights as such.

28. THIRD PARTY BENEFICIARIES

This Contract is intended for the benefit of the County and Provider and not for the benefit of any third parties.

29. STANDARD OF CARE

The Provider shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Provider currently practicing under similar circumstances. The Provider shall, without additional compensation, correct those services not meeting such a standard.

30. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Contract unless a more specific time period is set forth in either the Special Terms & Conditions or Scope of Work

31. NOTICE

Except as set forth elsewhere in the Contract, for all purposes under this Contract, except service of process, any notices shall be given by the Provider to the County Project Manager. Notice to the Provider for all purposes under this Contract shall be given to the person executing the Contract on behalf of the Provider at the address identified on the signature page.

32. SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

33. PRECEDENCE

In the event of an inconsistency in the Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:

A. Applicable federal, state, and local law, regulations, rules, and ordinances;

B. the DSHS Basic Agreement;

C. this Contract, including Exhibits;

D. these General Terms & Conditions; and

E. any document incorporated in the Contract by reference.

34. WAIVER

Waiver of any breach or condition of this Contract shall not be deemed a waiver of any prior to subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

35. ATTORNEY FEES

In the event that litigation must be brought to enforce the terms of this Contract, the prevailing party shall be entitled to be paid reasonable attorney fees.

36. CONSTRUCTION

This Contract has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.

37. CORRECTIVE ACTION PROCESS

If the County finds evidence of potential non-compliance during the monitoring process or learns that the Provider is out of compliance with any of the terms or conditions of this Contract, the following process will be pursued:

A. The County's DD Coordinator notifies the appropriate Provider staff of the potential non-compliance and an agreeable solution is reached.

B. If the process described in (A) does not result in resolution, the County will establish a date when representatives of the County and Provider shall meet and discuss areas of contention and attempt to resolve the issues involved.

The County will provide by registered mail to the Provider's Director and Board President a written summary of the areas of non-compliance or potential non-compliance.

C. Within twenty (20) calendar days of the date the written notification was mailed, a discussion between County and the Provider's Director of Board designee of the areas of non compliance or potential non-compliance shall be conducted.

D. If the County and the Provider cannot agree upon a resolution, the County shall withhold payments related to the area(s) of non-compliance or potential non- compliance, unless a written extension of the period to agree upon corrective action is issued by the County.

E. Nothing in this section shall preclude audits by other duly authorized representatives of the County, the Department of Social and Health Services or other departments of State government, nor shall it preclude the recoupment of overpayments identified through those audit procedures.

38. EXECUTION, AMENDMENT AND WAIVER

The Contract shall be binding on the County only upon signature by the County Commissioners. The Contract may only be altered, amended, or waived by a written amendment executed by both parties. Only the County Commissioners have authority to alter, amend or waive the Contract on behalf of the County.

39. INSURANCE

The Provider shall maintain insurance as specified and shall pay for losses for which it is found liable. Without limiting the Provider's indemnification, it is agreed that the Provider shall maintain in force, at all times during the performance

of this Contract, a policy or policies of insurance covering its operations and shall in each policy, name the County, its appointed and/or elected officers, officials, agents and/or employees as additional insureds.

The Provider shall maintain continuously during the term of this Contract public liability insurance with limits of liability not less than:

$ 500,000	each person, personal injury, including death
$1,000,000	each occurrence, personal injury, including death
$ 250,000	each occurrence, property damage liability
$2,000,000	aggregate
$1,000,000	Errors and Omissions per occurrence
$2,000,000	Errors and Omissions aggregate

The Provider shall inform the County in writing of any changes in insurance and provide County with a new certificate of insurance within twenty days of the change.

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such policy of insurance the Provider is required to obtain and maintain pursuant to this Agreement shall be primary over any third-party liability coverage provided to Clallam County by and through its membership in the Washington Counties Risk Pool or WCRP. The third-party liability coverage provided by the WCRP to Clallam County shall be non-contributory with respect to any policy of insurance the Provider is required to obtain and maintain pursuant to this Agreement. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within 20 days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

If the proof of insurance or certificate of coverage indicating the County is an "additional insured" to a policy obtained by the Consultant in order to comply with this agreement refers to an endorsement (by number, abbreviation or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Consultant to obtain the full text of that endorsement and forward that full text to the County within 30 days of the execution of this Agreement.

The coverage limits identified herein shall not limit the potential liability of the Provider and the Provider's duty to defend, indemnify, and hold harmless shall apply to any liability beyond the scope of insurance coverage.

The County retains the right to withhold payment if the Provider does not provide timely and adequate proof of the insurance required by this Section.

The Provider shall ensure that vehicles used to transport participants as a part of services provided under this Contract are covered by a commercial vehicle insurance policy with a clear indication that clients may be transported by the provider and are covered under the policy. Further, each employee driving clients shall have their personal automobile insurance, driver's license and current driving abstract on file at the Provider's administrative office.

The Provider shall maintain Worker's Compensation coverage as required by the Industrial Insurance Act of the State of Washington.

The Provider agrees to maintain a fidelity bond in the amount of Twenty Thousand Dollars ($20,000) which covers all individuals responsible for the administration of funds. Evidence of the fidelity bond shall be provided to the County within thirty (30) calendar days of the date of this Contract. The Provider will inform the County in writing of any change in the bond and provide evidence of continuing bonding coverage within thirty (30) calendar days of the change.

40. AUDITS

The Provider shall demonstrate the ability to safeguard public funds including maintaining books, records, documents and other materials relevant to the provision of goods and services.

Except as set forth herein, for contracts up to and including one year in length, an independent financial audit ("audit") of funds shall be performed. For contracts in excess of one year and up to and including two years, an independent financial review ("review") of funds shall be performed in the first year of the Contract and an audit shall be performed in the second year.

The Provider is required to submit to the County a copy of the independent auditor's or reviewer's final report within thirty (30) days following the issuance of the report. Additionally, the Provider shall provide comments on the findings and recommendations in the report, including a plan for Corrective Action.

The Provider will submit their plan for audit or review to the County by **September 1, 2021,** including time frame for completion of audit or review, standards by which they will be audited or reviewed, and the name of the individual or organization who will complete the audit or review, the Provider's total federal funding, and determination of the applicability of a Single Audit.

Audits and reviews must be submitted within the time frame described in the Provider's plan. Any audit or review must be in accordance with all applicable Federal and State statutes, as well as the State to County Basic Agreement.

Documentation and records shall be maintained to support levels of service billed. These records and supportive materials shall be available to the County upon request. Audits and reviews shall be conducted to determine compliance with the rules and regulations of each program service. In accordance with RCW 74.09.200, only those participant records or portions thereof, for which services were reimbursed by the County, may be examined.

If the Provider is a subrecipient of federal awards as defined by the Office of Management and Budget (OMB), the Provider shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance numbers. The Provider shall make the Provider's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DSHS and the County. The Provider shall incorporate audit requirements into all contracts between the Provider and its Subcontractors who are subrecipients. The Provider shall comply with any future amendments to the Federal Code of Regulation for Single Audits and any successor or replacement Circular or regulation.

If the Provider expends $750,000 or more in federal awards from any and/or all sources in any fiscal year beginning after June 30, 1996, the Provider shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Provider shall submit to the County contact person the data collections form and reporting package specified in the Federal Code of Regulation for Single Audits, reports required by the program specific audit guide, if applicable, and a copy of any management letters issued by the auditor.

41. TREATMENT OF ASSETS PURCHASED BY PROVIDER

Except as provided in the Contract, title to all assets (property) purchased or furnished by the Provider is vested in the Provider and the County waives all claim of ownership to such property.

42. TREATMENT OF PARTICIPANT ASSETS

Except as otherwise provided by court order, the Provider shall ensure that any participant for whom the Provider is providing services under the Contract shall have unrestricted access to the participant's personal property. The Provider shall not interfere with the participant's ownership, possession, or use of such property. Upon termination of the Contract, the Provider shall immediately release to the participant all of the participant's personal property.

43. TREATMENT OF COUNTY ASSETS

Except as otherwise provided in the Contract, title to all assets (property) purchased or furnished by the County for use by the Provider during the Contract term shall remain with the County. During the term of the Contract, the Provider shall protect, maintain, and insure all County property in the Provider's possession against loss or damage.

44. TITLE XIX WAIVER PROVISO

Participants identified as covered under Division of Developmental Disabilities' home and community-based waiver programs shall not be funded under this Contract when services are available from the Division of Vocational Rehabilitation under PL 94-142, Title V, Section 504 of the Rehabilitation Act of 1973 or under Social Security

programs which assist with employment options under PL 99-643, Section 1619(a) Employment Opportunities for Disabled Americans Act, 1986, PASS or IRWE plans.

The Provider assures that documentation is on file with the County assigning to the County its Medicaid billing rights for services to participants eligible under DDA's home and community-based waivers. Such services must be purchased no differently from the way services are purchased for participants not eligible under the waiver. Services must be purchased on a Fee for Service basis to satisfy the Title XIX Contract.

45. HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT of 1996 (HIPAA)

In addition to any other confidentiality requirements set forth herein, the Provider shall comply with the following provisions if it constitutes a "business associate" as that term is defined in 45 CFR §160.103, as now or hereafter amended.

A. The Provider is not authorized to use or further disclose "Protected Health Information" (PHI) as that phrase is defined in 45 CFR § 164.501, as now or hereafter amended, in a manner that would violate the requirements of 45 CFR § 165.504(e), as now or hereafter amended, if done by the Clallam County, except that:

(1) The Provider may use and disclose PHI for the proper management and administration of the Provider, as provided in paragraph 45 CFR § 164.504(e) (4); and

(2) The Provider may provide data aggregation services relating to the health care operations of Clallam County.

B. The Provider will:

(1) Not use or further disclose the information other than as permitted or required by this Contract or as required by law;

(2) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Contract;

(3) Report to Clallam County any use or disclosure of the information not provided for by this Contract of which it becomes aware;

(4) Ensure that any agents, including a Subcontractor to whom it provides PHI received from, or created or received by the Provider on behalf of, Clallam County agrees to the same restrictions and conditions that apply to the Provider with respect to such information;

(5) Make available PHI in accordance with 45 CFR § 164.524;

(6) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526;

(7) Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(8) Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Provider on behalf of, Clallam County available to the Secretary for purposes of determining Clallam County's compliance with this subpart; and

(9) At termination of the Contract, if feasible, return or destroy all PHI received from, or created or received by the Provider on behalf of, Clallam County that the Provider still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the Contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

C. In addition to any other termination clause herein, this Contract may be terminated by Clallam County if Clallam County determines that the Provider has violated a material term of this provision.

D. The Provider may use the information it has received in its capacity as a business associate to Clallam County, if necessary:

(1) For the proper management and administration of the Provider; or

(2) To carry out the legal responsibilities of the Provider.

E. The Provider may disclose the information it has received in its capacity as a business associate for the purposes described in 4 of this section, if:

(1) The disclosure is required by law; or

(2) (a) The Provider obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and

(b) The person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.

46. SURVIVAL

Without being exclusive, Paragraphs 7, 10, 16-22, 24-25 and 34-37 of these General Terms & Conditions shall survive any termination, expiration or determination of invalidity of this Contract in whole or in part. Any other Paragraphs of this Contract which, by their sense and context, are intended to survive shall also survive.

47. ENTIRE CONTRACT

This written Contract represents the entire Contract between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

48. DEBARMENT CERTIFICATION

The Provider, by signature to this Agreement, certifies that the Provider is not presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any Federal or State department or agency.

49. BACKGROUND/CRIMINAL HISTORY CHECK

A background criminal history clearance is required every three years for all employees, subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS participants, in accordance with RCW 43.43.830-845, RCW 74.15.030 and chapter 388.06 WAC. Character Competence and Suitability Reviews, if required, will be updated every three years.

If the entity reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in Chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the disqualified individual provider.

It is required that the DSHS Background Check Central Unit (BCCU) be utilized to obtain background clearance.

50. REPORTING ABUSE AND NEGLECT

The Provider and its subcontractors under this contract will comply with RCW 74.34 and RCW 26.44 to the extent required by law. If the County is notified by DSHS that a Provider (or any of their staff, volunteers or authorized agents) is cited or on the registry for a substantiated finding, then associated staff will be prohibited from providing services under this contract.

DATA SECURITY REQUIREMENTS

1. DEFINITIONS

The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:

A. "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf).

B. "Authorized Users(s)" means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.

C. "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. For purposes of this contract, data classified as Category 4 refers to data protected by: the Health Insurance Portability and Accountability Act (HIPAA).

D. "Cloud" means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iCloud, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, O365, and Rackspace.

E. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits (256 preferred) for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

F. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

G. "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, orWindows Phone. Mobile Devices include smart phones, most tablets, and other form factors.

H. "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.

I. "Portable Device" means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.

J. Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.

K. "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.

L. "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.

M. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.

2. AUTHORITY

The security requirements described in this document reflect the applicable requirements of Standard 141.10 (https://ocio.wa.gov/policies) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: https://www.dshs.wa.gov/ffa/keeping-dshs- client-information-private-and-secure, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.

3. ADMINISTRATIVE CONTOLS

The Contractor must have the following controls in place:

A. A documented security policy governing the secure use of its computer network and systems, and which defines sanctions that may be applied to Contractor staff for violating that policy.

B. If the Data shared under this agreement is classified as Category 4 data, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.

C. If Confidential Information shared under this agreement is classified as Category 4 data, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.

4. AUTHORIZATION, AUTHENTICATION, AND ACCESS

In order to ensure that access to the Data is limited to authorized staff, the Contractor must:

A. Have documented policies and procedures governing access to systems with the shared Data

B. Restrict access through administrative, physical, and technical controls to authorized staff.

C. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action

D. Ensure that only authorized users are capable of accessing the Data.

E. Ensure that an employee's access to the Data is removed immediately:

(1) Upon suspected compromise of the user credentials.

(2) When their employment, or the contract under which the Data is made available to them, is terminated.

(3) When they no longer need access to the Data to fulfill the requirements of the contract.

F. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.

G. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:

(1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.

(2) That a password does not contain a user's name, logon ID, or any form of their full name.

(3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.

(4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.

H. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:

(1) Ensuring mitigations applied to the system don't allow end-user modification.

(2) Not allowing the use of dial-up connections.

(3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.

(4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.

(5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.

(6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.

I. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:

(1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor

(2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)

(3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)

J. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:

(1) Be a minimum of six alphanumeric characters.

(2) Contain at least three unique character classes (upper case, lower case, letter, number).

(3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.

K. Render the device unusable after a maximum of 10 failed logon attempts.

5. PROTECTION OF DATA

The Contractor agrees to store Data on one or more of the following media and protect the Data as described:

A. **Hard disk drives**. For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms, which provide equal or greater security, such as biometrics or smart cards.

B. **Network server disks**. For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secure Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data, as outlined below in Section 8 Data Disposition, may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

C. **Optical discs (CDs or DVDs) in local workstation optical disc drives**. Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

D. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

E. **Paper documents**. Any paper records must be protected by storing the records in a Secure Area, which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.

F. **Remote Access**. Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

G. **Data storage on portable devices or media.**

(1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections::

(a) Encrypt the Data.
(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
(d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
- Keeping them in a Secure Area when not in use,
- Using check-in/check-out procedures when they are shared, and
- Taking frequent inventories.

(2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

H. **Data stored for backup purposes**.

(1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition.

(2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition

I. **Cloud storage**. DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:

(1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:

(a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attest to the contact listed in the contract and keep a copy of that attestation for your records in writing that all such procedures will be uniformly followed.
(b) The Data will be Encrypted while within the Contractor network.
(c) The Data will remain Encrypted during transmission to the Cloud.
(d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
(e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor.
(f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on the contractor network
(g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.

(2) Data will not be stored on an Enterprise Cloud storage solution unless either:

(a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,
(b) The Cloud storage solution used is HIPAA compliant.

(3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.

6. SYSTEM PROTECTION

To prevent compromise of systems which contain DSHS Data or through which that Data passes:

A. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.

B. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.

C. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.

D. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

7. DATA SEGREGATION

A. DSHS category 4 data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation

(1) DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data.

(2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data.

(3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

(4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.

(5) When stored as physical paper documents, DSHS Data will be physically segregated from non- DSHS data in a drawer, folder, or other container.

B. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

8. DATA DISPOSITION

When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	**Will be destroyed by:**
Server or workstation hard disks, or	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or
Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.

Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse
Magnetic tape	Degaussing, incinerating or crosscut shredding

9. NOTIFICATION OF COMPROMISE OR POTENTIAL COMPROMISE

The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

10. DATA SHARED WITH SUBCONTRACTORS

If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub- Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

2h
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Health & Human Services

WORK SESSION ☒ **Meeting Date:** September 20, 2021

REGULAR AGENDA ☒ **Meeting Date:** September 28, 2021

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing ☐ Contract/Agreement/MOU ☒ Contract # 11331-21-PJA

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

These contracts are between Clallam County HHS and Concerned Citizens, Morningside and Pierce Jones & Associates for adult developmental disability services. The purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons who experience intellectual and developmental disabilities. Contract Agreement period is July 1, 2021 thru June 30, 2023.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Funds are already in the budget.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Please approve and sign.

County Official signature & print name: Kevin LoPiccolo

Name of Employee/Stakeholder attending meeting: Kevin LoPiccolo & Kelley Lawrence

Relevant Departments: Health & Human Services

Date submitted: September 14, 2021

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* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

11331-21-PJA

PROVIDER CONTRACT
Pierce Jones & Associates

This PROVIDER CONTRACT is entered into and effective July 1, 2021 through June 30, 2023 between CLALLAM COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, hereinafter referred to as "County" and Pierce Jones & Associates, hereinafter referred to as "Provider".

CLALLAM COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES

Address: 111 E 3rd Street
Port Angeles, WA 98362

Main Phone: (360) 417-2303
Fax: (360) 452-9605

Contact Person: Kelley Lawrence, Clallam County Coordinator for Developmental Disabilities
Contact Phone: (360) 417-2407
Contact E-Mail: klawrence@co.clallam.wa.us

Provider: Pierce Jones & Associates
720 E Washington Street, Suite 106
Sequim, WA 98382
Phone: (360) 582-9965
Fax: (360) 457-1105
E-mail: karen@piercejones.net
Contact Person: Karen Pierce, Owner
Service Modality: Individual Supported Employment
Community Inclusion
Community Information & Education
County Millage: Sequim School District
Quillayute Valley School District
Port Angeles School District

Funding Authority:
DSHS Basic Agreement # 1783-86259
DDA County Services Agreement # 2163-22716
DSHS, DDA Home & Community Based
Waiver Program (CMS)
Tax Identification Numbers:
IRS #: 42-1733574
UBI #: 601-944-741

This Contract is comprised of:

Exhibit "A"	Special Terms & Conditions
Exhibit "B"	General Terms & Conditions
Exhibit "C"	Data Security Requirements

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

IN WITNESS WHEREOF, the parties have entered this Contract on this ___day of _____, 2021.

BOARD OF CLALLAM COUNTY COMMISSIONERS:

Mark Ozias, Chair

ATTEST:

Loni Gores, Clerk of the Board

PIERCE JONES & ASSOCIATES:

Karen Pierce, Owner — Aug 30, 2021 — Date

APPROVED AS TO FORM:

SPECIAL TERMS AND CONDITIONS

1. DEFINITIONS SPECIFIC TO PROGRAM AGREEMENT

The words and phrases listed below, as used in this Program Agreement, shall each have the following definitions:

A. "Acuity Level" means the level of an individual's abilities and needs as determined through the DDA assessment.

B. "AWA" means ALTSA Web Access.

C. "Additional Consumer Services" refers to indirect Client service types as follows:

(1) "Community Information and Education": Activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.

(2) "Training": To increase the job related skills and knowledge of staff, providers, volunteers, or interning students in the provision of services to people with developmental disabilities. Also to enhance program related skills of board or advisory board members.

(3) "Other Activities" reserved for special projects and demonstrations categorized into the following types:

(1) Infrastructure projects: Projects in support of Clients (services not easily tracked back to a specific working age Client) or that directly benefit a Client(s) but the Client is not of working age. Examples include planning services like benefits planning and generic job development e.g. "Project Search".
(2) Start-up projects: Projects that support an agency or directly benefit the agency. Examples include equipment purchases and agency administrative support.
(3) Partnership project: Collaborative partnerships with school districts, employment providers, DVR, families, employers and other community collaborators needed to provide the employment supports and services young adults with developmental disabilities require to become employed during the school year they turn twenty-one (21). Supports provided should complement and not replace what the student(s) receive through the Individualized Education Program (IEP).

D. "BARS" means Budget and Accounting Reporting System.

E. "Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the Developmental Disabilities Administration or is an identified PASRR Client.

F. "Competitive Integrated Employment" means work performed by an individual on a part-time or full- time basis, within an integrated setting within the community that meets HCBS settings requirements. The individual must be compensated at minimum wage or higher, using the higher of the Federal, State, or local rate, and at a rate comparable to the wage paid to non-disabled workers performing the same tasks, including receiving the same benefits and opportunities for advancement.

G. "Consumer Support" refers to direct Client service types as follows:

(1) "Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion. These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Employment or Group Supported Employment) for working age individuals who have received nine months of employment support.

(2) "Individual Supported Employment" or "IE": services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities, and promote career development. These are individualized services necessary to help persons with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job.

(3) "Individualized Technical Assistance" or "ITA": services are a part of an individual's pathway to individual employment. This service provides assessment and consultation to the employment provider to identify and address existing barriers to employment. This is in addition to supports received through supported employment services for individuals who have not yet achieved their employment goal.

H. "County" is the political subdivision of the state of Washington and the county or counties entering into this Program Agreement.

I. "CRM" means the DDA Case Resource Manager.

J. "CSA" means County Service Authorization.

K. "DD" means developmental disabilities.

L. "DDA" means the Developmental Disabilities Administration within DSHS.

M. "DDA Region" means the DDA Regional office.

N. "DVR" means the Division of Vocational Rehabilitation.

O. "General Terms and Conditions" means the contractual provisions contained within that agreement, which govern the contractual relationship between DSHS and the county and it's subcontractor(s).

P. "HCBS" means the Medicaid Home and Community Based Services.

Q. "PASRR" means Preadmission Screening and Resident Review.

R. "PCSP" means Person Centered Service Plan, a document that authorizes and identifies the DDA paid services to meet a Client's assessed needs. Formerly referred to as the Individual Support Plan.

S. "Quality Assurance" means an adherence to all Program Agreement requirements, including DDA Policy 6.13, *Employment/Day Program Provider Qualifications,* County Guidelines and the Criteria for Evaluation, as well as a focus on reasonably expected levels of performance, quality, and practice.

T. "Quality Improvement" means a focus on activities to improve performance above minimum standards and reasonably expected levels of performance, quality and practice.

U. "Service Provider" is a qualified Client service vendor who is contracted to provide Employment and Day Program services.

V. "Subcontractor" is the service provider contracted by the County to provide services.

W. "RCW" means Revised Codes of Washington

X. "WAC" means Washington Administrative Code

2. TERM OF CONTRACT

Term of this contract shall be July 1, 2021 through June 30, 2023.

3. PURPOSE

This Contract is entered into between County and Pierce Jones & Associates in accordance with chapter 71A.14 RCW. Its purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disabilities.

4. CLIENT ELIGIBILITY

Client eligibility and service referral are the responsibility of DDA under chapter 388-823 WAC (Eligibility) and chapter 388-825 WAC (Service Rules). Only persons referred by DDA shall be eligible for direct client services under this contract. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. Direct client services provided without authorization by DDA or the County are not reimbursable under this Contract.

5. PROVIDER QUALIFICATIONS

Provider assures they meet the qualifications as outlined in the DDA Policy 6.13, ***Program Provider Qualifications***. Administration of the developmental disabilities County program cannot be subcontracted.

6. HOME AND COMMUNITY BASED WAIVER SERVICES ASSIGNMENT OF MEDICAID BILLING RIGHTS

Provider agrees to assign to DDA its Medicaid billing rights for services to DDA Clients eligible under Title XIX programs in this Contract. Written documentation shall be available to County upon request.

7. REPORTING ABUSE AND NEGLECT

The Provider is a mandated reporters under RCW 74.34.020(13) must comply with reporting requirements described in RCW74.34.035,.040 and chapter 26.44 RCW. If a Provider staff member is cited or on the registry for a substantiated finding, then, that associated staff will be prohibited from providing services under this contract.

8. PROVIDER WILL FOLLOW ALL APPLICABLE FEDERAL, STATE, AND LOCAL POLICIES AND GUIDELINES

DDA policy manual https://www.dshs.wa.gov/dda/policies-and-rules/policy-manual

1992 County Guidelines (https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/c_guidelines.pdf)

DDA Guiding Values
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Guiding%20Values%20Booklet.pdf

County Guide to Achieve DDA's Guiding Values

2018-19 Mandatory Requirements

DDA Policy 4.11, County Services for Working Age Adults

Chapter WAC 388-850, chapter 388-828 WAC, WAC 388-845-0001, 0030, 0210, 0215, 0220, 0600-0610, 1030-1040, 2100, 2110

Criteria for Evaluation

IRS Self-Employment Guidelines

Clallam County Supported Self-Employment Manual

DDA Guidelines for Community Assessments within Employment and Vocational Programs;

Washington Protection and Advocacy (WPAS) Access Agreement
https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/WPAS.pdf

APSE CESP Certification Handbook; http://www.apse.org/wp-content/uploads/docs/CESP%20Candidate%20Handbook.1.12.pdf

COUNTY BEST PRACTICES: Individual Employment Billable Activities, Community Inclusion Billable Activities, Employment Plan/Progress Form Instructions, Community Inclusion Plan/Progress Form Instructions, Criteria for Evaluation 2019-2021, DDA Self-Employment Guidelines, https://www.dshs.wa.gov/dda/county-best-practices and any other requirements established by the Department of Social and Health Services and the County.

Subcontractors: The County will pass on all applicable contractual requirements that are between DDA and the County to the subcontractor. The County shall immediately notify the DDA Region of the County's intent to terminate a subcontractor who is serving a DDA referral. Individuals or agencies contracted with a county or DDA may not subcontract for Employment or Community Inclusion services.

9. SERVICE DESCRIPTION

A. INDIVIDUAL SUPPORTED EMPLOYMENT (568.64)

The Provider shall, under BARS code 568.64, provide services as follows:

(1) **Individual Supported Employment** services are a part of an individual's pathway to employment and are tailored to individual needs, interests, and abilities and promote career development. These are individualized services necessary to help a person with developmental disabilities obtain and continue integrated employment at or above the state's minimum wage in the general workforce. These services may include intake, discovery, assessment, job preparation, job marketing, job supports, record keeping and support to maintain a job (per the Individual Employment Phases & Billable Activities)

Clients in an **employment** program will be supported to work towards a living wage. A living wage is the amount needed to enable an individual to meet or exceed his/her living expenses. Clients should be supported to average twenty (20) hours of community work per week or eighty-six (86) hours per month; however, each person's preferred hours of employment should be taken into consideration. The amount of service a Client receives will be based on his/her demonstrated need, acuity level and work history per WAC 388-828. Outcomes will be established in accordance with County Guidelines.

Provider employment staff will attend the annual assessment and case manager PCSP development meeting, when properly notified with at least two weeks' advance notice, for each participant the provider serves.

All participants will be contacted by the Provider according to participant need or at least once per month.

At least 40 documented hours of County-approved training per Fiscal Year (July 1 – June 30) will occur for each FTE staff person who provides services in this modality. The provider shall keep track of all training received for each staff person.

The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.

Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

All Clients will be contacted by their service provider according to Client need and at least once per month.

Clients will be assisted in accessing DVR services per the DDA/DVR MOU. Client services shall not be reimbursed under this Program Agreement when the same services are paid for under the Rehabilitation Act of 1973 by DVR, Public Law 94-142 or any other source of public or private funding.

For Individual Employment where the provider is also the client's employer, funding for the service provider will be available for the first 6 months of employment. At the end of the 6 months another service provider, who is not the employer of record, must provide the support unless the county issues a written approval for the provider to continue with long term supports.

(2) **Individual Supported Employment** can include Supported Self-Employment. Supported Self-Employment, if an applicable goal, must meet the following requirements:

(1) Adhere to Washington State DDA Self-Employment Policy Guidelines
(2) Determine that the proposed activity is a business according to IRS Guidelines
(3) Once it has been determined the activity will meet IRS rules for a business, the self-employed person receiving DDA employment supports will:
- Demonstrate the individual receiving services owns and operates the business;
- Provide a Business Plan to the County and DDA demonstrating feasibility as determined by DVR or a neutral, agreed-upon third party business expert;
- Become licensed if required and follow all local, state, and federal regulations and rules;
- Establish benchmarks for profitability and demonstrate progress is being made toward reaching those profit benchmarks; and
- Demonstrate the business will likely provide a living wage.

(4) Adhere to the Clallam County Supported Self-Employment Manual.

B. COMMUNITY INCLUSION

"Community Inclusion" or "CI": services are individualized services provided in typical integrated community settings for individuals in retirement.. Services will promote individualized skill development, independent living and community integration for persons to learn how to actively and independently engage in their local community. Activities will provide opportunities to develop relationships and to learn, practice and apply skills that result in greater independence and community inclusion (per the Community Inclusion Billable Activities). These services may be authorized for individuals age 62 and older. These services may be authorized instead of employment support (Individual Supported Employment) for working age individuals who have received nine (9) months of employment support.

(1) Monthly Community Inclusion (CI) service support hours will be based on the Client's CI service level per WAC 388-828-9310 for all Clients who began receiving CI services July 1, 2011 and forward.

(a) To ensure health and safety, promote positive image and relationships in the community, increase competence and individualized skill-building, and achieve other expected benefits of CI, services will occur individually or in a group of no more than two (2) or three (3) individuals with similar interests and needs.
(b) CI services will focus on activities that are typically experienced by the general public. Support to participate in segregated activities and/or specialized activities will not be reimbursed.
(c) A Client receiving CI services will not receive employment support simultaneously.
(d) A Client receiving CI services may at any time choose to leave CI to pursue work and receive employment support.

(2) The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

(3) All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, guardian and others as appropriate.

(4) Semi-annual progress reports that describe the outcomes of activities will be provided by the provider or the County to the client, their CRM, guardian and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

(5) All Clients will be contacted by their service provider according to Client need and at least once per month.

C. TRANSPORTATION (IE and CI)

It is the Provider's responsibility to inform participants that transportation is not the responsibility of the Provider to supply. Transportation training may include coordination of the multiple transportation services, training the individual in use of public transportation, supports for the individual to obtain a driver's license, walking, bicycling or use of the student's family, friends or co-workers to provide transportation. The Provider shall assess and document in the EP/PR each participant's transportation needs.

The Provider shall assist each participant to access public or specialized transportation for any activity sponsored as a part of Individualized Supportive Employment services. It is expected that public or specialized transportation will be utilized, except as detailed in the transportation plan. The cost of transportation is included in the fee for service that a Provider receives.

If no other viable transportation options are available, the Provider may transport participants in Provider or employee vehicles provided that:

(1) Provider complies with the automobile insurance requirement set forth in the Provider Contract;

(2) Automobile insurance specifically indicates that the provider is covered for transporting clients;

(3) Transportation Assessment and Plan indicates this is the only feasible mode of transportation; and

(4) DDA Case Manager agrees to the Transportation Assessment and Plan.

D. COMMUNITY INFORMATION & EDUCATION (568.40) AND COUNTY MILLAGE FUNDS

The Provider shall, under BARS code 568.40, provide services as follows:

Community Information & Education refers to costs incurred by the program for activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services, activities aimed at promoting public awareness and involvement; community consultation, capacity building and organization activities.

In addition, Provider may use Community and Education and Millage funds to accomplish any of the following certifications and/or trainings that support professional development that enables staff to support individuals with developmental disabilities:

Certification as Certified Professional Employment Professionals (CESP)
Assist Clallam County in creating a more effective and professional team of job coaches/developers for persons with developmental disabilities. Increase capacity of local agencies to meet the employment needs of individuals with developmental disabilities. Increase effectiveness in placing and supporting individuals with developmental disabilities as employees in local businesses.

Submit proof of successful passage of the CESP certification exam. One page summary report documenting date, time and location of exam with notification of passage of the exam.

APSE or Other Employment Appropriate National Convention Training
Provider must get approval from County, in writing, of the intended Convention or Conference wanting to attend. Upon approval, Provider shall provide county with all applicable backup documentation for reimbursement. This

includes but is not limited to conference agenda, receipts for travel reimbursement, any handouts applicable to the training or conference, and any other documentation required or requested by the County.

Other Trainings and/or Professional Development
Other trainings and professional development opportunities may be approved (requires prior written approval by the County) and reimbursed that support the Provider access and attain new or continued knowledge that increases the staff's effectiveness in securing, supporting or improving the employment status of client served by Provider.

E. COUNTY MILLAGE FUNDS: SCHOOL DISTRICT TRANSITION SERVICES

Provide Transition services for eligible students authorized by the applicable School District between the ages of eighteen and twenty-one when selected by the student and their family, and referred by the School District. Transition services shall promote collaboration among DVR, school district, county, DDA, and community agencies that support the transition of students from school to employment and/or post-school activities leading to employment, including career exploration.

Transition services will include the following:

(1) Collaborate with School District staff and keep them informed of activities, progress and timelines as outlined in the IEP;

(2) Effectively communicate with the student's family and their case manager also informing them of activities, progress and timelines as outlined in the IEP;

(3) Develop individualized vocational services plan when needed;

(4) Develop individualized budget to implement the vocational services plan and submit to District Administrator and County staff for approval,

(5) Work closely with School District staff for purposes of transportation needs and other supports; and

(6) Provide monthly written progress reports with all billings to the County that include:

(a) Name of School District
(b) Student's name;
(c) Direct service hours to the student;
(d) Dates and hours of service on behalf of the student including but not limited to scheduling transportation, name and date employer(s) contacted (initial and follow-up) and job development;
- Student's wages earned;
- Hours worked; and
- Progress on work skills and behaviors as identified and outlined on IEP.

(7) Approval of billing invoices require the submittal of a monthly progress report and documentation of service dates and hours provided on the County approved form. Billings must be submitted within 45 days of the last day of the service month to be considered for payment.

(8) Services during July and August must be approved by the IEP team and the School District. The school will determine if Extended School Year (ESY) is available for these services and will notify the County in writing of any such approval. A new CSA will be written to cover services during the months of July and August.

(9) Students will not be transported in private staff vehicles. Transportation training may include coordination of the school's transportation services, training the individual in use of public transportation, supports for the individual to obtain a driver's license, walking, bicycling or use of the student's family to provide transportation.

(10) The Provider shall assess and document in the Transportation Assessment and Plan each participant's transportation needs. The Provider shall assist each participant to access public or specialized transportation for any activity sponsored as a part of Transition services. It is expected that public or specialized

transportation will be utilized, except as detailed in the transportation plan. The cost of transportation is included in the fee for service that a Provider receives.

(11) If no other viable transportation options are available, the Provider may transport participants in Provider or employee vehicles provided that

(a) Provider complies with the automobile insurance requirement set forth in the Provider Contract;
(b) Automobile insurance specifically indicates that the provider is covered for transporting clients;
(c) Transportation Assessment and Plan indicates this is the only feasible mode of transportation; and
(d) DDA Case Manager agrees to the Transportation Assessment and Plan.

10. CLIENT'S INDIVIDUALIZED PLAN

The Client's DDA PCSP is the driver for service. The AWA CSA and updated Planned Rates information will not exceed the Client's DDA PCSP. Service changes will not occur until the Client has received proper notification from DDA.

All Clients will have an Individualized Employment or Community Inclusion plan to identify Client's preferences. Minimum plan elements are outlined in the reference document "Criteria for an Evaluation." A copy of the Client's individualized plan will be provided to the Client, their CRM, the County, guardian and others as appropriate. Semi-annual progress reports that describe the outcomes of activities will be provided by the provider and given to the county, the client, their CRM, and others as appropriate. The report will summarize the progress made towards the Client's individualized goals.

Provider shall complete the plan within 30 days of service starting and provide a semi-annual progress report six months after the initial report.

Failure to submit ER/PR within the appropriate time lines will result in billing not being processed until the plans are completed.

All Clients will be contacted by their service provider according to Client need and at least once per month.

If Clients in Individual Employment have not obtained paid employment at minimum wage or better within **six (6) months,** the Provider and County will assure the following steps are taken:

A. Review the progress toward employment goals;
B. Provide evidence of consultation with the Client/guardian; and

C. Develop additional strategies with the Client/guardian, county staff, employment support staff, case manager, and others identified by the Client. Strategies may include providing technical assistance, changing to a new provider, and/or providing additional resources as needed to support the individual's pursuit of employment. The additional strategies will be documented for each Client and kept in the Client's file(s).

If after twelve (12) months the Client remains unemployed, an additional review will be conducted. The provider will address steps outlined in the previous six month progress report in the next six month progress report. The Client may request to participate in Community Inclusion activities or the Client may choose to remain in an employment program. When requesting to participate in CI, the Client shall communicate directly with his or her DDA Case Manager. The DDA Case Manager is responsible for authorizing CI services.

Individual Employment staff hours must be attributed to the "Individual Employment and Billable Activity Phase(s)".

11. SETTINGS

Employment and day services must adhere to the Home and Community Based settings (HCBS) requirements of 42CFR 441 530(a)(1), including that:

A. The setting is integrated in the greater community and supports individuals to have full access to the greater community;

B. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

C. The setting provides opportunities to seek employment and work in competitive integrated settings; and

D. The setting facilitates individual choice regarding services and supports, and who provides them.

12. PROVIDER RESPONSIBILITIES

For State funded services, the Provider agrees to serve only persons referred by DDA who are eligible for direct client services under this Provider Contract. It is DDA's responsibility to determine and authorize the appropriate direct service(s) type. The Provider agrees to consider participants for service acceptance upon receipt of referral from County. All referred clients will have the opportunity to participate in vendor interviews and self-select the provider of their choice after interviews. A client may also self-select and waive their participation in interviews but the appropriate form must be completed and signed indicating their selection.

The Provider agrees to provide authorized services, participate in conferences and consult with State DDA Case Managers and County staff to implement changes in participant services if needed. Any change in a participant service including a change in hours of service, will be preceded by an approved and signed County Service Authorization form (CSA).

The Provider will clearly communicate to the client, prior to beginning services, the minimum and maximum service hours per month they can expect to receive. The amount of service hours a client receives is based upon his/her demonstrated need, acuity level, work history and documented special conditions per the Services Level Guidelines. If a change in the minimum and/or maximum service hour(s) is expected, the Provider will inform the client prior to the change. The client minimum and maximum service hour(s) ARE reflected in the County Service Authorization and updated planned rates information will not exceed the client's DDA PCSP. The amount of service the client receives should match the County Service Authorization and updated Planned Rates information.

The Provider will have at least one hour of face-to-face contact with each client they are authorized to serve. This contact must consist of at least one hour per month in order to bill for services during that month.

Services and programs shall be provided consistent with related RCW, WAC, Clallam County Program Contract and County Mandatory Requirements.

The Provider shall participate in regularly scheduled meetings between County DD staff and DDA staff to remain updated and current.

13. PROGRAM/SERVICE FUNDING AND RATES

Funding for services is a fee for service method of payment with each unit billed in accordance with the descriptions below.

STATE FUNDS:

Individual Supported Employment
Community Inclusion
Community Information and Education

COUNTY MILLAGE FUNDS:

Port Angeles School District Transition Services
Sequim School District Transition Services
Quillayute Valley School District Transition Services
Continuing Education and Training

IE Services:

This contract is fee-for-service. Individuals shall be billed at a rate of $75 per hour/unit, per month, from July 1, 2021 – June 30, 2023 unless a specialized rate is agreed upon by the agency, DDA Case Management and the County and

the rate is documented on the County Service Authorization form. One (1) unit equals an "hour" which is at least fifty minutes of service. Partial hour to the quarter may be recorded.

IE hours above 26 hours/month shall be billed at a rate of $40 per hour/unit.

A maximum monthly payment per client will be $3,500.

Reimbursable activities are contained on the *Individual Employment Billable Activities* document located at http://www.dshs.wa.gov/dda/county-best-practices.

The contractor will not be reimbursed for service hours/units provided above the maximum service hours/units documented on the client's DDA ISP or activities outside the scope of the *Employment Phases and Billable Activities* document.

CI Services:

This contract is fee-for-service. Individuals shall be billed at a rate of $35 per hour/unit, per month, from July 1, 2021 – June 30, 2023 unless a specialized rate is agreed upon by the agency, DDA Case Management and the County and the rate is documented on the County Service Authorization form. One (1) unit equals an "hour" which is at least fifty minutes of service. Partial hour to the quarter may be recorded.

Reimbursable activities are contained on the *Community Inclusion Billable Activities* document located at http://www.dshs.wa.gov/dda/county-best-practices.

Community Inclusion service support hours will be based on the participant's community Inclusion acuity as determined per WAC through the participant's DDA PSPC. Individuals receiving service hours above their assessed level of support or activities provided outside the scope of the *Community Inclusion Billable Activities* will not be reimbursed.

Community Information and Education:

568.40 Community Information and Education:

Provider, with prior written approval from County, may attend or provide community information and trainings that further the education of the community and/or staff regarding the inclusion of individuals with developmental disabilities into the workforce and/or community. Provider must provide the required documentation of attendance and expenses per county policy and request of the county before reimbursement.

The Total Maximum Compensation for completion of all Community Information and Education payment points shall not exceed **$3,500.**

High School Transition Services:

SERVICE CODE	SERVICE UNIT	UNIT RATE
County Millage	1 unit = 1 hour Maximum 20 hours per month 1:1 Ratio Only	$ 60.00/hour $1,200.00/month

14. PAYMENT, BILLING AND REPORTS

Billing shall be submitted no later than the 10th day of the month, following the month in which such expenses were incurred. Billing in December shall be submitted no later than the 3rd day of the month for services provided in November. Later submissions in December will result in payments delayed until the end of January. The County shall pay for services once a month.

Billing reports must be submitted electronically in accordance with requirements of the Washington State AWA Billing System. No payments will be made to the Provider until a timely and accurate billing report is received by the County.

Billing reports requiring corrections must be completed and resubmitted by the 15th day of the month. Failure to satisfy such requirements may result in a delay in payment.

Providers must mail a Contract Certification form with an original signature each month when they submit their billing reports electronically. This form must be received in the County office by the 15th day of the month. No payments will be made to the Provider until this form is received by the County. Failure to satisfy such requirements may result in a delay in payment.

A current Clallam County CSA must be in effect for each participant. Billing for services shall not exceed authorized amounts as indicated on the current form. Authorized units of service are pristine to the individual participant as assigned and noted on the Form. No sharing of hours between participants is allowed.

All initial invoices with documentation must be received by the County within 45 calendar days following the last day of the month in which the service is provided. Corrected invoices and documentation including re-posted billing information will be accepted throughout the fiscal year and long as they are received within 45 calendar days of the associated fiscal year. Payment will not be made on any invoice submitted past 45 calendar days after the program agreement fiscal year.

Late or corrected bills and accompanying documentation will be accepted up until 30 calendar days after the associated contract fiscal year. Payment will not be made on any bill submitted past the 30 calendar days of the associated contract fiscal year.

Client services shall not be reimbursed under this Provider Contract when the same services are paid for under the Rehabilitation Act of 1973 (DVR), Public Law 94-142 (Public Education), or any other source of public or private funding.

15. SERVICE STANDARDS

All providers of employment/day program services contracting with Clallam County to serve eligible individuals with developmental disabilities shall meet the following qualifications:

A. Compliance with APSE CESP Code of Conduct, Sections 1 and 3 regardless of certification status;

B. Assurance that potential conflict of interest (real or apparent) will not arise. Such a conflict would arise when the employee, officer or agent, any member of immediate family, guardian/decision-maker, or an organization which employs, or is about to employ, any of the above has financial or other interest in the client.

C. Documentation of experience, knowledge and performance in providing services to individuals with developmental disabilities will be maintained.

D. The following indicators will be incorporated into an agency's overall written performance plan and the agency will document progress over time. An employment service performance plan must include for each acuity level, the following client data:

   (1) Number of new jobs;

   (2) Number of jobs lost and reason for job loss;

   (3) Percentage of clients employed earning minimum wage or higher; and

   (4) Average number of hours worked by client.

E. Documented history of working cooperatively with community-based organizations including employers, the Division of Vocational Rehabilitation (DVR) and schools;

F. Demonstrated methods for providing services based on individual needs as outlined in a client's plan;

G. Commitment to support integration of individuals with developmental disabilities with people who are not disabled;

H. The administrative capabilities necessary to safeguard public funds including: maintaining accurate accounting books, records, documents and other materials relevant to the provision of goods and services;

I. A management system that provides for systematic accumulation, filing and retention of timely reports to the County, DDA and/or for federal audits;

J. Sufficient Policies and Procedures for establishment and maintenance of adequate internal control systems: The Provider will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail such that operations can continue should staffing change or absences occur;

K. Compliance with the qualifications outlined in DDA Policy 6.13, Program Provider Qualifications;

L. To be a qualified service provider of employment services, an agency must employ at least one or more individuals who:

(1) Have at least two years of experience – or an Employment Professional Certificate from Highline Community College of or CESP Certification and one year of experience - related to the employment services the agency provides to DDA clients;

(2) Experienced staff that have documented current training and/or continued education on best employment practices. Additionally experienced staff must have the skill and ability to impart this information to frontline/direct line staff and maintain evidence of doing so.

(3) Staff core competencies will include the following at minimum:

(a) Developing, obtaining, and maintaining community-based employment placements with minimum wage compensation or greater;
(b) Conducting Discovery assessments;
(c) Goal and career planning;
(d) Job preparation;
(e) Job development;
(f) Work place and job analysis;
(g) Job Coaching, including task design and training, support strategies, and natural support;
(h) Documenting goals and writing reports clearly; and
(i) Knowledge of Social Security benefits.

M. Ensures that direct service staff are 18 years of age or older, have received training and have documented knowledge in the following areas:

Prior to working with clients:

(1) Client Confidentiality;

(2) Current individual instruction and support plans for each client with whom the employee works;

(3) DDA Policy 4.11 Working Age Adult (adult services only);

(4) DDA Policy 5.06 Client Rights;

(5) DDA Policy 5.13 Protection from Abuse; Mandatory Reporting

(6) DDA Policy 6.08 Mandatory Reporting Requirements for Employment and Day Program Service Providers

(7) DDA Policy 9.03 Employee Protection from Bloodborne Pathogens

(8) DDA Policy 9.07 HIV & AIDS

(9) DDA Policy 12.01 Incident Management

(10) DD Policy 13.01 Public Disclosure of Records and Safeguarding of Confidential Information

(11) DDA Policy 14.01 Environmental Safety (First Aid/CPR)

(12) Competencies including:

(a) Values that support the abilities of each individual
(b) Effective Communication – The ability to effectively listen and to make one's self understood
(c) Planning methods
(d) Crisis Prevention and Intervention

Within One Month of Employment Start Date:
Overview of DDA Policies, including:

(1) DDA Policy 3.01 Service Plans

(2) DDA Policy 5.03 Client Complaints

(3) DDA Policy 5.17 Physical Intervention Techniques

Within Three Months of Employment Start Date:

(1) Program skill development

(2) DDA Policy 5.02 Necessary Supplemental Accommodation

(3) DDA Policy 5.05 Limited English Proficient Clients

(4) DDA Policy 5.14 Positive Behavior Support

(5) DDA Policy 5.15 Use of Restrictive Procedures

(6) DDA Policy 13.04 Access to Client Records Maintained by DDA

N. Ensures that all direct service staff review new and updated County and DDA policies when issued. Staff review will be documented in provider's file.

O. Ensures that direct service staff are licensed or registered when appropriate/required.

P. Proof of Background/Criminal History Check: A background/criminal history clearance is required every three years for all employees and/or volunteers who may have unsupervised access to vulnerable DDA Clients, in accordance with RCW 43.43.830-845, RCW 74.15.030, and chapter 388 WAC. If the Provider reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the Provider. The DSHS Background Check Central Unit (BCCU) must be utilized to obtain background clearance.

Q. The Provider and all their staff members are mandated reporters under RCW 74.34.020(1) and must comply with reporting requirements described in RCW 74.34.035, RCW 74.34.040 and RCW 26.44. If the County is notified that a Provider staff member is cited or on the registry for a substantiated finding, then that staff member will be prohibited from providing services under the Clallam County Provider Contract.

R. The Provider will promptly report to DSHS and the County per DDA Policy 5.13, *Protection from Abuse: Mandatory Reporting,* if:

(1) They have reasonable cause to believe that abandonment, abuse, financial exploitation or neglect (as defined in RCW 74.34.020) of a person who has a developmental disability (as defined in RCW 71A.10.020) has occurred, and,
(2) If they have reason to suspect that sexual or physical assault of such a person has occurred they shall also immediately report to the appropriate law enforcement agency.

S. The Provider will assure adequate staffing levels to provide all services and when staffing is not adequate will inform the County when staffing is not adequate to serving potential clients.

GENERAL TERMS & CONDITIONS

1. SCOPE OF PROVIDER'S SERVICES

The Provider agrees to provide to the County services and any materials set forth in the Special Terms & Conditions [Exhibit "A"] during the Contract period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Contract.

2. ASSIGNMENT

The Provider may not assign any of the Provider's Contract rights or obligations to a third party without the prior, written consent of the County and the written assumption of the Provider's obligations by the third party.

3. COMPLIANCE WITH APPLICABLE LAW

At all times during the term of the Contract, the Provider shall comply with all applicable federal, state and local laws, regulations, and rules.

4. CONFIDENTIALITY OF PARTICIPANT INFORMATION

A. The Provider shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the Provider's performance of the services contemplated hereunder, except:

(1) As provided by law; or

(2) In the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

B. The Provider shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Provider to employ reasonable security measures, which include restricting access to the Confidential Information by:

(1) Each Provider will have a written policy for the appropriate use, storage, disclosure, modification and loss of Confidential Information in all formats and all staff will be trained in this policy. Documentation of training will be maintained by Provider.

(2) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

(3) Physically securing any computers, documents, portable devices such as smart phones, tablets, flash memory devices, portable hard disks and laptop/notebook/netbook computers if those items or other media containing Confidential Information may be transported out of a Secured area. Data will not be stored on portable devices or media unless:

(a) It is appropriately encrypted with a key length of at least 128 bits;
(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method;
(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity. Maximum period of inactivity is 20 minutes;
(d) Properly inventoried and controlled;
(e) Stored in a secured area;
(f) Under the control of Contractor staff at all times when in an unsecured location.

(4) Ensuring the security of Confidential Information transmitted via fax (facsimile) by:

(a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
(b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
(c) Verifying after transmittal that the fax was received by the intended recipient.

(5) When transporting DSHS Confidential Information electronically, including via email, the Data will be protected by:

(a) Transporting the data within the (State Government Network) SGN or Contractor's internal network, or;
(b) Encrypting any Data that will be in transit outside the SGN or Contractor's internal network. This includes transit over the public internet.

(6) When transporting six (6) or more records containing Confidential Information, outside a Secure Area, do one or more of the following as appropriate:

(a) Use a Trusted System
(b) Encrypt the Confidential Information, including:
- Encrypting email and/or email attachments which contain Confidential Information
- Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

(7) Send paper documents containing Confidential Information via a Trusted System. When not in use, such records must be stored in a locked container such as a file cabinet, locking drawer or safe in a secured area accessible only to authorized personnel.

(8) DSHS data may be stored on portable or non-portable media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery process. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If so, such media will be protected as otherwise described in this contract. If this media is retired while DSHS Confidential Information still exists upon it, that data will be destroyed at that time in accordance with the approved destruction methods obtained from the County contact identified on the cover page of this Contract.

C. DSHS Data must be desegregated or otherwise distinguished from non-DSHS data. This is to ensure that when no longer needed by Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation:

(1) DSHS Data will be kept on media which will contain no non-DSHS Data. And/or,

(2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,

(3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

(4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS Data by the value of a specific field or fields within database records.

(5) When stored as physical paper documents, DSHS Data will be physically separated from non-DSHS Data in a drawer, folder or other container.
(6) When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS Data with which it is comingled must be protected as described in the preceding paragraphs.

D. Upon request of the County or at the end of the Contract term, or when no longer needed, the Provider shall return the Confidential Information or certify in writing that the Provider employed a DSHS approved method to

destroy the information. The Provider may obtain information regarding approved destruction methods from the County contact identified on the cover page of this Contract.

E. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping or incineration.

5. PROVIDER CERTIFICATION REGARDING ETHICS

Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the County Coordinator and DSHS Contact designated on the contract within one (1) business day of discovery. The Provider must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by the county, law or DSHS.

The Provider certifies that the Provider is in compliance with RCW Chapter 42.23 and 42.20; and shall comply with said RCW Chapters throughout the term of the Contract.

6. PROVIDER NOT AN EMPLOYEE OF COUNTY

The Provider's services shall be furnished by the Provider as an independent Provider and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

For purposes of the Contract, the Provider acknowledges that the Provider is not an officer, employee, or agent of the County. The Provider acknowledges that the entire compensation for this Contract is specified in Special Terms & Conditions [Exhibit "A"] and the Provider is not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Provider represents that it maintains a separate place of business, serves participants other than the County, will report all income and expense accrued under this Contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent Provider relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Provider agrees to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any overpayments be made to the Provider pursuant to this Contract, the Provider agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.

Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Provider, its officers, employees and/or agents, shall not be entitled to any benefits which Clallam County provides to its employees.

7. NO GUARANTEE OF EMPLOYMENT

The performance of all or part of this Contract by the Provider shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Provider or any employee of the Provider or any Subcontractor or any employee of any Subcontractor by the County at the present time or in the future.

8. REGULATIONS AND REQUIREMENTS

This Contract shall be subject to all federal, state and local laws, rules, and regulations.

9. RIGHT TO REVIEW

This Contract is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County Project Manager. Each subcontractor will be evaluated at least once per contract biennium. The evaluation system will incorporate Quality Assurance items and Quality Improvement measures incorporated with it. A copy of

this evaluation system shall be made available to all subcontractors and the DDA upon request. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Contract and its performance, and any and all communications with or evaluations by service recipients under this Contract. The Provider shall preserve and maintain all financial records and records relating to the performance of work under this Contract for six (6) years after Contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.

The Provider shall maintain records sufficient to:

A. document performance of all acts required by statute, regulation, rule, or the Contract;
B. substantiate the provider's statement of its organization's structure, tax status, capabilities, and performance;
C. demonstrate accounting procedures, practices and records which sufficiently and properly document the Provider's invoices to the County and all expenditures made by the Provider to perform as required by the Contract; and
D. establish and maintain adequate internal control systems: The Provider will maintain written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail that, operations can continue should staffing change or absences occur.

Documentation, books, records, and other evidence shall be kept at the company's Clallam County Office and will be available for examination by the County at reasonable times.

10. MODIFICATIONS

Either party may request changes in the Contract. Any and all agreed modifications shall be in writing, signed by each of the parties.

11. TERMINATION FOR DEFAULT

The County may terminate the Contract in whole or in part, by written notice to the Provider, if the County has a reasonable basis to believe that the Provider has:

A. failed to meet or maintain any requirement for contracting with the County;

B. failed to perform under any provision of the Contract;

C. becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors; and/or

D. otherwise breached any provision or condition of the Contract.

Before the County may terminate the Contract, the County may, by depositing written notice to the Provider in the U.S. Mail, postage prepaid, terminate the Contract, and at the County's option, obtain performance of the work elsewhere. If the Contract is terminated for default, the Provider shall not be entitled to receive any further payments under the Contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Provider. The Provider agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

However, the County may terminate the Contract without written notice and without opportunity for correction, if the County has a reasonable basis to believe that the Provider has failed to ensure the health or safety of any participant for whom services are being provided under the Contract or the Provider has violated any law, regulation, rule, or ordinance.

If a notice of termination for default has been issued and it is later determined for any reason that the Provider was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience paragraph hereof.

12. TERMINATION FOR CONVENIENCE

The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interest of the County. Whenever the Contract is terminated in accordance with this paragraph, the Provider shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the Contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of Contract by the County.

The Provider may terminate the Contract by giving the County at least thirty (30) calendar days' written notice addressed to: Director, Clallam County Department of Health and Human Services, 111 E 3rd Street · Port Angeles, WA 98362.

13. TERMINATION DUE TO INSUFFICIENT FUNDS

If sufficient funds for payment under this Contract are not appropriated or allocated or are withdrawn, reduced or otherwise limited, the County may terminate this Contract upon five (5) days written notice to the Provider. No penalty or expense shall accrue to the County in the event this provision applies.

14. TERMINATION PROCEDURE

The following provisions apply in the event that this Contract is terminated:

A. The Provider shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
B. The Provider shall provide the County with an accounting of authorized services provided through the effective date of termination.
C. If the Contract has been terminated for default, the County may withhold a sum from the final payment to the Provider that the County determines necessary to protect itself against loss or liability.

15. DEFENSE AND INDEMNITY CONTRACT

The Provider agrees to defend, indemnify and hold harmless the County, its appointed and elected officers, officials, agents and/or employees, from and against any and all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorney's fees and/or costs by reason of any and all claims and demands upon the County, its appointed and elected officers, officials, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Provider, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed and elected officers, officials, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed and elected officers, officials, agents and/or employees. It is further provided that no liability shall attach to the County by reason of entering into this Contract, except as expressly provided herein.

16. INDUSTRIAL INSURANCE WAIVER

With respect to the performance of this Contract and as to claims against the County, its appointed and/or elected officers, officials, agents and/or employees, the Provider expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Contract extend to any claim brought by or on behalf of any employee of the Provider. Along with the other provisions of this Contract, this waiver is mutually negotiated by the parties to this Contract.

17. VENUE AND CHOICE OF LAW

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Contract, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Contract shall be governed by the law of the State of Washington.

18. WITHOLDING PAYMENT

In the event the County Project Manager determines that the Provider has failed to perform any obligation under this Contract within the times set forth in this Contract, then the County may withhold from amounts otherwise due and payable to Provider the amount determined by the County as necessary to cure the default, until the County Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Provider to termination or damages, provided that the County promptly gives notice in writing to the Provider of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the County Project Manager set forth in a notice to the Provider of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Provider acts within the times and in strict accord with the provision of the Disputes clause of this Contract. The County may act in accordance with any determination of the County Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Provider, (3) to set off any amount paid or incurred from amounts due or to become due the Provider. In the event the Provider obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Provider by reason of good faith withholding by the County under this clause.

19. RIGHTS AND REMEDIES

The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

20. PROVIDER'S COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment received from the Provider concerning this Contract shall be binding upon the Provider, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Provider to fulfill such a commitment shall render the Provider liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Contract, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

21. PATENT/COPYRIGHT INFRINGEMENT

Provider will defend, indemnify and hold harmless the County, its appointed and elected officers, officials, agents and/or employees from and against any and all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its appointed and elected officers, officials, agents and/or employees for damages because of the Provider's alleged infringement of any patent or copyright. The Provider will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers, officials, agents and/or employees in any action. Such defense and payments are conditioned upon the following:

A. That Provider shall be notified promptly in writing by County of any notice of such claim.

B. Provider shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County

22. DISPUTES

A. The parties to this Agreement shall resolve all disputes at the most relevant level. The Contractor shall bear responsibility for resolving any dispute that occurs between a client and the Contractor.

B. Differences between the Contractor and the County, arising under and by virtue of the contract documents shall be brought to the attention of the County Coordinator at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County Coordinator shall be final and conclusive thirty (30) days from the date of mailing unless the Contractor mails or otherwise furnishes to the County Coordinator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County Coordinator are in error.

(1) In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral

argument and live testimony will not be permitted. The original written materials will be submitted to the County Coordinator, who will then deliver the materials to a Dispute Resolution Board as described below. Copies of all written materials will be served upon the parties.

(2) If an appeal of the County Coordinator decision is timely received, the County and the Contractor shall convene a dispute resolution board comprised of one member nominated separately by each party, and a third member identified and agreed upon by the two members. If the two members together cannot agree upon the third member, the Contractor and County are to petition the Clallam County Superior Court to designate a third member. The Dispute Resolution Board will then attempt to resolve the dispute based upon the written materials provided by the County Coordinator.

(3) Reviews of the Dispute Resolution Board's determination may be brought in the Superior Court of Clallam County within fifteen (15) days of mailing of the Dispute Resolution Board's written decision. Pending a final decision in the Superior Court of Clallam County, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

C. Notice of Potential Claims: The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the County Coordinator or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

D. Detailed Claim: The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

23. OWNERSHIP OF ITEMS PRODUCED

All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Provider and/or its consultants or Subcontractors, in connection with the performance of this Contract shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws and Provider and/or its agents shall have no ownership or use rights in the work.

24. RECOVERY OF PAYMENTS TO PROVIDER

The right of the Provider to retain monies paid to it is contingent upon satisfactory performance of this Contract, including the satisfactory completion of the project described in the Special Terms & Conditions [Exhibit "A"]. In the event that the Provider fails, for any reason, to perform obligations required of it by this Contract, the Provider may, at the County Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Provider for those parts of the project that are rendered worthless in the opinion of the County Project Manager by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the County Project Manager demands repayment of funds.

25. PROJECT APPROVAL

The extent and character of all work and services to be performed under this Contract by the Provider shall be subject to the review and approval of the County Project Manager. For purposes of this Contract, the County Project Manager is:

Name:	Kelley Lawrence
Title:	Clallam County Coordinator for Developmental Disabilities
Address:	111 E 3rd Street · Port Angeles, WA 98362
Telephone:	360-417-2407

E-mail: klawrence@co.clallam.wa.us
Fax: 360-452-9605

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County Project Manager as to the extent and character of the work to be done shall govern subject to the Provider's right to appeal that decision as provided herein.

26. NON-DISCRIMINATION

The Provider shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.

27. SUBCONTRACTORS

This is a fee-for-service Contract and the Provider will not enter into subcontracts for any of the work expected by this Contract without first obtaining review and written approval of the subcontract by the County.

In the event that the Provider employs the use of any Subcontractors with the written approval of the County, the Contract between the Provider and the Subcontractor shall provide that the Subcontractor bound by the terms of this Contract between the County and the Provider. The Provider shall ensure that in all subcontracts entered into, Clallam County is named as an express third-party beneficiary of such contracts with full rights as such.

28. THIRD PARTY BENEFICIARIES

This Contract is intended for the benefit of the County and Provider and not for the benefit of any third parties.

29. STANDARD OF CARE

The Provider shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Provider currently practicing under similar circumstances. The Provider shall, without additional compensation, correct those services not meeting such a standard.

30. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Contract unless a more specific time period is set forth in either the Special Terms & Conditions or Scope of Work

31. NOTICE

Except as set forth elsewhere in the Contract, for all purposes under this Contract, except service of process, any notices shall be given by the Provider to the County Project Manager. Notice to the Provider for all purposes under this Contract shall be given to the person executing the Contract on behalf of the Provider at the address identified on the signature page.

32. SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

33. PRECEDENCE

In the event of an inconsistency in the Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:

A. Applicable federal, state, and local law, regulations, rules, and ordinances;

B. the DSHS Basic Agreement;

C. this Contract, including Exhibits;

D. these General Terms & Conditions; and

E. any document incorporated in the Contract by reference.

34. WAIVER

Waiver of any breach or condition of this Contract shall not be deemed a waiver of any prior to subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

35. ATTORNEY FEES

In the event that litigation must be brought to enforce the terms of this Contract, the prevailing party shall be entitled to be paid reasonable attorney fees.

36. CONSTRUCTION

This Contract has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.

37. CORRECTIVE ACTION PROCESS

If the County finds evidence of potential non-compliance during the monitoring process or learns that the Provider is out of compliance with any of the terms or conditions of this Contract, the following process will be pursued:

A. The County's DD Coordinator notifies the appropriate Provider staff of the potential non-compliance and an agreeable solution is reached.

B. If the process described in (A) does not result in resolution, the County will establish a date when representatives of the County and Provider shall meet and discuss areas of contention and attempt to resolve the issues involved.

The County will provide by registered mail to the Provider's Director and Board President a written summary of the areas of non-compliance or potential non-compliance.

C. Within twenty (20) calendar days of the date the written notification was mailed, a discussion between County and the Provider's Director of Board designee of the areas of non compliance or potential non-compliance shall be conducted.

D. If the County and the Provider cannot agree upon a resolution, the County shall withhold payments related to the area(s) of non-compliance or potential non- compliance, unless a written extension of the period to agree upon corrective action is issued by the County.

E. Nothing in this section shall preclude audits by other duly authorized representatives of the County, the Department of Social and Health Services or other departments of State government, nor shall it preclude the recoupment of overpayments identified through those audit procedures.

38. EXECUTION, AMENDMENT AND WAIVER

The Contract shall be binding on the County only upon signature by the County Commissioners. The Contract may only be altered, amended, or waived by a written amendment executed by both parties. Only the County Commissioners have authority to alter, amend or waive the Contract on behalf of the County.

39. INSURANCE

The Provider shall maintain insurance as specified and shall pay for losses for which it is found liable. Without limiting the Provider's indemnification, it is agreed that the Provider shall maintain in force, at all times during the performance

of this Contract, a policy or policies of insurance covering its operations and shall in each policy, name the County, its appointed and/or elected officers, officials, agents and/or employees as additional insureds.

The Provider shall maintain continuously during the term of this Contract public liability insurance with limits of liability not less than:

$ 500,000	each person, personal injury, including death
$1,000,000	each occurrence, personal injury, including death
$ 250,000	each occurrence, property damage liability
$2,000,000	aggregate
$1,000,000	Errors and Omissions per occurrence
$2,000,000	Errors and Omissions aggregate

The Provider shall inform the County in writing of any changes in insurance and provide County with a new certificate of insurance within twenty days of the change.

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such policy of insurance the Provider is required to obtain and maintain pursuant to this Agreement shall be primary over any third-party liability coverage provided to Clallam County by and through its membership in the Washington Counties Risk Pool or WCRP. The third-party liability coverage provided by the WCRP to Clallam County shall be non-contributory with respect to any policy of insurance the Provider is required to obtain and maintain pursuant to this Agreement. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within 20 days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

If the proof of insurance or certificate of coverage indicating the County is an "additional insured" to a policy obtained by the Consultant in order to comply with this agreement refers to an endorsement (by number, abbreviation or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Consultant to obtain the full text of that endorsement and forward that full text to the County within 30 days of the execution of this Agreement.

The coverage limits identified herein shall not limit the potential liability of the Provider and the Provider's duty to defend, indemnify, and hold harmless shall apply to any liability beyond the scope of insurance coverage.

The County retains the right to withhold payment if the Provider does not provide timely and adequate proof of the insurance required by this Section.

The Provider shall ensure that vehicles used to transport participants as a part of services provided under this Contract are covered by a commercial vehicle insurance policy with a clear indication that clients may be transported by the provider and are covered under the policy. Further, each employee driving clients shall have their personal automobile insurance, driver's license and current driving abstract on file at the Provider's administrative office.

The Provider shall maintain Worker's Compensation coverage as required by the Industrial Insurance Act of the State of Washington.

The Provider agrees to maintain a fidelity bond in the amount of Twenty Thousand Dollars ($20,000) which covers all individuals responsible for the administration of funds. Evidence of the fidelity bond shall be provided to the County within thirty (30) calendar days of the date of this Contract. The Provider will inform the County in writing of any change in the bond and provide evidence of continuing bonding coverage within thirty (30) calendar days of the change.

40. AUDITS

The Provider shall demonstrate the ability to safeguard public funds including maintaining books, records, documents and other materials relevant to the provision of goods and services.

Except as set forth herein, for contracts up to and including one year in length, an independent financial audit ("audit") of funds shall be performed. For contracts in excess of one year and up to and including two years, an independent financial review ("review") of funds shall be performed in the first year of the Contract and an audit shall be performed in the second year.

The Provider is required to submit to the County a copy of the independent auditor's or reviewer's final report within thirty (30) days following the issuance of the report. Additionally, the Provider shall provide comments on the findings and recommendations in the report, including a plan for Corrective Action.

The Provider will submit their plan for audit or review to the County by **September 1, 2021,** including time frame for completion of audit or review, standards by which they will be audited or reviewed, and the name of the individual or organization who will complete the audit or review, the Provider's total federal funding, and determination of the applicability of a Single Audit.

Audits and reviews must be submitted within the time frame described in the Provider's plan. Any audit or review must be in accordance with all applicable Federal and State statutes, as well as the State to County Basic Agreement.

Documentation and records shall be maintained to support levels of service billed. These records and supportive materials shall be available to the County upon request. Audits and reviews shall be conducted to determine compliance with the rules and regulations of each program service. In accordance with RCW 74.09.200, only those participant records or portions thereof, for which services were reimbursed by the County, may be examined.

If the Provider is a subrecipient of federal awards as defined by the Office of Management and Budget (OMB), the Provider shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance numbers. The Provider shall make the Provider's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DSHS and the County. The Provider shall incorporate audit requirements into all contracts between the Provider and its Subcontractors who are subrecipients. The Provider shall comply with any future amendments to the Federal Code of Regulation for Single Audits and any successor or replacement Circular or regulation.

If the Provider expends $750,000 or more in federal awards from any and/or all sources in any fiscal year beginning after June 30, 1996, the Provider shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Provider shall submit to the County contact person the data collections form and reporting package specified in the Federal Code of Regulation for Single Audits, reports required by the program specific audit guide, if applicable, and a copy of any management letters issued by the auditor.

41. TREATMENT OF ASSETS PURCHASED BY PROVIDER

Except as provided in the Contract, title to all assets (property) purchased or furnished by the Provider is vested in the Provider and the County waives all claim of ownership to such property.

42. TREATMENT OF PARTICIPANT ASSETS

Except as otherwise provided by court order, the Provider shall ensure that any participant for whom the Provider is providing services under the Contract shall have unrestricted access to the participant's personal property. The Provider shall not interfere with the participant's ownership, possession, or use of such property. Upon termination of the Contract, the Provider shall immediately release to the participant all of the participant's personal property.

43. TREATMENT OF COUNTY ASSETS

Except as otherwise provided in the Contract, title to all assets (property) purchased or furnished by the County for use by the Provider during the Contract term shall remain with the County. During the term of the Contract, the Provider shall protect, maintain, and insure all County property in the Provider's possession against loss or damage.

44. TITLE XIX WAIVER PROVISO

Participants identified as covered under Division of Developmental Disabilities' home and community-based waiver programs shall not be funded under this Contract when services are available from the Division of Vocational Rehabilitation under PL 94-142, Title V, Section 504 of the Rehabilitation Act of 1973 or under Social Security

programs which assist with employment options under PL 99-643, Section 1619(a) Employment Opportunities for Disabled Americans Act, 1986, PASS or IRWE plans.

The Provider assures that documentation is on file with the County assigning to the County its Medicaid billing rights for services to participants eligible under DDA's home and community-based waivers. Such services must be purchased no differently from the way services are purchased for participants not eligible under the waiver. Services must be purchased on a Fee for Service basis to satisfy the Title XIX Contract.

45. HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT of 1996 (HIPAA)

In addition to any other confidentiality requirements set forth herein, the Provider shall comply with the following provisions if it constitutes a "business associate" as that term is defined in 45 CFR §160.103, as now or hereafter amended.

A. The Provider is not authorized to use or further disclose "Protected Health Information" (PHI) as that phrase is defined in 45 CFR § 164.501, as now or hereafter amended, in a manner that would violate the requirements of 45 CFR § 165.504(e), as now or hereafter amended, if done by the Clallam County, except that:

(1) The Provider may use and disclose PHI for the proper management and administration of the Provider, as provided in paragraph 45 CFR § 164.504(e) (4); and

(2) The Provider may provide data aggregation services relating to the health care operations of Clallam County.

B. The Provider will:

(1) Not use or further disclose the information other than as permitted or required by this Contract or as required by law;

(2) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Contract;

(3) Report to Clallam County any use or disclosure of the information not provided for by this Contract of which it becomes aware;

(4) Ensure that any agents, including a Subcontractor to whom it provides PHI received from, or created or received by the Provider on behalf of, Clallam County agrees to the same restrictions and conditions that apply to the Provider with respect to such information;

(5) Make available PHI in accordance with 45 CFR § 164.524;

(6) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526;

(7) Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(8) Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Provider on behalf of, Clallam County available to the Secretary for purposes of determining Clallam County's compliance with this subpart; and

(9) At termination of the Contract, if feasible, return or destroy all PHI received from, or created or received by the Provider on behalf of, Clallam County that the Provider still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the Contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

C. In addition to any other termination clause herein, this Contract may be terminated by Clallam County if Clallam County determines that the Provider has violated a material term of this provision.

D. The Provider may use the information it has received in its capacity as a business associate to Clallam County, if necessary:

(1) For the proper management and administration of the Provider; or

(2) To carry out the legal responsibilities of the Provider.

E. The Provider may disclose the information it has received in its capacity as a business associate for the purposes described in 4 of this section, if:

(1) The disclosure is required by law; or

(2) (a) The Provider obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and

(b) The person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.

46. SURVIVAL

Without being exclusive, Paragraphs 7, 10, 16-22, 24-25 and 34-37 of these General Terms & Conditions shall survive any termination, expiration or determination of invalidity of this Contract in whole or in part. Any other Paragraphs of this Contract which, by their sense and context, are intended to survive shall also survive.

47. ENTIRE CONTRACT

This written Contract represents the entire Contract between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

48. DEBARMENT CERTIFICATION

The Provider, by signature to this Agreement, certifies that the Provider is not presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any Federal or State department or agency.

49. BACKGROUND/CRIMINAL HISTORY CHECK

A background criminal history clearance is required every three years for all employees, subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS participants, in accordance with RCW 43.43.830-845, RCW 74.15.030 and chapter 388.06 WAC. Character Competence and Suitability Reviews, if required, will be updated every three years.

If the entity reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in Chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the disqualified individual provider.

It is required that the DSHS Background Check Central Unit (BCCU) be utilized to obtain background clearance.

50. REPORTING ABUSE AND NEGLECT

The Provider and its subcontractors under this contract will comply with RCW 74.34 and RCW 26.44 to the extent required by law. If the County is notified by DSHS that a Provider (or any of their staff, volunteers or authorized agents) is cited or on the registry for a substantiated finding, then associated staff will be prohibited from providing services under this contract.

DATA SECURITY REQUIREMENTS

1. DEFINITIONS

The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:

A. "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf).

B. "Authorized Users(s)" means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.

C. "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. For purposes of this contract, data classified as Category 4 refers to data protected by: the Health Insurance Portability and Accountability Act (HIPAA).

D. "Cloud" means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iCloud, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, O365, and Rackspace.

E. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits (256 preferred) for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

F. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

G. "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, orWindows Phone. Mobile Devices include smart phones, most tablets, and other form factors.

H. "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.

I. "Portable Device" means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.

J. Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.

K. "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.

L. "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.

M. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.

2. AUTHORITY

The security requirements described in this document reflect the applicable requirements of Standard 141.10 (https://ocio.wa.gov/policies) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: https://www.dshs.wa.gov/ffa/keeping-dshs- client-information-private-and-secure, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.

3. ADMINISTRATIVE CONTOLS

The Contractor must have the following controls in place:

A. A documented security policy governing the secure use of its computer network and systems, and which defines sanctions that may be applied to Contractor staff for violating that policy.

B. If the Data shared under this agreement is classified as Category 4 data, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.

C. If Confidential Information shared under this agreement is classified as Category 4 data, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.

4. AUTHORIZATION, AUTHENTICATION, AND ACCESS

In order to ensure that access to the Data is limited to authorized staff, the Contractor must:

A. Have documented policies and procedures governing access to systems with the shared Data

B. Restrict access through administrative, physical, and technical controls to authorized staff.

C. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action

D. Ensure that only authorized users are capable of accessing the Data.

E. Ensure that an employee's access to the Data is removed immediately:

(1) Upon suspected compromise of the user credentials.

(2) When their employment, or the contract under which the Data is made available to them, is terminated.

(3) When they no longer need access to the Data to fulfill the requirements of the contract.

F. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.

G. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:

(1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.

(2) That a password does not contain a user's name, logon ID, or any form of their full name.

(3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.

(4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.

H. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:

(1) Ensuring mitigations applied to the system don't allow end-user modification.

(2) Not allowing the use of dial-up connections.

(3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.

(4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.

(5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.

(6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.

I. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:

(1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor

(2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)

(3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)

J. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:

(1) Be a minimum of six alphanumeric characters.

(2) Contain at least three unique character classes (upper case, lower case, letter, number).

(3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.

K. Render the device unusable after a maximum of 10 failed logon attempts.

5. PROTECTION OF DATA

The Contractor agrees to store Data on one or more of the following media and protect the Data as described:

A. **Hard disk drives**. For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms, which provide equal or greater security, such as biometrics or smart cards.

B. **Network server disks**. For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secure Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data, as outlined below in Section 8 Data Disposition, may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

C. **Optical discs (CDs or DVDs) in local workstation optical disc drives**. Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

D. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area, which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

E. **Paper documents**. Any paper records must be protected by storing the records in a Secure Area, which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.

F. **Remote Access**. Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

G. **Data storage on portable devices or media**.

(1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections::

(a) Encrypt the Data.
(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
(d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
- Keeping them in a Secure Area when not in use,
- Using check-in/check-out procedures when they are shared, and
- Taking frequent inventories.

(2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

H. **Data stored for backup purposes.**

(1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition.

(2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 Data Disposition

I. **Cloud storage**. DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:

(1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:

(a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attest to the contact listed in the contract and keep a copy of that attestation for your records in writing that all such procedures will be uniformly followed.
(b) The Data will be Encrypted while within the Contractor network.
(c) The Data will remain Encrypted during transmission to the Cloud.
(d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
(e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor.
(f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on the contractor network
(g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.

(2) Data will not be stored on an Enterprise Cloud storage solution unless either:

(a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,
(b) The Cloud storage solution used is HIPAA compliant.

(3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.

6. SYSTEM PROTECTION

To prevent compromise of systems which contain DSHS Data or through which that Data passes:

A. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.

B. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.

C. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.

D. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

7. DATA SEGREGATION

A. DSHS category 4 data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation

(1) DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data.

(2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data.

(3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

(4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.

(5) When stored as physical paper documents, DSHS Data will be physically segregated from non- DSHS data in a drawer, folder, or other container.

B. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

8. DATA DISPOSITION

When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	**Will be destroyed by:**
Server or workstation hard disks, or	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or
Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.

Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse
Magnetic tape	Degaussing, incinerating or crosscut shredding

9. NOTIFICATION OF COMPROMISE OR POTENTIAL COMPROMISE

The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

10. DATA SHARED WITH SUBCONTRACTORS

If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub- Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Document was submitted after the agenda and packet were posted on
late submittal
9/28/21

Department: Clerk

WORK SESSION ☐ **Meeting Date**

REGULAR AGENDA ☒ **Meeting Date: 9/28/2021** 9/28/21

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing
☒ Contract/Agreement/MOU - Contract # 891.21.001
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☒ Other Clerk E-Filing Module

Documents exempt from public disclosure attached: ☐

Executive summary:
The Clerk of the Superior Court is seeking to implement an E-Filing module to add to our existing OnBase Document Management Software to allow a new avenue of access to the Court.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Budget change will be necessary for professional services, license, user fees and maintenance for this project. CARES funding has been pre-approved through AOC under approval No. CARES341.

Recommended action: Approval of Amended SOW attached for the Clerk's E-filing Module. Supplemental Appropriation is in the process and will be approved 10-26-21.

County Official signature & print name: N. Botnen

Name of Employee/Stakeholder attending meeting: Nikki Botnen

Relevant Departments: Clerk

Date submitted: 09/28/2021

DocuSign Envelope ID: 8E9C8419-5131-4702-9685-36A7909DE570

KONICA MINOLTA 8.91.21.08 **Statement of Work**

Company Name	Proposed Solution	Document Date
Clallam County, WA	eFile Portal Implementation	9/24/2021
Account Manager	**Sales Engineer**	**Expiration Date**
Catherine Bedrossian	Greg Kover	9/30/2021

Distribution List

Name	Organization	Position	Email
Nikki Botnen	Clallam County	Superior Court Clerk	nbotnen@co.clallam.wa.us
Catherine Bedrossian	Konica Minolta	Account Manager	cbedrossian@kmbs.konicaminolta.us
Ken Hubbard	Konica Minolta	ECM Sales Director	khubbard@kmbs.konicaminolta.us
Keith Thomson	Konica Minolta	Professional Services Director	keith.thomson@kmbs.konicaminolta.us

Questions regarding this SOW should be directed to:

Catherine Bedrossian
cbedrossian@kmbs.konicaminolta.us
(310) 383-4212

Introduction

This is a Statement of Work (SOW) that outlines the professional services and software licensing required for implementation of the proposed solution described below. The items outlined here are based on the current understanding of requirements at the time of this document's creation. If it is determined that Clallam County would like to proceed with the project as defined in the SOW, Konica Minolta Business Solutions U.S.A., Inc. (Konica Minolta) will begin assigning resources and commence with project engagement.

Overview

This project includes the addition of a web portal that will be made available to external parties for the purpose of electronically filing case related documents. The initial phase includes the configuration of a portal and layout which will allow the external parties to have self-service access to password retrievals and changes to limit the administrative overhead for internal staff.

The process of receiving documents and validating the provided and required details in order for staff to Reject or Accept the eFiled document using a new workflow process that will provide options for the users to process incoming documents. Automated notifications will provide feedback to external eFilers on the status of the submission.

This process will use the External Access Client ("EAC") module for OnBase which will incur a variable billing on a 30 day cycle based on active users for the period. Only the accounts with activity will trigger the monthly charge per account of $4.00; as an example if there are 20 accounts logged into for a specific month, that period would incur a charge of $80.00.

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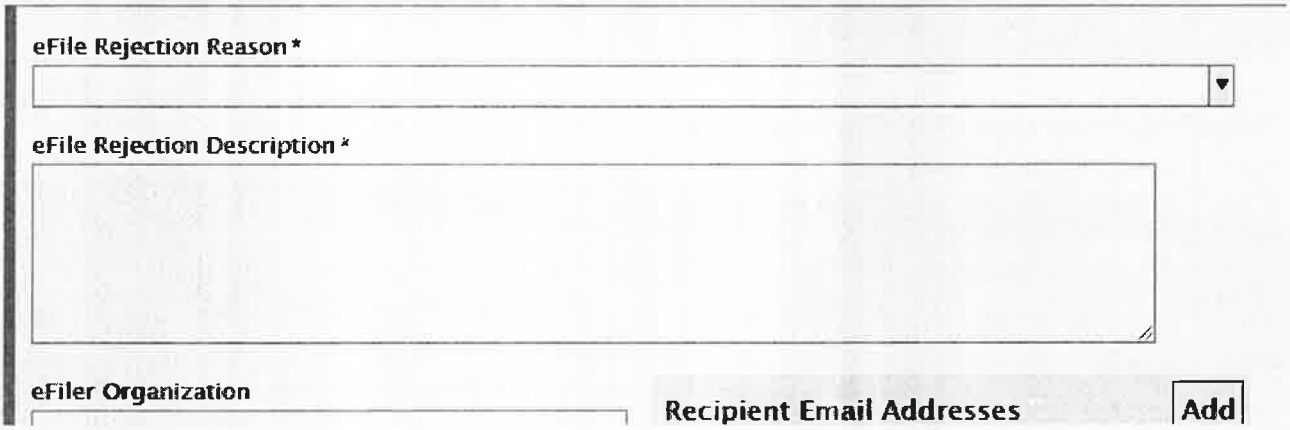
Scope

Create three (3) new User Groups:

- EAC Admin - Uses will be capable of making configuration changes for the external users
- eFiler Accounts - Users able to connect to the system for upload and download options, contributor access
- eFile Reviewers - Internal staff user group for access to efile Review workflow process and queues

One new Unity Form used to provide staff with pre-defined rejection reasons and allows for further customizations to the subject and message bodies using a new internal autofill process. The process will allow staff to select a reason for the rejection which will populate an additional field on the form that may be further customized if needed.

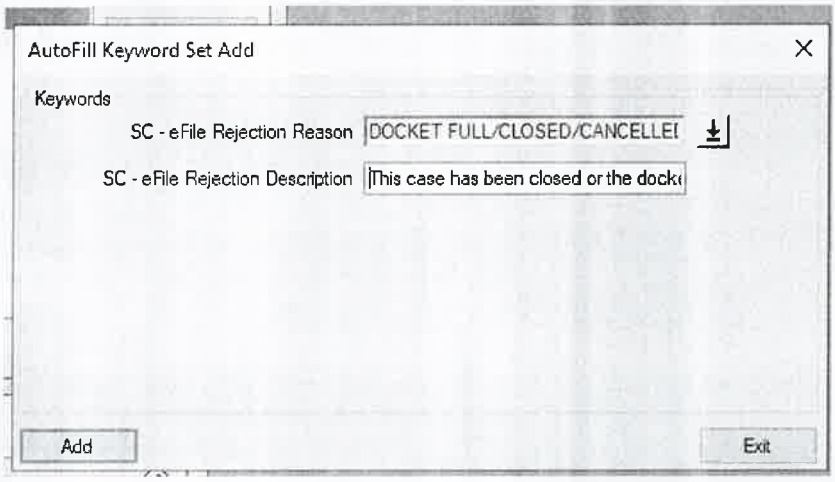


The values selected and submitted from this form will be used in the generation of an automated email message. The message will not be saved in OnBase.

Example reasons include;

- Wrong Case Number
- Wrong County
- Wrong Court

Each defined reason will also have a default description used in the body of the email message. Users with administrative permissions may make changes to these as needed:



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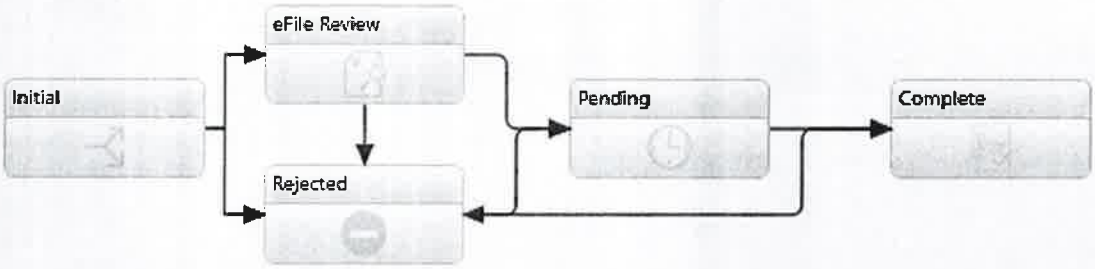
One new Query;

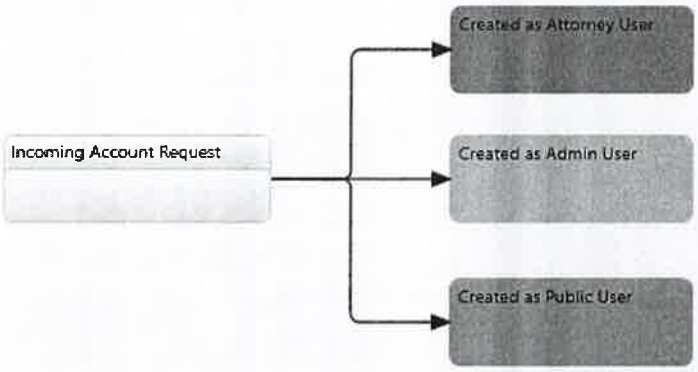
- eFiled document search displayed on the portal main view ;
    - Limited to documents uploaded by the current user within the last 30-60 days

Two new Workflow Processes:

- eFile Review/Index and File (Accept, Reject, provide reasons for rejections)

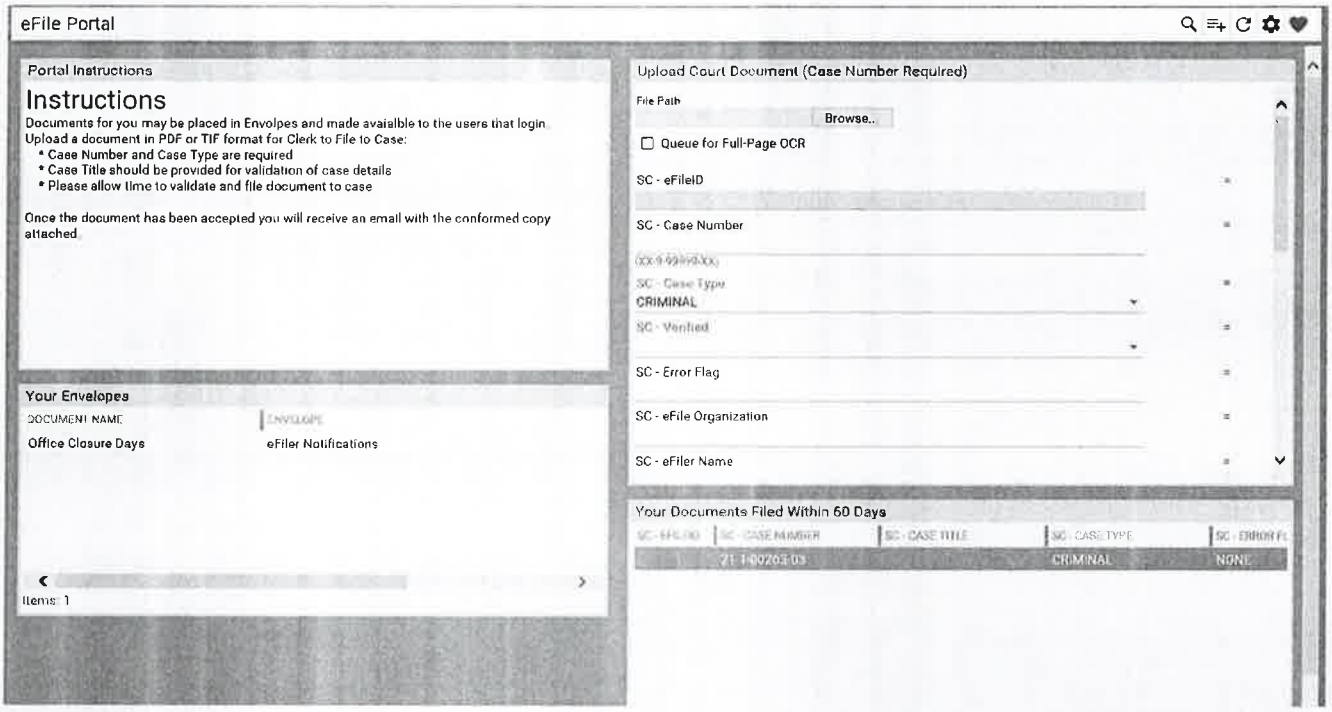


- EAC Account Management to be a manual process initially, later phases may look to automate the account creation tasks.



One new StatusView Layout to Include up to four 'Portlets';

- Instruction Panel - Includes configurable text, formatted as HTML for instructional content
- Custom Query - displays documents uploaded by the user within the last 60 days
- Upload - Limited to a Pre-acceptance eFile Case Document
- Announcements (Envelopes) - Provides a option to provide document access to external users of the system by creating a new document and sharing in an envelope



Konica Minolta's Responsibilities Include

- Create and configure a new eFile Document Type
- Install and configure the External Access Client ("EAC")
    - Three (3) Queue Workflow process for authorizing users
- Configure a new StatusView layout with the Four portlets configured
    - HTML Editor - Used to include basic instructions to users of the system and can be tailored with verbiage provided by the County.
    - Document Upload - Allows users to upload case related documents with a guided approach that will limit the Document Description based on the selected Case Type.
    - Document Query - Used to display the documents uploaded within the last 30 or 60 days, users may change date range and search for documents available to them.
    - Envelopes - May be used to provide informational documents to users of the system
- Create and configure a new Workflow for document intake process;
    - Four (4) queue workflow to allow staff to evaluate submitted data and document(s)
    - Verify format, content and indexing values
    - Accept or reject submitted documents with reason and notification
    - Provide notifications via custom template on acceptance, to include the conformed copy to the submitter
- Provide Clerk staff training on acceptance and rejection process
- Provide internal staff training on the new process for eFiled document validation, rejection or acceptance

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Client's Responsibilities Include

- Assign a software or system administrator to participate for the duration of the project
- Provide user access for discovery, user acceptance testing and training sessions
- Provide support services for network related configuration tasks associated with the new web portal configuration

Assumptions

- The existing SSL certificate will suffice for encrypting the data
- Email notifications will not be stored in OnBase
- No integration for automated billing system
- Konica Minolta will use remote support tools for the configuration and testing during this project
- Konica Minolta and client will work together to unit test the developed solution in the respective environments
- Konica Minolta and client will work together to define the development and implementation schedule, tasks and resource planning
- All development will be performed on the test system and migrated to the production system upon UAT Sign Off

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Implementation Plan

A project rollout plan will be proposed and finalized as a part of the project engagement. The key dates below are provided as a high level timeline for your project.

Key Dates

The key dates listed below are preliminary, and mutually agreed upon by Clallam County and Konica Minolta. These dates are subject to change, but any changes would be discussed, reviewed, and approved by Konica Minolta and Clallam County

Description	Date
Contract Execution	9/27/2021
Purchase Order Delivery (if necessary)	9/28/2021
Project Kickoff	Project kickoff will be schedule 2-3 weeks after contract execution
Target Go-Live	12/15/2021

Customer Acknowledgement:_____(Initial)

Schedule

Once this SOW has been executed and a Purchase Order received, the Implementation Process identified above will be initiated with development of a formal project plan and schedule. This should take one to two weeks, and a formal plan will be cooperatively developed as a part of the project initiation phase, depending on resource availability. It is very important for both organizations to understand that starts and stops in the Implementation Process are very costly. Working together to develop a workable plan that will ensure a smooth process is critical to the overall success of the project.

Licensing Requirements

The External Access Client Module required for this project has been ordered under a separate quote.

The following software licensing is required to meet the needs of the proposed solution on an ongoing process..

Product / Module Name	Product Code	License Fee	Qty	Extended Price
External Access Client Contribute User *	EACIPI1-CO	$4.00	TBD	$0.00
*Monthly billings will be sent out based on active accounts for each period. Per client access monthly fee noted here for reference only and not due on project start.				

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Professional Services Fee Schedule

Konica Minolta's fee schedule includes the work items as described in this Statement of Work:

Professional Services	Milestone Payment
Contract Signing	$25,620.00
Professional Services Cost*	**$25,620.00**

* Konica Minolta recommends that clients maintain a 15% budget reserve for additional features and functionality that may be requested by the project team. These funds are not represented or accounted for in this proposal and will be accessed through change control.

Customer Acknowledgement:_____(Initial)

Project Payment Milestones

Konica Minolta's payment milestones are defined as:

Milestone	Acceptance Criteria
Contract Signing	At the time that Clallam County signs this proposal, the full amount of the project cost is due per the payment terms. **Acceptance Criteria:** Signature of this proposal.

Payment Terms

Payments for specific Tasks and Deliverables shall be made upon acceptance of the Milestones included in this SOW and are due net 30 from the date of invoice.

Change Management Process

Clallam County or Konica Minolta may request a change to the scope of the Professional Services to be rendered in a Scope of Work. If such a change is requested by either party, Konica Minolta will inform Clallam County in writing if such change would result in a change in fees or other costs to Clallam County or a change in the implementation schedule for the Professional Services, as well as any other material impact such change could reasonably be expected to have on the Professional Services.

Travel and Expense Policy

This project is intended to be fully executed remotely. If travel becomes a requirement then Clallam County will reimburse Konica Minolta for all reasonable expenses incurred in connection with the performance of the services in this scope of work for travel expenses (such as airfare, car rental, lodging, mileage reimbursement, tolls, parking and meals). All travel time will be subject to a travel charge. Travel charges will be applied based on the standard hourly rate. The client will be invoiced for one-half of the total travel time to and from the client location for each on-site visit.

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Statement of Confidentiality

This document contains information that is privileged, confidential and subject to copyright – it is tendered for the exclusive use of Clallam County and its employees only. No portion of this document, including any and all the supporting materials submitted within the document, or in addendum to it, may be transmitted to third parties or reproduced without prior written approval by Konica Minolta.

Validity

This document shall remain valid until 9/30/2021. Konica Minolta reserves the right to make changes in specifications and other information contained in this document without prior notice.

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Acceptance

CLIENT: Clallam County

PROPOSED SOLUTION: eFile Portal

This SOW is entered into as of the date indicated by the last signing party below by and between Konica Minolta and Clallam County. This SOW is an addendum to the parties' Master Services and Sales Agreement ("MSA") and is governed by the terms of the MSA. In the event of any conflict between the MSA and this SOW, this SOW shall control but only with respect to this particular SOW.

By signing below, the authorized representative(s) from Clallam County acknowledge that they have read, agreed to and accepted this SOW and agree that it is provided for the purpose of providing an estimate for professional services related to discovery and gap analysis and is subject to change.

Clallam County Approval

Approver	Signature	Date Signed

Konica Minolta Business Solutions U.S.A., Inc. Approval

Ken Hubbard	DocuSigned by: Ken Hubbard A1C716FE64F049D...	9/24/2021
ECM Sales Director	Signature	Date Signed
Keith Thomson	DocuSigned by: Keith Thomson E094DAD962C34BD...	9/24/2021
Professional Services Director	Signature	Date Signed

39
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Public Works/Road

WORK SESSION ☐ **Meeting Date**

REGULAR AGENDA ☒ **Meeting Date: 09/28/2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Resolution
☐ Draft Ordinance
☐ Contract/Agreement/MOU - Contract #
☐ Proclamation
☐ Final Ordinance
☐ Budget Item
☒ Other Bid Opening

Documents exempt from public disclosure attached: ☐

Executive summary:

This item is opening of bids received for the Sequim-Dungeness Way/Woodcock Road Roundabout Project, CRP C1257.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

This item is budgeted as a part of the 6-Year Transportation Improvement Program and the Annual Construction Program.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

That the Board publicly opens all bids received for this project, then refers them to Public Works for review, tabulation and recommendation of award at their next regularly scheduled meeting.

County Official signature & print name: ,Mary Peterson for Ross Tyler

Name of Employee/Stakeholder attending meeting: Ross Tyler

Relevant Departments: Public Works/Road Dept.

Date submitted: 9/22/2021

3b
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Public Works/Road

WORK SESSION ☐ **Meeting Date**

REGULAR AGENDA ☒ **Meeting Date: 09/28/2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Resolution
☐ Draft Ordinance
☐ Contract/Agreement/MOU - Contract #
☐ Proclamation
☐ Final Ordinance
☐ Budget Item
☒ Other Bid Opening

Documents exempt from public disclosure attached: ☐

Executive summary:

This item is opening of bids received for the 2021 Countywide Overlay Project, CRP C1258.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

This item is budgeted as a part of the 6-Year Transportation Improvement Program and the Annual Construction Program.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

That the Board publicly opens all bids received for this project, then refers them to Public Works for review, tabulation and recommendation of award at their next regularly scheduled meeting.

County Official signature & print name: Mary Peterson, Mary Peterson for Ross Tyler

Name of Employee/Stakeholder attending meeting: Ross Tyler

Relevant Departments: Public Works/Road Dept.

Date submitted: 9/22/2021

4a
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Human Resources

WORK SESSION ☒ **Meeting Date: 9/27/2021**

REGULAR AGENDA ☒ **Meeting Date: 9/28/2021**

Required originals approved and attached? ☐
Will be provided on: 9/24/2021 Afternoon

Item summary:

☐ Call for Hearing
☒ Contract/Agreement/MOU - Contract # 461.21.15
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☒ Other Letter of Understanding – 1619-CS

Documents exempt from public disclosure attached: ☐

Executive summary:
In accordance with Collective Bargaining protocols and the 6-30-21 expiration of the 2020-2021 Contract Extension Agreements from the original 2018-2020 Colllective Bargaining Agreements (CBA), staff has completed negotiations with the bargaining unit of 1619 CS (Correction Sergeants) and have ratified a Letter of Understanding commencing retroactive to July 1, 2021 and expiring on June 30, 2024.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
2021 budgetary impacts will be discussed at the worksession.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve the ratified proposed letter of understanding as negotiated and presented.

County Official signature & print name: Tom Reyes

Name of Employee/Stakeholder attending meeting: Tom Reyes – Rich Sill

Relevant Departments: All Departments

Date submitted: 9/22/2021

Document was submitted after the agenda and packet were posted on _____.

6 9/21/21
9/28/21

Clallam County/AFSCME 1619-CS
Letter of Understanding
July 1, 2021 – June 30, 2024

Clallam County ("the County") and AFSCME 1619-CS ("the Union") agree to the following language changes to the contract extension effective July 01, 2021 through June 30, 2024:

Wage progression for the following individuals will occur as noted. Anniversary dates are based on dates of hire/promotion as a Clallam County Corrections Sergeant. Rates are based on the Appendix A Wage Schedule as adjusted contractual annual cost-of-living increases):

Ross Cameron	Wage
7/1/21	$6751.79

Alicia Newhouse	Wage
8/1/21	$6052.63
1st Promotion Anniv. Date	$6314.52
2nd Promotion Anniv. Date	$6529.78
3rd Promotion Anniv. Date	$6751.79

Sandra Waterhouse	Wage
7/1/21	$6052.63
1st Promotion Anniv. Date	$6314.52
2nd Promotion Anniv. Date	$6529.78
3rd Promotion Anniv. Date	$6751.79

Dated Signed
By Union: _____

THE WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES LOCAL 1619-CS

_____
Darrell Bryant, President

_____
Josh Marburger, AFSCME Representative

_____
APPROVED AS TO FORM
Matthew Lynch, Employment Council

Date Signed
By County: _____

CLALLAM COUNTY BOARD OF COMMISSIONERS

_____
Mark Ozias, Chair

_____
Bill Peach

_____
Randy Johnson

SA
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☐ **Meeting Date:**

REGULAR AGENDA ☒ **Meeting Date: 09/28/21**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☒ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☐ Other - Notice

Documents exempt from public disclosure attached: ☐

Executive summary:
Board of Clallam County Commissioner will consider adopting by Resolution the attached supplemental appropriations on September 28, 2021
Supplemental appropriations – increased expenditures due to unanticipated federal, state, and local funds.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Sheriff – OPNET Drug - $84,022
Sheriff – OPNET Drug - $45,773
Sheriff – Operations - $52,592
Superior Court - $111,745

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve the attached Resolution - supplemental appropriations.

County Official signature & print name: Morgann Halencak, Deputy Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: All Departments

Date submitted: September 8, 2021

---

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

BUDGET RESOLUTION _____, 2021

ADOPTING A SUPPLEMENTAL BUDGET FOR DEPARTMENTS/FUNDS LISTED BELOW

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Pursuant to RCW 36.40.100, in open, public meeting, after proper notice, the following facts create a need for the Supplemental Budget Appropriations listed below:

   Sheriff – OPNET Drug
   - Additional funding from Department of Commerce Multi-Jurisdictional Drug-Gang Task Force Program for the Narcotics Task Force Program/$84,022
   - Additional funding from the sale of forfeited vehicles and firearms will pay Washington State Treasurer 10% of two vehicles and remainder to be used to purchase two replacement vehicles/$45,773

   Sheriff – Operations - Adds funding from reimbursement from FY18 & FY19 Operation Stonegarden Grant for patrol overtime, grant coordinator salary and benefits and patrol mileage related to grant activities for January through June 2021/$52,592
   Superior Court – Additional funding for Uniform Guardianship Act Minor Guardianship program/$111,745

2. The Budget Director has verified the accounting method for the supplemental appropriations and approved it by numbering and initialing the attached *Budget Change Forms*.

NOW, THEREFORE, THE BOARD OF CLALLAM COUNTY COMMISSIONERS hereby adopts the Supplemental Budget Appropriations for unanticipated state or federal funds shown above, and authorizes and directs the Treasurer to make the necessary transfer of funds in order to affect the Board's intent.

PASSED AND ADOPTED this twenty-eighth day of September 2021

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mark Ozias, Chair

_____
Randy Johnson

_____
Bill Peach

ATTEST:

_____
Loni Gores, CMC, Clerk of the Board

c: Budget Director
Treasurer
Affected Department(s)

DRAFT

CLALLAM COUNTY BUDGET CHANGE FORM

RECEIVED
CLALLAM CO. FINANCE
AUG 19 2021

Date Submitted: 08/18/21 **Budget Hearing/Meeting Date:** 09/28/21

X **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

__ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or reallocations between departments within the same fund, or anytime a reallocation within the same budget would authorize a new permanent position or a new capital purchase

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	11008.811	**Budget Name**	Sheriff - OPNET Drug

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	33316.73.8000	Narcotics Task Force Program	84,022
Total				84,022

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	52123.10.0010	Regular Time	25,000
		52123.10.0500	Overtime	500
		52123.20.0020	Benefits	9,254
		52123.31.0010	Office Supplies	700
		52123.31.0020	Operating Supplies	2,500
		52123.31.0026	Uniforms & Clothing	1,500
		52123.32.0015	Gasoline	2,500
		52123.35.0010	Small Tools and Minor Equipment	5,000
		52123.41.0020	Professional Services	15,000
		52123.41.5120	Public Works	500
		52123.42.0015	Cellular Phone	625
		52123.43.0020	Travel – Training	1,500
		52123.45.0010	Building/Office Rental	3,600
		52123.48.0040	Equipment – Repair and Maintenance	500
		52123.48.0042	Vehicle – Repair and Maintenance	1,000
		52123.49.0030	Printing and Binding	100
		52123.49.0049	Document Destruction	100
		52123.49.0058	Seizure Costs	2,000
		52123.49.0060	Registration	500
11008.811	Sheriff OPNET	50800.00.0000	Ending Fund Balance	11,643
Total				84,022

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Funding from WA State Department of Commerce Multi-Jurisdictional Drug-Gang Task Force Program grant award #F18-31440-003 that is anticipated to be expended in FY2021 but not already budgeted for.

County Official Approval: WJ Benedict

(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

Revised: J:\SDATA\BUDGETS_2021\Budget Changes\11008 JAG supplemental 092821.docx

RECEIVED
CLALLAM CO. FINANCE
SEP 03 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: 09/03/21 **Budget Hearing/Meeting Date:** 09/28/21

X **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

__ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or reallocations between departments within the same fund, or anytime a reallocation within the same budget would authorize a new permanent position or a new capital purchase

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	11008.811	**Budget Name**	Sheriff - OPNET Drug

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	36930.00.0000	Confiscated and Forfeited Property	45,773
Total				45,773

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	52123.49.0058	Seizure Costs	2,707
		59421.64.0010	Machinery & Equipment	43,066
Total				45,773

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Funding from the sale of forfeited vehicles and firearms. OPNET will pay Washington State Treasurer 10% on the sale amount of two of the vehicles and the remainder of the revenue will be used to help purchase two replacement vehicles for OPNET use.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

123

RECEIVED
CLALLAM CO. FINANCE
SEP 03 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: 09/03/21 ✓ **Budget Hearing/Meeting Date:** 09/28/21 ✓

X ✓ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

__ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or revisions within departments

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.811 ✓	**Budget Name**	Sheriff - Operations

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.811 ✓	Sheriff - Ops	34210.00.0000 ✓	Law Enforcement Services	52,592
				52,592 ✓

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.811 ✓	Sheriff - Ops	52122.10.0500 ✓	Overtime	45,056
		52122.45.0015 ✓	Vehicle Rental/Lease	853
		52123.10.0010 ✓	Regular Time	4,292
		52123.20.0020 ✓	Benefits	2,391
				52,592 ✓

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Reimbursement from FY18 & FY19 Operation Stonegarden Grants for patrol overtime, grant coordinator salary and benefits, and patrol mileage related to grant activities for the months of January-June 2021.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

122

RECEIVED
CLALLAM CO. FINANCE
SEP 02 2021

CLALLAM COUNTY BUDGET CHANGE FORM

9/2/2021

Date Submitted: ~~8/31/21~~ **Budget Hearing/Meeting Date:** 9/28/21 ✓

_X_ ✓ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

__ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or reallocations between departments within the same fund, or anytime a reallocation within the same budget would authorize a new permanent position or a new capital purchase

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.861 ✓	**Budget Name**	Superior Court ✓

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.861 ✓	Superior Court ✓	33401.20.0065 ✓	AOC Uniform Guardianship Act	$111,745
Total				$111,745 ✓

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.861 ✓	Superior Court ✓	51221.41.0088 ✓	Minor Guardianship	$111,745
Total				$111,745 ✓

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Superior Court has received additional grant funding for our UGA Uniform Guardianship Act in the amount of $111,745. Please add these funds to our 2021 budget line for the UGA Minor Guardianship program.

County Official Approval: Brad Beauchamp

(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

120

H1
9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☐ **Meeting Date:**

REGULAR AGENDA ☒ **Meeting Date: 9-28-21**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☒ Hearing
☐ Contract/Agreement/MOU - Contract #
☒ Resolution - Policy
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☒ Other – New Policy

Documents exempt from public disclosure attached: ☐

Executive summary:

Greenhouse Gas Policy:
Any number of state and federal grants require that Clallam County have a Greenhouse Gas Policy in place in order to make application. Today we will be holding a hearing to take testimony on a Greenhouse Gas Policy for adoption; it is anticipated that this initial policy will serve as a starting point for additional strategies and considerations.

Hearing and approval of a Resolution for new Greenhouse Gas Policy 958.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Hearing and approval of a Resolution for new Greenhouse Gas Policy 958.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, BOCC – Rich Meier and Chelsea Lierly, Prosecuting Attorney's Office

Relevant Departments: Board of Commissioners, BOCC – Rich Meier and Chelsea Lierly, Prosecuting Attorney's Office

Date submitted: 9-7-21

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

RESOLUTION _____, 2021

ADOPTING POLICY 958 – GREENHOUSE GAS REDUCTION POLICY

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Formal policies and procedures regarding Greenhouse Gas Reduction need to be developed and implemented.

2. The proposed Policy was posted on the Intranet and Internet to allow staff and the public time to review and comment. Prosecuting Attorney's Office reviewed the proposed Policy.

3. A public hearing was held September 28, 2021 to solicit testimony.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners in consideration of the above findings of fact:

1. That the attached Policy 958 – Greenhouse Gas Reduction Policy, be adopted for inclusion in the Clallam County Administrative Policy Manual.

PASSED AND ADOPTED this twenty-eight day of September, 2021

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mark Ozias, Chair

ATTEST:

_____
Randy Johnson

_____
Loni Gores, CMC, Clerk of the Board

_____
Bill Peach

DRAFT

GREENHOUSE GAS REDUCTION POLICY
Policy 958

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DRAFT

Greenhouse Gas Reduction Policy

.1 PURPOSE

This policy is intended to acknowledge Clallam County government's ~~responsibility and commitment to honor our stewardship of~~ commitment of action to conserve resources while conducting government business and to model the conservation of resources to the county residents and businesses. A primary goal of this policy is to monitor and reduce greenhouse gas emissions in county government and to assist in the reduction of greenhouse gas emissions in the region through partnerships, planning, education, and community engagement.

This policy is intended to be reviewed and updated as Clallam County continues to establish goals, actions and partnerships related to the reduction of greenhouse gas emissions.

.2 APPLICABILITY

This policy applies to all county offices, departments and agencies and to all elected and appointed County Officials, their employees, volunteers and visitors of Clallam County facilities unless otherwise governed by statute, County Ordinances or policy.

.3 DEFINITIONS

3.1 Greenhouse Gas

A greenhouse gas is a gas that absorbs and emits radiant energy within the thermal infrared range, causing the greenhouse effect. The primary greenhouse gases in Earth's atmosphere are water vapor, carbon dioxide, methane, nitrous oxide and ozone.

3.2 Greenhouse Effect

The greenhouse effect is the process by which radiation from a planet's atmosphere warms the planet's surface to a temperature above what it would be without this atmosphere.

.4 GENERAL POLICIES

Clallam County acknowledges government's need and responsibility to conserve resources in the conduct of government business and to serve as a role model conservation to Clallam County residents, businesses and visitors.

4.1 Historical Review

In 2009, the Board of County Commissioners adopted a *Climate Action Plan* to guide decision-making and set goals related to greenhouse gas reductions. As an outcome of the *Climate Action Plan*, significant internal reductions in energy consumption were achieved at the department level by removing excess/outdated equipment, reducing

passive energy use, replacing traditional lighting with more efficient options, and by ~~updated~~ updating heating and cooling systems.

In 2019, to continue and expand on the *Climate Action Plan* efforts, ~~county commissioners~~ the Board of County Commissioners hosted a series of Jefferson Dinners in each district to open a dialog with constituents to engage, gather public opinion and build community support ~~about~~ around the role of county government in Climate Action. The public guidance from each Jefferson Dinner was shared in a work session resulting in a determination to establish an updated greenhouse gas inventory to gather data for use in guiding future climate action initiatives and to stand up in an in-house Climate Advisory Group to ensure countywide engagement and to bring ideas and plans forward for adoption.~~.~~

4.2 Greenhouse Gas Inventory

Clallam County has committed to conduct and maintain an updated greenhouse gas inventory for the purpose of establishing a baseline to measure and determine the results of any climate action initiatives and to monitor progress toward county greenhouse gas emission goals.

The greenhouse gas inventory will monitor the status of Clallam County as a governmental entity (county owned structures, vehicles, employees) as well as Clallam County as a geographic region. To ensure accuracy, consistency, and inclusiveness, Clallam County ~~has determined to~~will establish data-gathering partnerships with any interested county cities, tribal governments, and the public.

4.3 Planning

Clallam County has incorporated by Resolution 62-2018 that all future updates to the Clallam County Comprehensive Plan will be informed by relevant climate change predictions and shall be amended to specifically include strategies that will reduce Clallam County's risk exposure while improving citizen's ability to prepare for and address the impacts of climate change.

Clallam County has committed to work closely with the consultant engaged by the North Olympic Development Council (NODC) beginning in 2022 to develop specific guidelines on incorporating climate change considerations within county planning documents such as the Comprehensive Plan and the Shoreline Master Plan.

Clallam County has adopted a new Solid Waste Management Plan that focuses on waste reduction gains as well as ~~highlighting important focus areas moving forward, especially in reducing~~ recommendations for waste reduction strategies including food waste reduction strategies. ~~in the waste stream and related supporting programs and efforts.~~ Food waste reduction is perhaps the most impactful area of focus for Clallam County as we work to reduce our carbon footprint.

4.4 Vehicle Emissions

Clallam County recognizesd the significant environmental impacts created by our fleet vehicles and commuting employees. It is the policy of Clallam County to establish alternatives to reduce the greenhouse gases created by these activities.

- Electric Vehicle Charging Stations (EVCS)
  Clallam County conducted a survey of all employees to determine the interest and anticipated use of EVCS for incentivizing employees to switch to electric vehicles for commuting. Based on a positive response to the survey, six EVCS will be installed in the employee parking lot (anticipated completion 12/2021).
  With the installation of EVCS, Clallam County has the option of replacing a portion of the county fleet vehicles with electric vehicles. All elected officials and department heads are encouraged to consider electric fleet vehicles as a contributing factor in meeting county greenhouse gas emissions reduction goals.
- Reduced cost public transportation passes are available for purchase by Clallam county employees in the County Commissioner's Office.
- Significant efforts were made in 2020 to allow some employees with department head approval to complete county work from home reducing emissions caused by commuting.
- Consideration of expanded work-from-home policies that allow employees increased flexibility to work remotely, thereby reducing vehicle emissions.

4.5 Climate Advisory Group

In 20211~~8~~, ~~Clallam County~~the Board of County Commissioners established an internal *Climate Advisory Group* to ensure continued progress in the reduction of greenhouse gases. The *Climate Advisory Group* is led by the director of the Clallam County Washington State University Extension Office and consists of employees from a variety of county departments working in an ancillary capacity to:

- ~~Conduct and update the Clallam County greenhouse gas inventories;~~
- ~~Engage the public to build community support, participate in the gathering of data and monitoring the progress of county greenhouse gas reductions;~~
- Support the public outreach efforts and information dissemination around climate planning.
- Identify data-collection needed for informed decision-making on GHG reductions.
- Recommend greenhouse gas emission reduction goals to the County Commissioners;
- Identify and recommend greenhouse gas reduction and resource conservation strategies to the Board of County Commissioners;
- Monitor and report county progress to the public on actions related to county greenhouse gas emissions;
- Draft and submit changes and additions to the Clallam County Greenhouse Gas Policy.

Comments received on Greenhouse Gas Reduction Policy 958

Lierly, Chelsea

From: Winborn, Joel
Sent: Friday, September 17, 2021 10:49 AM
To: Lierly, Chelsea; Stanley, Elizabeth
Cc: Winborn, Joel; Gores, Alanna
Subject: Policy 958 DRAFT

Just a few comments.

1. .2 APPLICABILITY.
   I don't understand what "...visitors of Clallam County facilities", means. To me, it can be interpreted as we are requiring the public to drive
   electric cars, etc.

2. .4 GENERAL POLICIES
   There is a space between, "conserva tion" that should be removed.

3. 4.1 Historical Review
   The first paragraph refers to the BOCC as, "Board of Commissioners", and in the second paragraph they are listed as, "county commissioners".

4. 4.4 Vehicle Emissions
   In the first bullet, there is a quantity of "six EVCS" shown, when the grant we received was for three. Maybe there are plans for more??? Also,
   the date shown is completion in 2021 which will not occur. It will be 2022.

5. 4.5 Climate Advisory Group
   The first paragraph refers to the BOCC in a third way as, "Clallam County Commissioners".

Thank you,
Joel

From: Gores, Alanna
Sent: Thursday, September 09, 2021 10:40 AM
To: @County Employees
Subject: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21
County Staff:
On September 28, 2021 at 10:30 a.m. the Board of Commissioners will be holding a hearing regarding a new Policy 958-Greenhouse Gas Reduction. Copy of the policy can be found here: http://www.clallam.local/bocc/html/redline.htm
Please review this policy and send any comments you might have to CLierly@co.clallam.wa.us and EStanley@co.clallam.wa.us **no later than Friday, September 17.**
Thanks, Loni
Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4

Port Angeles, WA 98362
Phone: 360-417-2256

Joel G. Winborn, Director
Clallam County Parks, Fair & Facilities Department
223 East 4th Street, Suite 7
Port Angeles, WA 9 8 3 6 2

Lierly, Chelsea

From: Emma Bolin <Ebolin@cityofpa.us>
Sent: Friday, September 17, 2021 2:14 PM
To: Lierly, Chelsea
Cc: Ben Braudrick; Allyson Brekke; nwest@cityofpa.us
Subject: RE: Need Pdf-county greenhouse gas policy

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Chelsea,

Thank you for providing the City an opportunity to review the County's draft greenhouse gas policy. Here are our comments:

The City's climate change planning and greenhouse gas inventory process is currently well underway. This involves a robust public engagement strategy including two public workshops and a survey identifying climate related actions. Included in the outreach strategy are stakeholder meetings, which the City expects the County to attend in order to discuss the plan development and greenhouse gas inventory findings using ICLEI clear path software. The NODC has been awarded funds for Climate Action and has hired the same consultant, Cascadia Consulting, Inc. to assist in the public engagement and drafting of a Climate Resiliency Plan. The NODC could assist the County in its efforts to partner with local jurisdictions in order to facilitate a more comprehensive climate action effort. The City hopes to adopt its climate resiliency plan prior to July 2022 as part of a Comprehensive Plan Update. Continued engagement and partnership will likely be directed by this plan and the City hopes that Clallam County will be represented in that effort.

Thank you kindly,

Emma Bolin, AICP
Community Development Manager | City of Port Angeles
360.417.4752 (p) | ebolin@cityofpa.us
321 East 5th Street
Port Angeles, WA 98362-0217
www.cityofpa.us

NOTICE: The City Manager has signed an emergency order that temporarily suspends and replaces construction vesting code provisions that allow applicants to choose which code they want their plans to be vested to, the 2015 or 2018 codes until January 1, 2022. Learn more here.

Did you know? Permit Services staff can assist you from your home or office computer the same as we would at the permit counter. All resources in our office are available online. Learn more by visiting our Permit Services Self-Serve Resources Guide.

We have a new appointment scheduling tool that allows you to schedule a virtual or in-person meeting at City Hall.

From: Lierly, Chelsea <clierly@co.clallam.wa.us>
Sent: Friday, September 17, 2021 8:38 AM
To: Emma Bolin <Ebolin@cityofpa.us>
Cc: Ben Braudrick <Bbraudri@cityofpa.us>
Subject: RE: Need Pdf-county greenhouse gas policy

Good morning Emma,

Please see attached. Please send back a redlined version with your comments by the end of today.

Thanks,

Chelsea

Chelsea Lierly

From: Emma Bolin <Ebolin@cityofpa.us>
Sent: Thursday, September 16, 2021 5:48 PM
To: Lierly, Chelsea <clierly@co.clallam.wa.us>
Cc: Ben Braudrick <Bbraudri@cityofpa.us>
Subject: Need Pdf-county greenhouse gas policy

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Hi Chelsea,

The City's Community and Economic Development team would like to comment on the County's draft greenhouse gas policy. Can you please provide me a pdf of the policy at your earliest convenience? The hyperlink did not work.

Thank you kindly,

Emma Bolin, AICP
Community Development Manager | City of Port Angeles
360.417.4752 (p) | ebolin@cityofpa.us
321 East 5th Street
Port Angeles, WA 98362-0217
www.cityofpa.us

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We have a new appointment scheduling tool that allows you to schedule a virtual or in-person meeting at City Hall.

NOTICE: This email and any attachments may be subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

Lierly, Chelsea

From: Tyler, Ross
Sent: Wednesday, September 15, 2021 11:12 AM
To: Lierly, Chelsea
Subject: RE: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21
Attachments: Comments on draft Greenhouse Gas Reduction Policy.doc

Hi Chelsea,

Attached are my comments regarding the draft Greenhouse Gas Reduction Policy. I do not have any comments on the draft policy itself, my comments are targeted towards some of the operational details that will need to be considered once the policy is adopted.

Thank you for the opportunity to comment.

Ross

From: Lierly, Chelsea
Sent: Monday, September 13, 2021 8:46 AM
To: Tyler, Ross; Winborn, Mary Ellen; Winborn, Joel; 'Karen Affeld'; nwest@cityofpa.us
Subject: FW: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21
Importance: High

Good morning,

Clallam County is on track to adopt a Greenhouse Gas Policy by the end of this month. I am requesting specifically from your department or business to please review and provide any feedback on the draft of our Greenhouse Gas Policy by this Friday, September 17th.

If you have any questions, please let me know.

Thank you!

Chelsea

Chelsea Lierly
BOCC Analyst | Board of Equalization Coordinator
Clallam County - Board of County Commissioners
223 E 4th Street | Port Angeles, WA 98362
Telephone: 360.417.2330| Email: clierly@co.clallam.wa.us

From: Gores, Alanna <agores@co.clallam.wa.us>
Sent: Thursday, September 9, 2021 11:09 AM
To: @County Employees <CountyEmployees@co.clallam.wa.us>
Subject: RE: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21

County Staff:

For those that can't open the link I've attached the PDF file.
Some are able to open the link in Explorer program.

Loni

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

From: Gores, Alanna
Sent: Thursday, September 09, 2021 10:40 AM
To: @County Employees
Subject: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21

County Staff:

On September 28, 2021 at 10:30 a.m. the Board of Commissioners will be holding a hearing regarding a new Policy 958-Greenhouse Gas Reduction. Copy of the policy can be found here: http://www.clallam.local/bocc/html/redline.htm

Please review this policy and send any comments you might have to CLierly@co.clallam.wa.us and EStanley@co.clallam.wa.us **no later than Friday, September 17.**

Thanks, Loni

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

Clallam County Public Works/Road Department

223 E. Fourth St., Suite 6
Port Angeles, WA 98362-3015

Ross Tyler, P.E.;
Director of Public Works/County Engineer
360-417-2448 Fax: 360-417-2513 E-mail: rtyler@co.clallam.wa.us

Comments on draft Greenhouse Gas Reduction Policy

I am limiting my comments to Section 4.4 Vehicle Emissions and further limiting to suggestions related to future policy details, and support program development.

I have no suggested modifications to the draft Greenhouse Gas Reduction Policy as currently presented.

4.4 Vehicle Emissions

Electric Vehicle Charging Stations (EVCS)

1) Develop policies that govern the use of EVCS.
    a. Are the stations open to the public for public use
    b. What priorities will be given to County fleet EV's vs employee personal EV's vs public EV's.
    c. Is there a charge ($) for personal use by a County employee, or the public

Electric Vehicle Fleet Maintenance

1) Develop a program to support EV's within the Equipment Rental & Revolving Fund
    a. This will be a completely new technology therefore our ability to maintain these vehicles will need to evolve and will probably include some combination of dealer maintenance and ER&R program maintenance.

Thank you for the opportunity to comment.

Ross

Ross Tyler, P.E.
Director of Public Works/County Engineer

Lierly, Chelsea

From: Teel, Tess
Sent: Thursday, September 9, 2021 12:16 PM
To: Lierly, Chelsea; Stanley, Elizabeth
Subject: FW: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21

Two suggestions:

We need to incentivize and reduce not only ***commuting***, but reducing the use of heat, cooling, outdated equipment, and reducing excessive amounts of electric-consuming equipment. Each device sitting on a desk uses electricity whether it is actually in use or not – that generates excess heat and thereby requires more cooling to keep the surrounding office cooler and that increases our carbon footprint.

1. Reducing the number of "individual" devices (i.e. laser printers desktop scanners) from individuals desks and going to a "shared equipment environment" is not only much more cost effective in supplies, maintenance, and cost to acquire, but requires much less electricity.

2. Most desktop devices and peripherals are left on day and night and even in "power-saving mode" continue to consume electricity. Instituting a plan to *"power-off devices at end of business day"* would save hundreds if not thousands of dollars yearly and reduce green-house gases in a concrete and measureable way. Looking to reducing our electric bill is a much easier way that each employee can and should assist in.

Not everyone can afford a new car and certainly not an electric car. The cost to install electric car charges would be a huge expense out of pocket for a very small ROI which will benefit a small subset of the employees and residents of Clallam County.

Establishing, encouraging, and *monitoring* a County policy that makes the commitment to reduce the number of individual devices as well as a policy that all non-essential devices be completely turned off at the end of shift *(a power strip would be simple way)* would certainly be something that *all employees* could participate in and bring greenhouse gas reduction to front of mind.

These two simple steps will save the County money, cost nothing to implement, and potentially encourage employees to examine their at-home carbon footprint encouraging a more "green" mindset daily.

Tess Teel, Admin Specialist IV – IT
Clallam County Information Technology
223 East 4th Street, Ste 13
Port Angeles, WA 98362
Phn: 360-417-2349
tteel@co.clallam.wa.us

(Please consider the environment before printing this email)

All e-mail sent to this address will be received by the Clallam County e-mail system and may be subject to public Disclosure under Chapter 42.56 RCW and is subject to archiving and review by someone other than the recipient.

From: Gores, Alanna
Sent: Thursday, September 9, 2021 10:40 AM
To: @County Employees
Subject: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21

County Staff:

On September 28, 2021 at 10:30 a.m. the Board of Commissioners will be holding a hearing regarding a new Policy 958-Greenhouse Gas Reduction. Copy of the policy can be found here: http://www.clallam.local/bocc/html/redline.htm

Please review this policy and send any comments you might have to CLierly@co.clallam.wa.us and EStanley@co.clallam.wa.us **no later than Friday, September 17.**

Thanks, Loni

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

Lierly, Chelsea

From: Anderson, Dean
Sent: Thursday, September 9, 2021 11:03 AM
To: Lierly, Chelsea; Stanley, Elizabeth
Cc: Gores, Alanna
Subject: FW: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21

I don't know if this is a thought best shared here or elsewhere, but I do have a comment.

Regarding the Vehicle Emissions section, I think it would be worthwhile and beneficial for the County to further expand in the area of some employees completing county work from home on an ongoing basis (instead of limiting those efforts somewhat to pandemic-related situations). Reviewing and opening up policies related to working from home and allowing that as an ongoing option for many positions, whether it be full-time working from home or in some cases part-time from home and part-time in office, would be beneficial in many areas including reduction of environmental impacts of commuting employees and potentially reducing the spread of COVID-19.

There are cases where the work-from-home allowance has been limited to the COVID pandemic, and as that waned, employees were asked to return to work full time in the office even when the nature of the work could be done from home, at least part time.

It makes sense for example for some positions to work in the building full time due to the nature of the duties, while others could work efficiently say 2 days a week in the office and 3 at home, reducing their vehicle emissions by more than 50% and potentially reducing the spread of COVID-19.

Dean Anderson
Systems Analyst
Information Technology Department
Clallam County

From: Gores, Alanna
Sent: Thursday, September 9, 2021 10:40 AM
To: @County Employees
Subject: New Policy - 958 Greenhouse Gas Reduction Policy - RESPONSE NEEDED BY 9-17-21

County Staff:

On September 28, 2021 at 10:30 a.m. the Board of Commissioners will be holding a hearing regarding a new Policy 958-Greenhouse Gas Reduction. Copy of the policy can be found here: http://www.clallam.local/bocc/html/redline.htm

Please review this policy and send any comments you might have to CLierly@co.clallam.wa.us and EStanley@co.clallam.wa.us **no later than Friday, September 17.**

Thanks, Loni

Loni Gores
Clerk of the Board

Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

Lierly, Chelsea

From: David Hanna
Sent: Friday, September 17, 2021 4:25 PM
To: Lierly, Chelsea; Stanley, Elizabeth
Subject: Proposed Clallam County Climate Change Policy

Greetings:

Policies such as this, which hurry to completion, must of necessity contain a few fads or fashions that may not represent current technology. I'll pass over those and speak to solid technology which works; specifically hybrid and electric cars.

My family has owned a Prius for six years and we've put over 200,000 hard miles on it. 50 mpg is not a marketing gimmick, it really goes that far on a gallon of gas. This is tried and true technology that is mature right now. Aside from any climate change benefits, these cars pay for themselves in hard cash savings, from the very first day.

Electric cars are just a bit further out but I'm hearing good things about them.

So. My suggestion is that Clallam County begin investing in hybrid cars as older cars come up for replacement. As they work out, maybe look at investing in a single hybrid SUV and try it out.

Let's keep an eye on all-electric vehicles and, when the technology seems mature, buy one, run it hard and see how it goes. Until then, let's let other agencies try them out first. We'll follow on when they've worked the bugs out of them. We'll also have to make sure that there are charging stations around the County and the greater Puget Sound area.

Speaking of fads and fashions, reclaiming food waste isn't really proven technology now, but I really think that the obstacles to reusing this resource are being worked out. Let's watch this technology, go slowly now, and be prepared to go much further about the time the next five year update to the Solid Waste Master Plan comes around.

I'm new in this position; the above represents only my personal observations, experiences and opinions.

Regards

David Hanna, PE
Clallam County Public Works
Utilities Program Manager
223 E 4th St Ste 6
Port Angeles, WA 98362
dhanna@co.clallam.wa.us
360-417-2441

David Hanna, PE
Clallam County Public Works
Utilities Program Manager
223 E 4th St Ste 6
Port Angeles, WA 98362
dhanna@co.clallam.wa.us
360-417-2441

H2

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

9/28/21

Department: BOCC

WORK SESSION ☐ **Meeting Date:**

REGULAR AGENDA ☒ **Meeting Date: 09/28/21**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☒ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☐ Other - Notice

Documents exempt from public disclosure attached: ☐

Executive summary:
Board of Clallam County Commissioner will consider adopting by Resolution the attached debatable emergencies on September 28, 2021.
Debatable emergency – Public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
Non Departmental - $40,000
Parks & Facilities - $12,631
Parks & Facilities - $22,150
Parks & Facilities - $39,000
Sheriff – Jail Medical - $31,500
Sheriff – OPNET Drug - $4,500

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve the attached Resolution - debatable emergencies.

County Official signature & print name: MaryAnn Halencak, Deputy Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: All Departments

Date submitted: September 8, 2021

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* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Budget Debatables 09-28-21
Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

BUDGET RESOLUTION _____, 2021

ADOPTING BUDGET EMERGENCIES FOR THE DEPARTMENTS/FUNDS LISTED BELOW

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Pursuant to RCW 36.40.140, after a public hearing on August 31, 2021 the following constitute Public emergencies, which could not reasonably have been foreseen at the time of budget preparation:

   Non Departmental - Additional funding for contract with CBG Communication for professional services for renegotiation and technical review work for the WAVE cable franchise renewal/$40,000
   Parks and Facilities
   - Additional funding for expenses related to COVID-19 for goods and services expenditures incurred in August, 2021 expected to be reimbursed through FEMA/$12,631
   - Additional funding for wages for temporary custodian hired through Express Personnel for June through November 2021/$22,150
   - Additional funding for the purchase and installation of Supply Fan 1 to the HVAC system in the courthouse and a replacement hot water heater in the Jail/$39,000

   Sheriff – Jail Medical – Additional funding for expenses related to COVID-19 for inmate testing expenditures incurred April - August, 2021/$31,500
   Sheriff – OPNET Drug – Additional funding to purchase two replacement vehicles for OPNET use/$4,500

2. The Budget Director has reviewed the accounting method for the debatable emergencies and approved it by numbering and initialing the attached *Budget Change Forms*.

NOW, THEREFORE, BE IT RESOLVED by the Clallam County Commissioners, in consideration of the above findings of fact:

1. The amount of money required to meet the public emergencies listed above is authorized for expenditure provided that no expenditure is made or liability incurred pursuant to the resolution under RCW 36.40.150 until a period of five days, exclusive of the date this resolution is signed, have elapsed.
2. The Treasurer is authorized and requested to make any necessary transfer of funds in order to affect the Board's intent.

PASSED AND ADOPTED this twenty-eighth day of September 2021

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mark Ozias, Chair

_____
Randy Johnson

_____
Bill Peach

ATTEST:

_____
Loni Gores, CMC, Clerk of the Board

c: Budget Director
Treasurer
Affected Department

DRAFT

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: 8/19/2021 **Budget Hearing/Meeting Date:** 9/28/2021

__ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

X **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or reallocations between departments within the same fund, or anytime a reallocation within the same budget would authorize a new permanent position or a new capital purchase

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.291	**Budget Name**	NonDepartmental

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.293	General Fund Reserves	50800.00.0000	Ending Fund Balance	40,000
Total				40,000

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.291	NonDepartmental	51420.41.0020	Professional Services	40,000
Total				40,000

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Funding in the amount of $40,000 for our new contract with CBG Communications. CBG Communications will provide renegotiation and technical review work relating to the WAVE cable franchise renewal.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

RECEIVED
CLALLAM CO. FINANCE
AUG 3 1 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: September 1, 2021 **Budget Hearing/Meeting Date:** September 28, 2021

__ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

X **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

__ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law

__ **Budget Revision** – transfers or reallocations between departments within the same fund, or anytime a reallocation within the same budget would authorize a new permanent position or a new capital purchase

__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.911.	**Budget Name**	Parks & Facilities

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.293	General Fund Reserves	50800.00.0000	Ending Fund Balance	$12,631
Total				$12,631

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.911.	Parks & Facilities	57680.31.0035	Cleaning and Sanitation Supplies	$3,821
00100.911.	Parks & Facilities	57680.41.1030	Personnel Services	$8,810
Total				$12,631

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

To pay for additional expenses related to the Covid 19 virus event in Clallam County that were paid from the Parks and Facilities budget in 2021. This is to cover the goods and services expenditures incurred in August 2021, and are expected to be reimbursed through FEMA reimbursements.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

117

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CLALLAM CO. FINANCE
AUG 3 1 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: September 1, 2021 **Budget Hearing/Meeting Date:** September 28, 2021

__ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

X **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

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__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.911.	**Budget Name**	Parks & Facilities

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.293	General Fund Reserves	50800.00.0000	Ending Fund Balance	$22,150
Total				$22,150

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.911.	Parks & Facilities	57680.41.1030	Personnel Services	$22,150
Total				$22,150

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

To pay for wages for a temporary evening custodian hired through Express Personnel to cover for custodian Hal Fjarle while he is off work on medical leave. The expectation is that Hal will be out on medical leave at least through November, possibly longer, pending approval from his medical provider. This will cover wages paid to Express Personnel for a temporary custodian for the time period of June through November, 2021.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

118

RECEIVED
CLALLAM CO. FINANCE
AUG 3 1 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: August 31, 2021 **Budget Hearing/Meeting Date:** September 28, 2021

__ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

X **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

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__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.911.	**Budget Name**	Parks & Facilities

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.293	General Fund Reserves	50800.00.0000	Ending Fund Balance	$39,000
Total				$39,000

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
~~30101.911~~ 00100.911	Parks & Facilities	57680.48.0010	Building Repair and Maintenance	$39,000
Total				$39,000

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

1) For the purchase and installation of replacement Supply Fan 1 to the HVAC system in the Courthouse facility. This fan is critical to the proper functioning of the main air system for the courthouse. The cost of this replacement will be $14,000.

2) For the purchase and installation of a replacement water heater in the Jail facility. The water heater was old and in need of replacement and determined to be beyond repair making replacement necessary. The cost of replacement of the water heater will be $25,000.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

119

RECEIVED
CLALLAM CO. FINANCE
SEP 03 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: 09/03/21 ✓ **Budget Hearing/Meeting Date:** 09/28/21 ✓

__ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

X ✓ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

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__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.816 ✓	**Budget Name**	Sheriff – Jail Medical ✓

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.293 ✓	General Fund Reserves ✓	50800.00.0000 ✓	Ending Fund Balance	31,500
Total				31,500 ✓

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.816 ✓	Sheriff – Jail Medical ✓	52360.41.0086 ✓	Inmate Medical ✓	31,500
Total				31,500 ✓

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

To pay for additional expenses related to the COVID 19 virus event in Clallam County. This is to cover the inmate testing expenditures incurred April-August 2021.

County Official Approval: _____
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

121

RECEIVED
CLALLAM CO. FINANCE
SEP 03 2021

CLALLAM COUNTY BUDGET CHANGE FORM

Date Submitted: 09/03/21 **Budget Hearing/Meeting Date:** 09/28/21

__ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds

X **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.

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__ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	11008.811	**Budget Name**	Sheriff - OPNET Drug

REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	50800.00.0000	Ending Fund Balance	4,500
Total				4,500

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
11008.811	Sheriff – OPNET Drug	59421.64.0010	Machinery & Equipment	4,500
Total				4,500

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Additional amount needed to purchase two replacement vehicles for OPNET use. Majority of funding will come from sale of forfeited property.

County Official Approval: _____

(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)

124

H3

9/28/21

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: DCD

WORK SESSION ☐ **Meeting Date:**

REGULAR AGENDA ☒ **Meeting Date: 9-28-2021**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☒ Final Ordinance
☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:
The Clallam County Planning Commission completed their review and public hearing process regarding a proposed ordinance intended to clarify the requirements for personal use of recreational vehicles, park models, and camping. The Planning Commission held a public hearing on July 7, 2021 and voted to forward the ordinance titled "Recreational Vehicles, Park Models, and Camping" to the Board of Commissioners on August 5, 2021. Staff attended a work session on the proposed ordinance September 30, 2021 and discussed adding the definition of a campground and clarifying the current definition of primitive campgrounds, along with any concerns the BOCC had with the ordinance. The Board may now conduct their public hearing process and review the public comments received. The ordinance is intended to consolidate existing requirements and address deficiencies in the Clallam County Code regarding Recreational Vehicles, Park Models, and Camping.
The ordinance will allow the placement of one RV or park model on a legal lot, ensure park models meet installation instruction or be engineered, and requires proof of legal black and gray water disposal, disposal of solid waste, and ensure compliance with zoning, shoreline, and critical areas.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Adoption of the RV Ordinance.

County Official signature & print name: MaryEllen Winborn

Name of Employee/Stakeholder attending meeting: Donella Clark, Principal Planner

Relevant Departments: DCD

Date submitted: 9-22-2021

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

Ordinance _____

An ordinance amending Clallam County Code Title 33 Zoning, and adding a new section adopting standards for Recreational Vehicles, Park Models, and Camping

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Chapter 33.03, Section 33.03.010, Definitions is amended to read as follows:

For the purpose of this title, certain terms or words herein shall be interpreted as specifically defined in this chapter. All other words in this title shall carry the meanings as specified in the latest edition of Webster's New Collegiate Dictionary. Words or phrases not listed here have neither been amended or repealed by the ordinance codified in this section and remain as currently enacted.

(1) "Accessory apartment" means an accessory housing unit located above the first floor of a multistoried commercial or limited industrial use building.

(2) "Accessory dwelling unit" or "ADU" means a separate dwelling unit within a single-family dwelling or a separate structure associated with a single-family dwelling which is incidental and subordinate to the primary residential use of the property. Accessory dwelling units are further defined as follows:

(a) Detached. Those accessory dwelling units that are lawfully constructed within existing outbuildings, or stand alone, where the ADU does not share a common wall with the primary residential dwelling unit. ADUs that are connected to a primary residential structure only by a covered breezeway or similar appurtenant structure shall be considered detached.

(b) Attached. Those accessory dwelling units that share a common wall or floor/ceiling with the primary dwelling unit and do not meet the definition of detached accessory dwelling unit.

(3) "Accessory housing" means an accessory single-family housing unit, the residential use of which remains a clearly incidental and subordinate use to a legally constructed primary single-family dwelling, commercial, or industrial use. "Accessory housing" includes accessory dwelling units, accessory apartments, caretaker apartments, and temporary medical hardship dwellings.

(4) "Accessory use or improvement" means a use or improvement which is necessary for the full use and enjoyment of the main use of the property, is typically associated with the main use, and is subordinate to or incidental to the main use of a parcel and which includes the utilities necessary to serve the accessory use. Accessory uses and improvements are allowed in all zoning districts.

(5) "Administrator" means the Director of the Department of Community Development of Clallam County or his/her designee.

(6) "Affected party" means those parties with standing to bring action on appeals of decisions rendered pursuant to this title and is limited to the following parties:

(a) The applicant or owner of property on which the development is proposed;

(b) Any person entitled to notice of the application pursuant to CCC 33.37.010; or

(c) Any person who deems themselves aggrieved by a decision and who will suffer direct and substantial impacts from the proposal.

(7) "Agriculture" means improvements and activities associated with the raising and harvesting of crops and livestock. "Agriculture" includes ancillary activities, including equipment storage and repair, seasonal employee housing, and temporary on-site retail stands for the sale of agricultural goods.

(8) "Airport, general aviation" means an area of land or water that is used or intended to be used for the landing and taking off of aircraft. General aviation airports are designated by the Federal Aviation Administration (FAA) and may include ancillary structures and facilities that support the public and/or commercial use of the airport, including boarding terminals, air traffic control towers, cargo decks, baggage and ticketing terminals, parking areas, fueling facilities, aircraft storage (hangars), and aircraft servicing and repair facilities.

(9) "Airport, private use" means an area of land or water that is used or intended to be used for the landing and taking off of aircraft. Private use airports are not designated by the Federal Aviation Administration (FAA) as general aviation airports and may include ancillary structures and facilities that support the private, noncommercial recreational use of the airport, including air traffic control towers, parking areas, fueling facilities, aircraft storage (hangars), and aircraft servicing and repair facilities.

(10) "Allowed use" means a use or structure which is allowed outright by this chapter in one or more zones without issuance of a conditional use permit but remains subject to all other development regulations applicable to the proposal.

(11) "Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves external to or attached to the exterior of any building.

(12) "Asphalt plant" means a permanent (longer than three months) installation of an asphalt plant; provided, that the facility complies with all applicable water quality, air quality, and other environmental regulations.

(13) "Bed and breakfast inns" means a single-family dwelling on property occupied by the owner or manager which is constructed or converted partially or entirely into an overnight, short-term boarding house which does not detract from the residential appearance of the structure, and has five or fewer rooms for overnight accommodations.

(14) "Business park" means a commercial or industrial development supporting low-intensity activities compatible with adjoining residential land uses when properly landscaped.

(15) "Campground" means land developed to provide designated areas for tents and shall include facilities constructed for the comfort or convenience of the campers, including but not limited to restrooms, showers, and garbage service, and is considered an outdoor-oriented recreation facility.

(16) "Caretaker apartment" means an accessory housing unit that is permitted in association with a commercial or industrial use where no residential dwelling exists, and the expressed purpose of the accessory housing unit is to provide housing for an on-site security or operations personnel.

(176) "Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums and mausoleums.

(187) "Child daycare center" means a person or agency that regularly provides care for a group of children for periods of less than 24 hours (RCW 74.15.020).

(198) "Church" means a building or buildings intended for religious worship including ancillary activity and improvements such as religious education, assembly rooms, kitchen, reading room, recreation hall and may include a residence for church staff. This definition does not include schools devoted primarily to nonreligious education.

(2019) "Commercial greenhouse or nursery" means a structure (greenhouse) or land (nursery) devoted to the cultivation and wholesale or retail of plants.

(201) "Commercial horse facility" means a facility greater than 2,000 square feet for the commercial boarding, care, training or riding of horses.

(221) "Commercial storage" means a structure, or part thereof, or area used principally for the storage of goods and merchandise.

(232) "Commercial use" means any premises devoted primarily to the wholesaling or retailing of a product or service for the purpose of generating an income.

(243) "Commercial use, neighborhood" means commercial uses whose primary function is to serve a limited geographic market area intending to enhance a neighborhood or limited residential market.

(245) "Commission" means the Clallam County Planning Commission appointed by the Board of Commissioners.

(256) "Communication relay facilities" means telephone, telegraph, television, radio, cables, microwave stations, retransmission improvements, substations and any other communication conveyance. This definition includes commercial broadcast stations, accessory control buildings, and security fencing.

(267) "Comprehensive Plan" means the Clallam County Comprehensive Plan, CCC Title 31.

(287) "Conditional use" means an activity or structure which is permitted in a zoning district through a special permitting process with public input and a determination that the proposed use is consistent with applicable land use regulations and the character of the neighborhood.

(289) "Corner lot" means a lot abutting on and at the intersection of two or more streets.

(2309) "County" means Clallam County.

(310) "Density" means the number of dwelling units per gross acre of land, which includes road rights-of-way to the centerline of fronting streets, tidelands, and dedicated open space areas.

(312) "Development right" is defined as the difference between the existing use of a parcel and its potential use as permitted by existing law, i.e., a development right is equal to the unused development potential of a parcel of land. In simplest form, a single development right usually represents the potential to build one dwelling unit.

(323) "Development standards" means a set of requirements establishing parameters to be followed in site and/or building design and development.

(334) "Duplex" means two dwelling units having a common roof.

(345) "Dwelling unit" means any building or any portion thereof which is intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes having independent living facilities for one family including permanent provisions for living, sleeping, eating, cooking, sanitation and including accessory structures and improvements.

(356) "Easement" means a grant of one or more property rights by the property owner to and/or for a specific or general use by a person or public.

(367) "Family daycare provider" means a child daycare provider who regularly provides child daycare for not more than 12 children in the provider's home in the family living quarters for periods of less than 24 hours (RCW 74.15.020).

(387) "Financial institution" means a building, property or activity, the principal use or purpose of which is the provision of financial services, including but not limited to: banks, facilities for automated teller machines (ATMs), credit unions, savings and loan institutions, stock brokerages and mortgage companies.

(389) "Gas station" means a principal building site and structures for the sale and dispensing of motor fuels or other petroleum products and the sale of convenience retail.

(4039) "Grocery store" means a structure devoted primarily to the sale of staple foodstuffs and household commodities.

(401) "Gross floor area," for structures used for commercial or industrial purposes, shall include the sum of the horizontal areas of one or more floors of a building measured from the exterior face of exterior walls or from the centerline of a wall separating two commercial uses but not including interior parking spaces, storage spaces, loading spaces and basements which are not used for human habitation or service to the public. For structures used for residential purposes, "gross floor area" shall include the sum of the horizontal areas of one or more floors of a building measured from the exterior face of exterior walls but not including garages or exterior storage spaces.

(421) "Group home" means a facility licensed by the State which is located in a single building utilized for the full-time shelter and care of a group of unrelated people. A group home is considered to be a multiple-family dwelling when it is occupied by 17 or more clients. A group home is considered to be a home enterprise when occupied by 16 or fewer clients and when consistent with the standards for a home enterprise.

(432) "Hazardous waste" means:

(a) Any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides or any residues or containers of such substances which are disposed of in such quantities or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes have short-lived toxic properties which may cause death, injury, or illness or have nutrogenic, teratogenic or carcinogenic properties; or are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(b) Any waste described in subsection (42)(a) of this section which will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of man or wildlife and is highly toxic to man or wildlife; or if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

(434) "Hazardous waste treatment and storage facility" means a site or facility used to store or treat hazardous waste as defined in subsection (42) of this section.

(454) "Home-based industry" means a revenue generating enterprise which is located on a residential parcel and which generates or involves outdoor activity and/or outdoor storage of equipment or supplies.

(465) "Home enterprise" means a revenue generating enterprise which is conducted entirely within a dwelling and/or inside other legally existing buildings on a residential property and is subordinate to and incidental to the residential use of the dwelling.

(476) "Indoor shooting range" means a facility, commercial, public or private, which provides for recreational shooting and hunter education within a fully enclosed and soundproof structure which is clearly subordinate to the residential use, if applicable, of the property.

(487) "Industrial use" means any premises devoted primarily to the manufacturing of finished or semi-finished products, and the processing of materials. This definition includes accessory facilities such as but not limited to storage facilities, transfer facilities, warehousing, heavy vehicular storage and repair, log storage milling and sorting.

(498) "Kennel" means an establishment which is designed to accommodate the temporary boarding of six or more household pets owned by persons other than the owner of the premises.

(5049) "Land use" means an activity on land serving man in some manner.

(510) "Limited industrial use" means those industrial uses which generate minimal amounts of noise, odor, glare, traffic, and other nuisance characteristics.

(521) "Lodges" means any structure accommodating an organization which is operated not-for-profit where entrance to the premises is contingent upon the payment of a monthly or yearly fee.

(532) "Long-term commercial significance" includes (or signals) the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the 20-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, Comprehensive Plan and development regulations, or other laws.

(543) "Lot coverage" means the total ground coverage of all buildings or structures on a site measured from the outside of external or supporting walls, but not to include: at-grade, off-street parking lots; deck areas; terraces; swimming pools; pool deck areas; walkways and roadways; and driveways.

(554) "Lot depth" means the horizontal length of a straight line drawn from the midpoint of the front property line of the lot to the midpoint of the rear property line.

(565) "Lot line, front" means the boundary of a lot which is common to a public or private road or access easement. Where the lot abuts two or more roads the lot owner may designate one of the lot lines common to one of the roads as the front lot line at the time the lot is developed.

(576) "Lot line, rear" means the property line of a lot that is most opposite or most distant from the designated front lot line and that does not intersect any front lot line. In the case of a triangular lot, it means a line 10 feet in length within the lot parallel to and at the maximum distance from the front lot line. In the event that the front property is a curved line, then the rear property line shall be assumed to be a line parallel to a line tangent to the front property line at its midpoint. In the case of waterfront property, the rear lot line is that which adjoins the ordinary high water line, unless otherwise designated by the Zoning Administrator.

(587) "Lot line, side" means any lot line that is not a front or rear lot line, or any lot line that intersects a front lot line.

(598) "Lot, parcel, tract" means an ownership of land in which the boundary is defined by a deed recorded in the County Auditor's office and assigned a tax parcel number by the County Assessor; or a lot which has been defined by a survey recorded pursuant to Washington State surveying or platting laws and is assigned a tax parcel number by the County Assessor; or parcels recognized by resolution of the Board of County Commissioners adopted prior to the effective date of this title.

(6059) "Lot width" means the horizontal distance between side lot lines measured at right angles to the lot depth line at a point midway between the front and rear property line. If the side property lines are not parallel, the width of the lot shall be the length of a line at right angles to the depth line of the lot at a distance midway from the front and rear lines required for the district in which the lot is located.

(610) "Marijuana processor" means a person licensed by the State Liquor and Cannabis Board to process marijuana into marijuana concentrates, usable marijuana and marijuana-infused products, and package them for sale in retail outlets and at wholesale to marijuana retailers.

(621) "Marijuana producer" means a person licensed by the State Liquor and Cannabis Board to produce and sell marijuana at wholesale to processors and other producers.

(632) "Marijuana retail" means a person licensed by the State Liquor and Cannabis Board to sell marijuana concentrates, usable marijuana, and marijuana-infused products in a retail outlet.

(634) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreation facilities.

(645) "Medical hardship" means a physical or mental incapacitation requiring daily care by an on-site caregiver and is attested to, in writing, by a licensed practicing physician in the State of Washington.

(665) "Medical hardship dwelling" means a mobile home or manufactured home, as defined by WAC 296-150M-0020, allowed to provide temporary housing in cases of documented medical hardship.

(676) "Medical service facility" means a licensed medical physician's clinic or outpatient care clinic where overnight accommodations are not provided.

(687) "Mineral extraction" means activities involved in the extraction and processing of minerals from the earth for industrial, commercial, or construction uses, excluding water. For the purpose of this chapter, removal of solid materials from the earth is not deemed mineral extraction until the activity collectively results in more than three acres of land being disturbed or that results in pit walls more than 30 feet high and steeper than one horizontal to one vertical. This definition does not include disturbances greater than three acres of land during any time period if the cumulative area that has not been rehabilitated according to the State's reclamation requirements outlined in Chapter 78.44 RCW is less than three acres. Farming, road construction, mineral exploration testing and site preparation for construction shall not be deemed mineral extraction activities.

(698) "Mineral Resource Land Overlay District" or "MRLOD" means an overlay designation given to the location of a surface mine or proposed surface mine. A surface mine located upon land having the MRLOD designation may operate there without first obtaining a conditional use permit, if one would otherwise be required in the absence of MRLOD designation. Such a surface mine is and remains subject to the regulations listed in Chapter 33.62 CCC and all other applicable development regulations.

(7069) "Minimum lot size" means the smallest parcel size upon which a dwelling may be placed or constructed; provided, that roads and open spaces which are dedicated to the public and tidelands shall be excluded when calculating lot size; provided, that lots in the Rural (R1) zoning district may include roads dedicated to the public as part of a land division in the minimum lot size calculation.

(710) "Mini-storage/self-storage" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants for the purpose of storing and removing personal property. A self-service storage facility is not a public warehouse.

(721) "Mixed-use" means development that combines two or more different land uses on the same lot or contiguous lots in the same zone, such as retail uses and residential uses.

(732) "Mobile home park" means a lot or parcel of land occupied by two or more mobile homes on a rent or lease basis, and approved by Clallam County pursuant to County regulations.

(743) "Motel/hotel" means a structure which provides overnight, short-term boarding to transient guests and not defined as a bed and breakfast inn facility.

(754) "Multiple-family dwelling" means a building containing three or more dwelling units.

(765) "Nonconforming use or structure" means a lawful structure or use existing at the time this title or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

(776) "Off-street parking" means any space specifically allocated to the parking of motor vehicles that is not located within a public right-of-way, travel lane, service drive, or any easement for public use.

(787) "Outdoor-oriented recreation facilities" means buildings, land alterations, or other facilities which are intended to provide for recreational activity including, but not limited to, campgrounds, boat launching facilities, golf courses and ball fields.

(789) "Outdoor shooting range" means a facility, commercial, public or private, and use, part of which occurs outdoors, which is established for the purpose of recreational shooting and hunter education/training. An "outdoor shooting range" includes the discharge of firearms for any lawful purposes. Accessory uses which directly relate to the use of the site as an outdoor shooting range such as campgrounds and indoor retailing of shooting supplies are included.

(8079) "Parking space" means an area set aside for the parking of one motor vehicle.

(81) "Park Model or Recreational Park Trailer" means a type of recreational vehicle as defined in the American national standards institute A119.5 standard for park trailers as defined by RCW 43.22.335.

(820) "Performance standards" means criteria that are established and must be met before a particular use will be permitted. These measures are designed to guide development of property and include, but are not limited to, open space requirements, water and wastewater requirements, buffer zones, screening, size and height limits for buildings, noise, vibration, glare, heat, air or water contaminants, and traffic.

(831) "Permitted use" means an activity or structure which is either allowed in a zone pursuant to this chapter without conditions or formal action by the County, or is identified as a conditional use.

(842) "Person" means a man, woman, firm, association, partnership, political subdivision, government agency, corporation or any other human entity whatsoever.

(853) "Preferred use" means the use that is the most appropriate lawful use for a particular parcel because that use best furthers the public policy behind the zoning or overlay designation applicable to that particular parcel.

(864) "Primary dwelling unit" means a structure consistent with the definition of "single-family dwelling," as set forth in this section; provided, that this definition applies to those single-family residential structures on parcels where an accessory dwelling unit, consistent with the standards of Chapter 33.50 CCC, is also present.

(875) "Primitive campground" means a campground of no more than 4 spaces for day use and overnight accommodations by tenters only (no recreational vehicles or tent-trailers) and shall include placement of a chemical toilet and garbage service. A primitive campground is also an outdoor-oriented recreation use, unless specified in each zoning district.

(886) "Professional office" means a structure accommodating the following professional offices: medical, dental, chiropractic, accounting, consulting, cosmetologist, real estate offices or

such other offices of persons required to be licensed by the State of Washington following completion of required training.

(897) "Public building" means a building or improvement which is used or owned by a governmental agency.

(9088) "Public improvement" means a facility which is used or owned by a governmental agency.

(9189) "Race track" means an area devoted to the racing of motor and nonmotorized vehicles or animals, and all improvements normally associated with racing such as off-street parking, patron seating, concessions, and a fixed race track.

(920) "Restaurant" means a business in which food is prepared and sold for consumption.

(931) "Research facility" means an improvement devoted to or supporting research activities and having minimal nuisance characteristics related to odor, noise, glare and radiation. "Research" is an activity devoted to the obtaining of knowledge and does not include any product retailing or wholesaling activity. Testing for surface and subsurface minerals is not a research activity.

(942) "Retail use" means a land use devoted primarily to the wholesale and retail sale of a product or service to the general public.

(95) "Recreational Vehicle (RV)" means a vehicular-type unit primarily designed for recreational camping or travel use that has its own motive power or is mounted on or towed by another vehicle. The units include travel trailers, fifth-wheel trailers, folding camping trailers, truck campers, and motor homes as defined by RCW 43.22.335.

(963) "RV park" means two or more occupied RVs on a propertya campground for day use and overnight accommodations by motor homes, travel trailers, truck campers, and camping trailers, and park models.

(974) "Satellite dish antenna" means a round, parabolic antenna intended to receive signals from orbiting satellites and other sources. Noncommercial dish antennas are defined as being less than four meters in diameter. Commercial dish antennas are typically those larger than four meters and typically used by broadcasting stations.

(985) "School" means a building where instruction is given to persons to enhance their knowledge or skills. Buildings where instruction is given primarily on religious matters are not deemed to be schools.

(996) "Setback" means the minimum distance allowed by this chapter between a lot line or the centerline of a street right-of-way and the foundation of any building on the lot; provided, however, that eaves, decks, porches, bay windows, chimneys or other architectural elements may project no more than two feet in any required yard except in instances where such projection would be over or on an easement, which is not allowed; and, provided further, that structures and improvements associated with utilities or roads dependent on location on or near road right-of-way shall be allowed without meeting the setback standards of the Zoning Code.

(10097) "Shooting range" means a facility established for the purpose of recreational shooting, including, but not limited to, target and skeet shooting.

(10198) "Should," when used in a statement, indicates a preference, recommendation or exhortation rather than a mandate or requirement and is a synonym for "may."

(10299) "Single-family dwelling" means a dwelling unit detached from any other dwelling unit and intended for occupation by one family and including accessory improvements and uses. This definition includes manufactured homes such as mobile homes, modular homes and other homes manufactured in components or as one complete dwelling unit.

(1039) "Storage facility" means a building or fenced open yard used solely for the storage of goods and materials; provided, that automobile wrecking or salvage facilities are excluded from this definition.

(1041) "Street" means any vehicular right-of-way which:

(a) Is an existing State, County or municipal roadway; or

(b) Is a publicly owned easement; or

(c) Is shown upon a plat or short plat or survey approved pursuant to County regulations; or

(d) Is approved by other governmental action. The street shall include all land within the boundaries of the street right-of-way which is improved.

(1052) "Street classifications" means those functional classifications given to streets by the Clallam County Board of Commissioners under the provisions of RCW 36.86.070.

(1063) "Street right-of-way" means a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation, and intended to be occupied by a street, as specified by recorded easements, recorded ownership instruments, or dedications accepted by the Board of County Commissioners for public transportation purposes.

(1074) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises of beer and/or wine.

(1085) "Timber harvesting" means improvements and activities associated with the growing and harvesting of trees. Such activity includes land preparation for tree planting, road construction, tree thinning, brush control, log storage and sorting yards, tree nursery facilities, research activity related to timber growing, improvements required for environmental impact mitigation, temporary chipping and barking activity utilizing portable equipment, storage of materials, vehicles and equipment supporting timber growing, harvesting and transportation activities, staging areas and facilities, timber trans-shipment facilities, log scaling facilities, the extraction of gravel and rock necessary to support timber management activity and all other silviculture and associated practices which are recognized by and consistent with the regulations of the Washington State Forest Practices Act of 1974.

(1096) "Timber labor camp" means facilities which are designed to accommodate persons who are employed in timber management activities. Such facilities provide overnight sleeping, waste disposal and one cooking facility to serve the entire facility.

(11007) "Tourist shop" means a facility devoted primarily to the sale of a product or service to the traveling public, including antique or curio shops, crafts, and memorabilia.

(11108) "Transfer of development rights" or "TDR" means an innovative voluntary program in which unused transferable development rights (TDRs) credited by the County to one parcel can be sold and transferred without buying and selling the land. These transferable development rights may be utilized in an urban growth area to increase allowable densities.

(11209) "Unclassified use" means an activity or land use not defined by this title and not listed as an allowed use, a conditional use, or a prohibited use in this title.

(1130) "Urban growth area" means those areas designated by Clallam County pursuant to the policies in the County-wide Planning Policy and the Comprehensive Plan.

(1141) "Urban level of facilities and services" means those services defined as "urban governmental services" with levels of service as defined within the capital facilities element of the Clallam County Comprehensive Plan.

(1152) "Utility" means a fixed, conveyance type improvement serving two or more ownerships. Said improvement conveys power, gas, water, sewage, surface drainage, or

communication signals. This definition does not include intercounty or interstate transmission facilities.

(1163) "Vacation rental" means a legally constructed dwelling intended for occupancy of the entire dwelling (not rental of individual rooms) by any person/group other than the primary owner for periods of 30 days or less and is an allowed use in all zoning districts that allow single-family residences. Uninhabitable structures like garages, barns, or sheds shall not be used as vacation rentals. "Vacation rental" does not include a bed and breakfast permitted and operated in accordance with this code.

(1174) "Variance" means an exception from the minimum standards of this chapter allowed by the provisions of Chapter 33.30 CCC.

(1185) "Vehicular repair" means a structure or land use devoted to the repair of motor vehicles and not otherwise defined as a home-based industry.

(1196) "Veterinary clinic" means any building or portion thereof designed or used for the medical care or treatment of cats, dogs, or other animals.

(12017) "Wholesale commercial use" means establishments or places of business primarily engaged in selling merchandise or services to retailers, industrial customers, institutional agencies, professional business users or to other wholesalers.

(12118) "Wood manufacturing" means any wood manufacturing premises devoted primarily to the manufacturing of semi-finished products, finished products and the processing of materials. This definition includes accessory facilities such as but not limited to storage facilities, transfer facilities, warehousing, heavy vehicular storage and repair, log storage, milling and sorting.

(12219) "Wood manufacturing (small-scale)" means any wood manufacturing activity meeting the following criteria: cabinet shops and other wood finishing facilities; all activity takes place indoors; and the structure is less than 5,000 square feet.

(1230) "Wrecking yard" or "junk yard" means an open area where scrap materials or motor vehicles are bought, sold, exchanged, recycled, stored, disassembled or handled, but which cannot be used again for the purpose for which it was originally intended.

(1241) "Zone" means a mapped area to which a uniform set of regulations applies. The Clallam County Official Zoning Map describes the extent and boundaries for the zones described within this title.

(1252) "Zoning" means the process by which a county or municipality legally controls the use of property and physical configuration of development upon tracts of land within its jurisdiction.

Chapter 33.48, Recreational Vehicles, Park Models, and Camping**, is created to read as follows:**

Section 33.48.010, Purpose is created to read as follows:

The purpose of this chapter is to protect public health, safety, and welfare of Clallam County citizens and the environment by providing standards for recreational vehicles and camping on private property.

Section 33.48.020, Requirements for Recreational Vehicle Use is created to read as follows:

(1) One RV may be placed and occupied on a legal lot and shall meet the standards of this code. If an RV is placed on vacant land only the land owner shall occupy the RV. Upon request by DCD (i.e. complaint received), the applicant shall provide evidence of compliance with these standards.

(2) Duration of stay within an approved/legal RV park or mobile home park will be determined by the manager/owner.

(3) Within frequently flooded areas, the maximum number of days a park model or RV can be occupied is 180 days and it must be ready for highway use (per FEMA regulations).

(4) For parcels over 2.4 acres in size, events with multiple RV's (family reunion, hunting camp, etc.) are allowed for a maximum of 56 days per year, no longer than 14 consecutive days. If multiple RV's are on the property in excess of 56 days per year and more than 14 consecutive days shall be identified as an RV park.

(5) Proof of legal black and gray water disposal shall be provided for use of an RV on property. Permanent connection to an approved septic or sewer connection by Clallam County Environmental Health or Public Works is required for an RV to be occupied more than 180 days per calendar and/or where water is installed and used at the property. Sani-cans are only approved for dry camping and shall be screened from public view.

(6) Solid waste (as defined by Chapter 41.11, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts) must be properly disposed from the property as outlined in Solid Waste Regulations (Chapter 41.11). In the event of solid waste investigation (i.e. burning of trash, the accumulation of junk vehicles, or more than 12 cubic feet of solid waste as outlined in Section 41.11.070 CCC, etc), documentation of the disposal of solid waste in an approved facility will be required to be provided to Clallam County DCD and/or Environmental Health.

(7) No more than two unoccupied recreational vehicles of any kind may be stored on a property, and only one unoccupied RV may be stored on parcels under five acres.

(8) RVs shall not be parked on a public roadway, right-of-way, or easement.

(9) RVs shall be licensed and operable, and shall not include any fixtures or attachments such as decks, porches, attached skirting, etc. that would prevent the movement of the vehicle.

(10) All personal property not considered solid waste shall be screened from adjacent properties and roadways through use of existing/proposed structures, fencing, berms, landscaping, etc.

(11) Permanent electrical service should be provided whenever feasible or if intended to be used more than 180 days in a calendar year, which is intended to reduce noise, fumes, fire hazard, and potential spills of fuel from the use of generators. Use of generators should include noise reducing measures (low noise ratings, mufflers, insulation, location, etc) to comply with the Washington State Department of Ecology Maximum Environmental Noise Levels codified at WAC 173-60, which includes stricter standards at night time (10 p.m. to 7 a.m.).

(12) Improvements to a site shall not disturb the native vegetation within a critical area, shoreline, or their buffers without compliance with Shoreline and Critical Area regulations. On pre-existing sites (developed prior to adoption of applicable regulations), placement on the developed area is allowed.

(13) Placement shall comply with the zoning, shoreline, and critical areas codes to the maximum extent possible.

(14) No more than one RV may be connected to a hook-up (electric and/or water) without being considered an RV park except as per 4 above, and renting of space(s) constitutes an RV park, which requires compliance with the underlying zoning.

(15) If conditionally allowed, RV parks with 4 or less spaces will not require approval of a binding site plan.

(16) The Administrator may permit one temporary RV for a caretaker for commercial/industrial development, or documented medical hardship for a caretaker or immediate family member. The temporary RV will require submittal of a request to be renewed every three years upon proof of continuing need, and shall not be allowed if a primary and accessory dwelling unit are already located on the parcel.

Section 33.48.030, Requirements for Park Models is created to read as follows:

(1) Only one Park Model may be placed and occupied on a legal lot and shall meet the above standards. Upon request by DCD (i.e. complaint received), the applicant shall provide evidence of compliance with these standards.

(2) Park models shall be secured with a system that meets the requirements per the manufacturer's installation instructions or, by engineered design, and shall be installed to prevent overturning and roof uplift.

(3) Park models placed on property with a single family residence will disqualify the property for an accessory dwelling unit.

(4) Park models may have skirting and detached decks (not structurally connected) if located outside of a floodplain.

Section 33.48.040, Temporary Living Quarters during Construction is created to read as follows:

During construction of a single family residence, the land owner may place an RV for temporary living quarters. Upon completion of the single family residence or expiration of the building permit the RV shall no longer be used as living quarters.

Section 33.48.050, Tents and Yurts is created to read as follows:

A property owner may camp without improvements using tents or unpermitted yurts on their property for no more than 30 days. Dry camping may not be used as a permanent living arrangement. Construction of yurts for permanent living requires approval of a building permit.

If the land owner intends to create improvements to the property, or camp more than 30 days, or provide camp sites to the public, the owner shall comply with underlying zoning standards. If allowed outright, the applicant shall provide a site plan showing compliance with all zoning setbacks and critical area/shoreline buffers, provide a source of approved septic disposal, and if potable water is intended to be provided, an approved water system shall be noted. Platforms or stands that are 30 inches or greater in height, which are constructed for the placement of tents, require issuance of a building permit. Any other structures must comply with Building Department standards.

Section 33.48.060, Violation-Penalty is created to read as follows:

Failure to comply with the provisions of this chapter shall be a violation. Violations of this code will be subject to civil penalties listed in Chapter 20 for non-commercial violations.

ADOPTED this _____ day of _____2021

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mark Ozias, Chair

ATTEST: _____
Randy Johnson

_____ _____
Loni Gores, Clerk of the Board Bill Peach

DRAFT

PUBLIC COMMENTS

Public Comment Matrix

Label	Comment	Response
Goldstein email 9-15	No mention of separate metering of utilities or garbage collection. Opening door for the worsening of these trashed RV's to accumulate on private property. Concerns about garbage on these properties. Since considering changes to zoning code, how about a discussion of tax break to home owners using ADU's as moderate income rental units instead of short-term vacation rentals.	RV connections will be regulated and enforced by the provider, and Environmental Health who regulates septic systems. County does not regulate metering or garbage collection, code is just intended to be sure there is proof of legal waste removal and the provider regulates the connection or disposal. DCD believes that this code will help enforcement since the codes are more clear and consolidated. Garbage accumulation is regulated by Environmental Health. Zoning codes do not regulate tax incentives. Comment reiterates the idea that individuals can park their own RV's on vacant property for personal use, but should not be allowed to rent a vacant property as an RV site since there is no investment to the neighborhood by an absentee land owner.
Peterson call 9-8	If RV is rented out on vacant land then the neighborhood becomes impacted and has to deal with problems that arise	Clarify that individual may personally use an RV on their vacant property but in order to allow others to use the RV it must also have a home on the property.
Byrne email 9-8	Urge acceptance allowing occupancy of an RV or Park Model	None
Reed email 9-7	In favor of ordinance. County should take care of junk cars and trash in yards.	Condition 6 specifically states section on solid waste
Bigoff email 9-7	Putting trailers on property to keep grandkids housed	None
Rutter email 9-7	Request clarification of ordinance	Ordinance sent and hearing date provided
Bush email 9-7	Support approval	None
Pero email 8-30	Totally screened RV from adjacent properties and roadways is not practical for most properties	Intent of condition 10 is to screen RV's from adjacent property owners and to screen excess personal property that does not fit inside the RV that

		could end up being placed around the property since there is no room to be stored inside the RV. This is of greater concern on properties where just an RV is placed and no structures for storage. Removed need for the unit and the appurtenances to be screened, but maintain that personal property that is not being stored indoors must be screened.
Frick 8-30	If not going to enforce don't waste our time. County needs to get tuff and hold violators accountable.	Purpose of the ordinance is to provide clarity in the code to help code enforcement have standards they can enforce instead of gray areas with no legal standing.
Emett email 6-4	Thanks for supporting issue of people being able to live in their RV on their own property.	None

Clark, Donella

From: Gores, Alanna
Sent: Thursday, September 16, 2021 6:10 AM
To: Johnson, Randy; Ozias, Mark; Peach, Bill; Clark, Donella; Winborn, Mary Ellen; Ballard, Greg
Subject: FW: Ammending Callam County code Title 33 Zoning. allowing RV's as ADU's

RV Comment received.

LG

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

From: DAVID GOLDSTEIN [mailto:inageboy@msn.com]
Sent: Wednesday, September 15, 2021 11:58 AM
To: Gores, Alanna
Subject: Ammending Callam County code Title 33 Zoning. allowing RV's as ADU's

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Commissioners,

I am a homeowner that built my home with an attached ADU which has been used and an apartment for the last 15 years. I built the ADU with proper permits and it is metered separately for both water and electric.
The City of Port Angeles charges both myself and my tenants separately for utilities including waste water even though there is only one sewer line running to the street. We are also required to have separate garbage containers for both units
I do not see any mention of the requirements for the separate metering of electricity, water, sewer or garbage collection mentioned in the current proposed draft allowing RV's as ADU's. It appears that those who are currently paying for these services will be subsidizing these RV ADU's if approved. I feel very strongly that this is simply unjust to those of us who have played by the rules and pay a tidy sum for our utilities to the City of Port Angeles. Also, there is no mention as to whom will actually be tasked with the enforcement of proper sewer hookups and garbage collection. Who exactly will be tasked with monitoring when an RV is on private property over or under six months?

If this zoning revision is allowed to pass as currently written, you will be opening the door for the worsening of these trashed RV's to accumulate on private property throughout Port Angeles and Clallam County. Don't we have enough problems already trying to deal with junk RV's on public property here in P.A. and the rest of the county? Have any of you driven by the old Humane Society shelter on 101 lately? In less than month, it went from having one trashed RV there to becoming a total dump, with 5 or more trashed vehicles there now with the requisite assorted garbage and junk there as well. This is on private property. Where is the current code enforcement?

Due to the current housing shortage, many people are seeking places to park their RV's and are willing to pay for a spot to do so. I foresee that many property owners will look at this as a way to make money and so there will be a proliferation of RV's in(various states of repair) on private property throughout the county.

Do you honestly believe it will be any easier to enforce the removal of these trashed eyesores and health hazards with the code revisions as currently written? How about requiring proof of waste water connection and regular garbage collection (as required by City of Port Angeles and Sequim) as a condition prior to placement instead of waiting for someone to make a complaint after the fact.

I have had on older RV just appear on private property a few houses down from me just a few days ago. This is on the same property that has a non-running pickup truck on it that has been packed with a mountain of garbage in the bed of the pickup that has been accumulating for the last eight months. Want to make a bet on what this area will look like in the next six months? Why are people allowed to have that much garbage accumulate on their property without it being declared a public nuisance and/or health problem? Again, no current enforcement and it is allowed continue.

Unless you are actually prepared to put some actual funding and manpower toward enforcement, I urge you NOT to pass the current draft amended Title 33 zoning code as written. Please let's not contribute to anymore blight in the county then we already have.

Since you are considering changes to the zoning code, How about a realistic discussion of a tax break for those home owners like myself that are actually using their ADU's as moderate income rental units instead of short-term vacation rentals.

Thank you kindly for your consideration regarding these issues.

David Goldstein

Clark, Donella

From: Gores, Alanna
Sent: Wednesday, September 08, 2021 5:43 PM
To: Johnson, Randy; Ozias, Mark; Peach, Bill; Winborn, Mary Ellen; Clark, Donella; Ballard, Greg
Subject: FW: Draft RV Ordinance

RV comment

From: kaylene@olypen.com [mailto:kaylene@olypen.com]
Sent: Wednesday, September 08, 2021 5:17 PM
To: Gores, Alanna
Subject: Draft RV Ordinance

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

Dear Loni,

Please forward this comment to our county commissioners in regards to the Draft RV Ordinance. Thank you!!

Commissioners,
I urge you to accept the Draft RV Ordinance allowing the occupancy of an RV or Park Model per the terms of the ordinance. As you know, housing in the county is short and there is a huge demand for affordable options. This is a step in the right direction for our county to help house our residents and mitigate the desperate and immediate need many face. I look forward to continued growth in tackling our housing shortage and appreciate your consideration, and hopefully acceptance, of this ordinance.

Respectfully,

Kaylene Byrne
BrokersGroup Real Estate Professionals
Office: 866.681.8778
Cell: 360.460.9962
Making it better for someone…every day.

Clark, Donella

From: Gores, Alanna
Sent: Tuesday, September 07, 2021 1:59 PM
To: Johnson, Randy; Ozias, Mark; Peach, Bill; Winborn, Mary Ellen; Clark, Donella; Ballard, Greg
Subject: FW: ADU dwellings

Comment received.

LG

-----Original Message-----
From: cathyreed1800@gmail.com [mailto:cathyreed1800@gmail.com]
Sent: Tuesday, September 07, 2021 9:06 AM
To: Gores, Alanna
Subject: ADU dwellings

I am in favor of this ordinance. I would much rather see the county take care of all the junk cars and trash that people have collected in their yards. As long as the units are kept in clean and safe condition it would be A good solution to affordable housing.
Sent from my iPhone

Clark, Donella

From: Gores, Alanna
Sent: Tuesday, September 07, 2021 2:53 PM
To: Johnson, Randy; Ozias, Mark; Peach, Bill; Clark, Donella; Winborn, Mary Ellen; Ballard, Greg
Subject: FW: Housing

From: bobbigoff [mailto:bobbigoff@sbcglobal.net]
Sent: Tuesday, September 07, 2021 11:35 AM
To: Gores, Alanna
Subject: Housing

Both of my gkids have worked fulltime.
They each take home about 1200 a month.
Not enough for rent, food, car pmts., car ins. And healthcare. So the idea of putting trailers or 5th wheels on our property where they are safe and can afford to get by is great. We can always use separate containers to haul sewer.
I doubt they are the only ones.

Sent from my T-Mobile 5G Device

Clark, Donella

From: Gores, Alanna
Sent: Tuesday, September 07, 2021 12:04 PM
To: 'Harmony Rutter'
Cc: Clark, Donella; Winborn, Mary Ellen; Ballard, Greg
Subject: RE: Clarification on RV ordinance

Harmony Rutter,

Thank you for your email below. I'm forwarding to the Department of Community Development for response.

Loni

-----Original Message-----
From: Harmony Rutter [mailto:rutterhj@gmail.com]
Sent: Monday, September 06, 2021 7:23 AM
To: Gores, Alanna
Subject: Clarification on RV ordinance

Hello Clerk Gores: I heard from a friend that there is an ordinance in the works (or already approved) that would limit the amount of time and location of someone living in an RV. This doesn't make sense to me since there is a housing shortage and labor shortage here in the county. I know several friends who are living communally with friends right now since they can't afford their own place and I would be devastated if my friends could no longer help each other out. Thank you for clarifying the current status of the new ordinance. I hope it hasn't passed. - Harmony

Sent from my iPhone

Clark, Donella

From: Gores, Alanna
Sent: Tuesday, September 07, 2021 1:18 PM
To: Johnson, Randy; Ozias, Mark; Peach, Bill; Winborn, Mary Ellen; Clark, Donella; Ballard, Greg
Subject: FW: County RV Ordinance

From: Mariia Bush [mailto:mariia.bush@caliberhomeloans.com]
Sent: Tuesday, September 07, 2021 8:49 AM
To: Gores, Alanna
Subject: County RV Ordinance

*** EXTERNAL EMAIL *** This message was sent from outside our County network.

To Whim It May Concern,

I support the approval of the draft RV Ordinance. I believe it can be one of the ways to address the shortage of the affordable housing in our community.

Sincerely,
Mariia

Contact Information for my Licensed Production Assistant
ERIN DRUM
O: (360)504-0609 | F: (833)716-0965
Erin.Drum@caliberhomeloans.com

We care about our customers' personal information. Please contact the appropriate parties to verify any emails requesting personal/financial information or requesting funds to be wired, prior to taking any action.

Clark, Donella

From: Gores, Alanna
Sent: Monday, August 30, 2021 11:15 AM
To: Johnson, Randy; Peach, Bill; Ozias, Mark; Clark, Donella; Winborn, Mary Ellen
Subject: FW: Comment on Draft Policy/Ordinance

Comment received on RV Ordinance.

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

-----Original Message-----
From: Sill, Richard
Sent: Monday, August 30, 2021 11:07 AM
To: Gores, Alanna; Halencak, Morgann
Subject: FW: Comment on Draft Policy/Ordinance

Hello Loni,

Not sure if this has already gone out to the BOCC or DCD.

Thanks

Rich

-----Original Message-----
From: Belinda Pero [mailto:bgpero@hotmail.com]
Sent: Monday, August 30, 2021 10:04 AM
To: Sill, Richard
Subject: Comment on Draft Policy/Ordinance

To: rsill@co.clallam.wa.us (Rich Sill, County Administrator)

This message was sent via the Clallam Website Email Form 08-30-2021.

Name: Belinda Pero

Email: bgpero@hotmail.com

Subject: Comment on Draft Policy/Ordinance

Comments: Hello,
I would like to comment on the creation of code, Chapter 33.48.020(10). To totally screen a recreational vehicle from adjacent properties and roadways is not practical for most properties. Please remove this section.
Belinda Pero

Clark, Donella

From: Gores, Alanna
Sent: Monday, August 30, 2021 7:45 AM
To: Johnson, Randy; Peach, Bill; Ozias, Mark; Winborn, Mary Ellen; Clark, Donella; Ballard, Greg
Subject: FW: RV code

RV Ordinance comment received.

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

-----Original Message-----
From: Mike Frick [mailto:mrfrick@olypen.com]
Sent: Sunday, August 29, 2021 7:11 AM
To: Gores, Alanna
Subject: RV code

To: commissioners@co.clallam.wa.us (Commissioners' Office)

This message was sent via the Clallam Website Email Form 08-29-2021.

Name: Mike Frick

Email: mrfrick@olypen.com

Subject: RV code

Comments: I have just read the Daily News and see that your planning to revise the Code dealing with RV's. I hopping that your not just doing this to let it set on the shelf, if your not going to enforce the policy then don't waste our time and your time and monies to change the policy. Doesn't do any good to have a policy and not enforce it. Having codes violations seems to be the standard in the county because the people know that you the county will do nothing to enforce them. The county needs to get tuff and hold the violators accountable.
Mike

Clark, Donella

From: Gores, Alanna
Sent: Friday, June 04, 2021 12:31 PM
To: Winborn, Mary Ellen; Clark, Donella; Ballard, Greg
Subject: FW: RV living on personal property

RV Comment

Loni Gores
Clerk of the Board
Commissioners Office
223 East 4th Street, Suite 4
Port Angeles, WA 98362
Phone: 360-417-2256

-----Original Message-----
From: Ozias, Mark
Sent: Friday, June 04, 2021 12:31 PM
To: Amy.emett@me.com
Cc: Gores, Alanna
Subject: RE: RV living on personal property

Amy,

Thanks for taking the time to write. I agree with you and hope to work with our elected Director of Community Development to improve upon the draft Ordinance she originally presented.

Sincerely,

Mark Ozias
Clallam County Commissioner

P.S. I have included our Board Clerk in this reply to ensure that your comment is part of the record for this issue.

From: Amy Emett [Amy.emett@me.com]
Sent: Sunday, May 30, 2021 9:42 PM
To: Ozias, Mark
Subject: RV living on personal property

To: mozias@co.clallam.wa.us (Commissioner Mark Ozias)

This message was sent via the Clallam Website Email Form 05-30-2021.

Name: Amy Emett

Email: Amy.emett@me.com

Subject: RV living on personal property

Comments: Thank you for supporting the issue of people being able to live in their RVs on their own property. We own a RV that is on our property although no one is living in it. We have RVed for a very long time and strongly feel that no one should tell you what you can or can't do on ones own property.
Amy Emett

EXECUTIVE AGENDA ITEM SUMMARY

ES 9/28/21 @2pm

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Prosecuting Attorney's Office

EXECUTIVE SESSION ☒ **Meeting Date:** 9/28/21@2pm

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☒ Other: Litigation

Documents exempt from public disclosure attached: ☐

Executive summary:
The Prosecuting Attorney's Office is requesting an executive session to discuss potential new affirmative litigation with the BOCC. The suit relates to the Opioid Crisis.

This litigation may be discussed with legal counsel in Executive Session pursuant to RCW 42.30.110(1)(i), which states that executive sessions may be held "to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency."

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
Unknown.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Make a determination as to whether Clallam County should participate in the litigation.

County Official signature & print name: Elizabeth Stanley 9/22/21

Name of Employee/Stakeholder attending meeting: Elizabeth Stanley
Relevant Departments: BOCC, PAO
Date submitted: 9/22/21

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256

MEETING INFORMATION

CLALLAM COUNTY BOARD OF COMMISSIONERS

****ATTENTION****

In response to the current pandemic, to promote social distancing, and in compliance with Governor's Proclamation and the recommendation of the Clallam County Health Officer, the Board of Commissioners meetings will be virtual only. The Board of Commissioners also strongly encourages public comments to be submitted in writing if possible.

This meeting can be viewed on a live stream at this link: http://www.clallam.net/features/meetings.html

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit https://zoom.us/j/8755617844 and use meeting ID: 875 561 7844 and passcode: 12345

Public comment and questions can be directed to the Clerk of the Board at 360-417-2256 or agores@co.clallam.wa.us.