

## **Welcome to tonight's City Council meeting!**

The elected officials of the City of Bonners Ferry are appreciative of an involved constituency. Testimony from the public is encouraged concerning issues when addressed under the Public Hearing portion of the agenda. Any individual who wishes may address the council on any issue, whether on the agenda or not, during the Public Comments period. Normal business will preclude public participation during the business portion of the meeting with the discretion left to the Mayor and Council. Special accommodations to see, hear, or participate in the public meeting should be made at City Hall within two days of the public meeting.

### **Vision Statement**

Bonners Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life. We are an inclusive city that welcomes all people, regardless of race, religion, color, national origin, sex, age, disability, sexual orientation, or gender identity and encourages their participation in city government and city programs.

**AGENDA**  
**CITY COUNCIL MEETING**  
Bonners Ferry City Hall  
7232 Main Street  
267-3105  
September 1, 2020  
6:00 pm

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENTS**

Each speaker will be allowed a maximum of three minutes, unless repeat testimony is requested by the Mayor/Council

### **REPORTS**

Police/Fire/City Administrator/City Engineer/Economic Development Coordinator/Urban Renewal District/SPOT/Golf

### **CONSENT AGENDA – {action item}**

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Approval of the August 18, 2020 Council meeting minutes, the August 25, 2020 Special Council meeting minutes

### **OLD BUSINESS**

4. City – Consider CARES Act Funds Relating to Public Safety Officers (attachment) {action item}
5. Golf – Consider Approval of the Friends of Mirror Lake Volunteers (attachment) {action item}

### **NEW BUSINESS**

6. Electric – Consider Authorizing the Mayor to Sign the Utility Agreement with the Federal Highway Administration to Move the Power Infrastructure on Riverside Street (attachment) {action item}
7. Electric – Consider Authorizing the Mayor to Sign the Contract with Asplundh for Tree Trimming for Fiscal Year 2021 (attachment) {action item}
8. Electric – Consider Authorizing the Mayor to Sign the Contract with HDR for Additional Services Related to the Latest Part 12 Inspection (attachment) {action item}
9. Water/Sewer – Consider Authorizing the Mayor to Sign Resolution #2020-09-01 for an Interfund Loan from the Sewer Fund to the Water Fund (attachment) {action item}
10. City – Consider Authorizing the Mayor to Sign the Contract with Bear Auto for Mechanical Work (attachment) {action item}
11. Street – Consider Approval of the Job Description for the Street and Park Superintendent (attachment) {action item}
12. City – Consider the Request from Len Pine to Sponsor 9/11 Memorial as a City Event (attachment) {action item}

### **ADJOURNMENT**

**MINUTES**  
**CITY COUNCIL MEETING**  
**Bonnors Ferry City Hall**  
**7232 Main Street**  
**267-3105**  
**August 18, 2020**  
**6:00 pm**

Mayor Dick Staples called the Council meeting of August 18, 2020 to order at 6:00 pm. Present for the meeting were: Council President Rick Alonzo, Council Members Adam Arthur, Valerie Thompson and Ron Smith. Also present were: City Engineer Mike Klaus, City Attorney Andrakay Pluid, City Clerk/Treasurer Christine McNair, Economic Development Director Dennis Weed, City Administrator Lisa Ailport, Jerry Higgs, Marciavee Cossette, Steve Tanner and Carolyn Testa.

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

Jerry Higgs wished Jimmy a quick and complete recovery.  
Steve Tanner spoke in opposition to the vision statement.

**REPORTS**

Police Chief Brian Zimmerman on behalf of the whole Police Department thanked Council for the possibility of hazard pay.

Economic Development Coordinator Dennis Weed said he has two ads in Outdoor Out There. More ads will be out this fall and next spring and will feature the mountain bike trails. The broadband grants are being re-looked at and the results should be out by the end of this month.

Urban Renewal District Dennis Weed said the library is requesting handicap doors with a push button entry.

**CONSENT AGENDA – {action item}**

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Approval of the July 22, 2020 Special Council meeting minutes, July 27, 2020 Special Council meeting minutes, August 3, 2020 Special Council meeting minutes, August 4, 2020 Council meeting minutes
4. Treasurer's Report

Valerie Thompson moved to approve the consent agenda. Rick Alonzo seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith - yes

**OLD BUSINESS**

**NEW BUSINESS**

5. Water – Consider Authorizing the Mayor to Sign the Contract with Burlington Northern Santa Fe for the Dakota Street Water Crossing (attachment) {action item}  
Mike said Welch Comer applied on behalf of the City of Bonnors Ferry for a license to put an eight-inch line through the existing ten-inch pipe. Adam asked if this is the original line to the river pump. Mike said yes. Adam asked if we will need another line for an additional well. Mike said the current pipe will be able to handle two wells. Mayor Staples asked when this will happen. Mike said hopefully in September. Rick Alonzo moved to authorize the Mayor to sign the contract with Burlington Northern Santa Fe for the Dakota Street water crossing. Valerie Thompson seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes
6. Street – Consider Authorizing the Advertisement for the Street Superintendent Position (attachment) {action item}  
Rick asked if it will be advertised 72-hour internally before going out to the job service. Lisa said yes. Valerie Thompson moved to advertise for a street superintendent. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

7. Street – Consider Authorizing the Mayor to Sign the Right of Way Dedication Agreement with Tim Gorshe (attachment) {action item}  
Mike said this agreement is similar to the agreement for Selkirk Street. Mayor Staples said this will help people get to the schools without getting on the highway. Adam asked if this makes the complete path. Mike said it does not. There is a gap between this and Denver Street. It is approximately 300 feet off of Alderson Lane. Valerie Thompson moved to authorize the Mayor to sign the right of way dedication agreement with Tim Gorshe. Adam Arthur seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes
8. Golf – Discuss the Role of the Golf Committee regarding the Golf Contractor's Contract {action item}  
Mayor Staples said he asked the golf committee to review the golf contractor's contract to review the maintenance items and make sure everything is the way it should be. Since the golf committee will know if the day-to-day maintenance items are being taken care of the way they should be. Valerie said we have a City employee on the golf committee that has knowledge of the course. Valerie is concerned that there may be lots of confusion with this. Valerie feels the golf contractor's contract is out of the golf committee's purview of their role. Ron said the golf committee's duties are in ordinance and if there are things that the committee or the Friends of Mirror Lake feel need to happen then those go through Ralph to City Council. Adam said he feels there is some confusion. Andrakay feels that the golf committee should not make a recommendation on who the contractor reports to. If there are maintenance issues staff is happy to look at those issues. Mayor Staples feels there was some confusion from the beginning regarding the contract. Ralph said the golf committee is not interested in discussing financial compensation. Ralph said there were a lot of changes that he is not sure Council is aware of the changes. Valerie said they all saw numerous drafts of the contract as well as the final contract before it was approved. Mayor Staples asked Ralph if he feels the golf committee doesn't want to look at the contract. Ralph said he doesn't want to speak for the committee. Rick said we need to have the chairman of the golf committee come to a Council meeting. Rick Alonzo moved to table this item. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes
9. Golf – Consider Approval of the Friends of Mirror Lake Volunteers (attachment) {action item}  
Mayor Staples said it is difficult to have an accurate list of volunteers because other people will see the project is happening and offer to help. Ron said if someone shows up and they are not on the volunteer list then they can't help with the project. Ron asked if the list of volunteers is for insurance purposes. Andrakay said yes and Ron is correct, if someone is not on the list they can't help with the project. Adam asked if there is a problem having an exhaustive list of volunteers. Andrakay said no, that is what she recommends. Mayor Staples tabled this item until the next meeting.
10. Golf – Consider Authorizing the Mayor to Sign the Contract with CDA Stump Grinding for Work at the Golf Course (attachment) {action item}  
Mayor Staples said CDA Stump Grinding is going to grind stumps on hole one. Rick Alonzo moved to authorize the Mayor to sign the contract with CDA Stump Grinding for work at the golf course. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes
11. Police – Consider Authorizing the Mayor to Sign the Memorandum of Understanding with the Boundary County School District (attachment) {action item}  
Brian said this is the same contract as the last two years. Adam Arthur moved to authorize the Mayor to sign the memorandum of understanding with the Boundary County School District. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

## **ADJOURNMENT**

The meeting adjourned at 6:55 pm.

**MINUTES**  
**SPECIAL CITY COUNCIL MEETING**  
**Bonnors Ferry City Hall**  
**7232 Main Street**  
**267-3105**  
**August 25, 2020**  
**5:15 pm**

Mayor Dick Staples called the Council meeting of August 25, 2020 to order at 5:15 pm. Present for the meeting were: Council President Rick Alonzo, Council Members Adam Arthur, Valerie Thompson and Ron Smith. Also present were: City Clerk/Treasurer Christine McNair, City Administrator Lisa Allport, City Attorney Andrakay Pluid. No members of the public were present.

1. Executive Session Pursuant to Idaho Code 74-206, Subsection 1 (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement

Rick Alonzo moved to enter into executive session pursuant to Idaho Code 74-206, Subsection 1 (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.

Entered into executive session at 5:15 pm.  
Executive session ended at 5:30pm with no action taken.

**PUBLIC HEARING**

Fiscal Year 2021 Budget Hearing

Mayor Staples opened the public hearing for the fiscal year 2021 budget at 5:30 pm.  
No public was present.

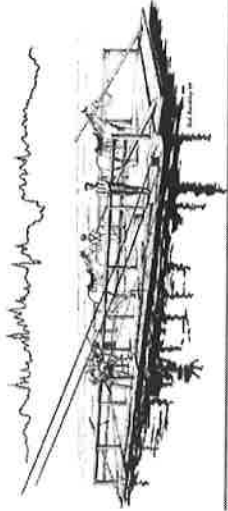
Mayor Staples closed the public hearing for the fiscal year 2021 budget at 5:30 pm.

**NEW BUSINESS**

2. City – First Reading of Fiscal Year 2021 Appropriation Ordinance #595 by Title Only (attachment) {action item}  
Adam Arthur moved to have the first reading of the fiscal year 2021 appropriation Ordinance #595 by title only. Valerie Thompson seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes. Andrakay read the ordinance.
3. City – Suspend the Reading Rules and Adopt Fiscal Year 2021 Appropriation Ordinance #595 {action item}  
Valerie Thompson moved to suspend the reading rules and adopt the fiscal year 2021 appropriation Ordinance #595. Rick Alonzo seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes
4. City – Consider Additional Payment Request from Anderson Bros. CPAs {action item}  
Rick Alonzo moved to send a letter regarding an additional payment of \$3,488.75 to Anderson Bros. CPAs for the audit. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes
5. Street – Consider Authorizing the Mayor to Sign the Contract for Dike Maintenance {action item}  
Lisa said Mike has been working with local contractors for dike maintenance. One quote was received from CDA Stump Grinding. This contract is for most of the dike with the exception of two properties. Lisa said we will be working with the County to apply herbicide and that cost will be in addition to the cost of the stump grinding. Rick asked about the clean-up. Lisa said the contractor will pile it and load it in the City trucks and the City will haul it off. Adam Arthur moved to authorize the Mayor to sign the contract for dike maintenance with CDA Stump Grinding in the amount of \$28,050.00. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

**ADJOURNMENT**

The meeting adjourned at 5:39 pm.



# CITY OF BONNERS FERRY

7232 Main Street  
P.O. Box 149  
Bonners Ferry, Idaho 83805  
Phone: 208-267-3105 Fax: 208-267-4375

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**TO:** Mayor and City Council

**FROM:** Lisa Ailport, City Administrator *LMA*

**DATE:** August 27, 2020

**RE:** CARES Act fund in form of Property Tax Relief

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The L2 form is due to the state tax commission on September 10<sup>th</sup>, which means the Council needs to decide how the city should address the use of the Idaho CARES act funds to cover qualified payroll costs if local governments pass savings on in form of property tax relief.

In our letter of intent to CFAC, we learned that our amount of money from the state would be capped at \$274,248.00. Our current L2 Form from the County indicates that our taxes with new construction and annexed areas is \$673,256.00

If we took the full amount offered under the CARES Act fund we would be providing in kind property tax relief of roughly 40% that would be passed on to property tax payers. The overall savings would be proportionate to the overall ownership one tax payers has of the system. That means, not everyone may see a 40% cut to their city taxes, as some may see greater than 40% and some less.

If Council elects to take the CARES Act funds, the city would be prohibited in taking the 3% levy tax increase.

In early August, the Governor passed an executive order stipulating that the US Treasury provided "positive reinforcement" for the use of the funds in this manner. No other letters have been provided from the US Treasury on this matter.

I will likely be presenting a more in-depth presentation at the Council meeting on the 1<sup>st</sup>. Should anyone have questions relating to the use of these funds that I can address in the PowerPoint for next Tuesday, please forward them to me so I can research and answer them.

Please let me know if you have any questions.

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*Application for Admission Pro Hac Vice  
Pending*

*Attorneys for Plaintiff Bonner County*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION

BONNER COUNTY, an Idaho municipal  
corporation,

Plaintiff,

vs.

BRADLEY J. LITTLE, in his official  
capacity as Governor of the State of  
Idaho; COVID-19 FINANCIAL  
ADVISORY COMMITTEE; ALEX J.  
ADAMS, in his official capacity as the  
Administrator of the Division of Financial

CASE NO.  
**COMPLAINT FOR  
DECLARATORY JUDGMENT**

Management, and as Chair of the COVID-19 Financial Advisory Committee; TOM KEALEY, in his official capacity as Director of the Idaho Department of Commerce; BRANDON D. WOOLF, in his official capacity as Controller of the State of Idaho; JULIE A. ELLSWORTH, in her official capacity as Idaho State Treasurer,

Defendants.

Pursuant to 28 U.S.C. § 2201, Plaintiff BONNER COUNTY (“Plaintiff” or the “County”) hereby brings this action against defendants Brad Little, in his official capacity as the Governor of the State of Idaho (“Governor Little”), the COVID-19 Financial Advisory Committee (“CFAC”), Alex J. Adams, in his official capacity as the Administrator of the Division of Financial Management and as Chair of CFAC (“Adams”), Tom Kealey, in his official capacity as Director of the Idaho Department of Commerce (“Kealey”), Brandon D. Woolf, in his official capacity as Controller of the State of Idaho (“Woolf”), and Julie Ellsworth in her official capacity as Idaho State Treasurer (collectively “Defendants”) and alleges as follows:

**NATURE OF THE ACTION**

1. In response to the spread of the SARS-CoV-2 virus (“Coronavirus”) and resulting COVID-19 disease, Congress enacted the Corona Virus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 501 (2020) [hereinafter the “CARES Act”], which the President signed into law on March 27, 2020.

2. Among other things, the CARES Act established a Coronavirus Relief Fund (the “Relief Fund”) through the appropriation of \$150 billion “for making payments to States, Tribal governments, and units of local government. . . .” CARES Act, § 5001(a) (codified at 42 U.S.C. § 801(a)(1)).
3. The County is informed and believes, and thereon alleges, that Congress’ intent in creating the Relief Fund was to allow the United States Department of the Treasury (“Treasury Department” or “Treasury”) to quickly and efficiently make funds appropriated by the CARES Act (“Funds”) available to assist each and every town, city, county, and other local government within the United States in responding to the spread of COVID-19. Congress intended that such funds would remain available to local governments, including the County, to allow them to respond to the spread of COVID-19.
4. The County is informed and believes, and thereon alleges, that in order to aid in the efficient distribution of these Funds, Congress authorized the Treasury Department to make direct distributions only to local governments with a population of over 500,000 persons.
5. The County has a population of less than 500,000, and therefore was not entitled to a direct distribution from the Relief Fund. However, pursuant to the CARES Act and subsequent Treasury regulations and guidelines, the County is entitled to receive a per capita distribution of Funds paid to the State of Idaho (the



“State”). The State received \$1.25 billion in Funds. Defendants have apportioned approximately \$282 million of those funds for distribution to Tribes and local governments within the State.

6. Neither Congress nor the Treasury Department have delegated any of their authority to the State to administer the Relief Fund. Rather, the State is to function as an intermediary between the Treasury Department and the local governments within its jurisdiction by fairly distributing Funds amongst such local governments, using a per capita distribution as a benchmark of fairness and equity.

7. Pursuant to the CARES Act and subsequent Treasury Department regulations and guidelines, the State is generally prohibited from imposing conditions on the County’s receipt of Funds. The State may only impose restrictions on the transfer of Funds to the extent necessary to facilitate the State’s compliance with the CARES Act.

8. Contrary to the general prohibition on attaching conditions to the Funds, Defendants are withholding Funds from local governments, including the County, unless the local governments agree to the unlawful conditions placed on such Funds by Defendants. These conditions include, among other things, 1) a stipulation that the majority of the Funds may be used only for payroll expenses and cannot be used to reimburse the County for purchasing personal protective equipment (“PPE”) and disinfectant products; 2) a waiver of the County’s statutory

right to increase its tax capacity by up to 3% (the “3% Capacity”) for the upcoming 2020-2021 fiscal year; and 3) a waiver of the County’s statutory right to access foregone tax capacity for past years (the “Foregone Capacity”). In addition, Defendants are pressuring local governments, including the County, to accept Funds without regard to federally mandated accounting and reporting requirements, including 2 C.F.R. part 200 and other federal laws and regulations governing the administration of federal grants.

9. By and through this Complaint, the County seeks a declaratory judgment setting forth the rights, duties, and obligations of the County and Defendants in relation to the Funds that are currently in Defendants’ possession and control.

#### PARTIES

10. The County is an Idaho municipal corporation, and is a body politic and corporate pursuant to Idaho Statutes § 31-601. The County was established in 1907 and is one of 44 counties in the State.

11. Governor Little is the Governor of the State of Idaho. He is sued in his official capacity. The supreme executive power of the State of Idaho is vested in Governor Little. Among his other duties, Governor Little is the Chief Budget Officer of the State of Idaho.

12. CFAC is an advisory committee formed by Governor Little on April 7, 2020, by and through Executive Order No. 2020-07.
13. Adams is the Administrator of the State Division of Financial Management, as well as the Chairperson of CFAC. He is sued in his official capacity. The Division of Financial Management, which Adams heads, is part of the Executive Office of the Governor. Its primary function is to assist Governor Little in his duties as the Chief Budget Officer of the State.
14. Kealey is the Director of the Idaho Department of Commerce, and is charged with distributing broadband grant funds. He is sued in his official capacity.
15. Woolf is the Controller of the State of Idaho, and is charged with the administration of federal grant funds. He is sued in his official capacity.
16. Julie Ellsworth is the Treasurer of the State of Idaho, and is charged with the administration of federal grant funds held in the State Treasury. She is sued in her official capacity.
17. Governor Little, Adams, Kealey, Woolf, and Ellsworth are public officials in the government of the State of Idaho that are charged, in their official capacities, with administering the \$1.25 billion in CARES Act Funds paid to the State by the Treasury Department. CFAC, through Executive Order No. 2020-07, is charged with collecting reports from local jurisdictions, setting policy, and

providing advice and recommendations to Governor Little and Adams in their administration of the CARES Act funds paid to the State.

**JURISDICTION AND VENUE**

18. This action arises under the CARES Act, a law of the United States. This Court has subject matter jurisdiction over the County's federal claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over related state law questions pursuant to 28 U.S.C. § 1367.

19. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because all Defendants reside in this judicial district and carry out their official duties within this district. Venue is further proper pursuant to 28 U.S.C. § 1391 (b)(2) because all of the events and omissions giving rise to this action, as further alleged below, occurred within this judicial district.

20. The County's action for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 & 2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

**GENERAL ALLEGATIONS**

**The CARES Act Relief Fund**

21. The CARES Act established a \$150 billion Relief Fund to be distributed to the states, Tribal governments, and local governments to pay for

necessary expenditures incurred due to the public health emergency created by the spread of COVID-19.

22. Section 5001 of the CARES Act added Title VI – Coronavirus Relief Fund, to the Social Security Act (42 U.S.C. § 301 *et seq.*). Title VI, sometimes referred to as Section 601 of the Social Security Act or simply “Section 601”, establishes the Relief Fund and sets forth the purposes for which such Funds may be used. Specifically, Section 601(d) of the Social Security Act (42 U.S.C. § 801(d)) provides as follows:

(d) USE OF FUNDS.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
- (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

23. The CARES Act does not permit any use of the Relief Fund beyond those “necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19).” 42 U.S.C. § 801(d)(1).

Nor does the CARES Act impose any further restrictions on how the Funds may be used by their recipients.

**Administration of the Relief Fund by the Department of the Treasury**

24. The Treasury Department, through power delegated by Congress to the Secretary of the Treasury, is charged with the administration of the Relief Fund. *See* 42 U.S.C. § 801(g)(3).

25. The CARES Act authorizes the Treasury Department to make direct payments of Funds to States, Tribal Governments, and units of local government. For purposes of the Relief Fund, a unit of local government is a county, municipality, town, or other unit of government below the State level with a population that exceeds 500,000.

26. Plaintiff is informed and believes, and thereon alleges, that Congress set this 500,000 population threshold as a matter of administrative convenience to enable the Treasury Department to quickly and efficiently distribute Funds. By limiting the number of local governments eligible to receive direct payments from the Treasury, Congress significantly reduced the total number of entities that the Treasury Department would have to identify and interact with in its administration of the Relief Fund. This, in turn, facilitated Treasury's prompt payment of Funds to the States, Tribal governments, and units of local government to allow those

bodies to quickly respond to the emerging public health emergency created by the spread of COVID-19.

27. To illustrate this streamlining effect, the Treasury Department identified a total of 171 units of local government that meet minimum population threshold of 500,000. As a basis for comparison, there are a total of 3,141 *counties* and county equivalents of all sizes in the 50 States and the District of Columbia.<sup>1</sup> Thus, Treasury was only required to identify and interact with less than 6% of the total number of *counties* within the United States. This number does not factor in the thousands of cities, towns, townships, and other municipalities throughout the 50 States.

28. The County is informed and believes, and thereon alleges, that local governments with populations of less than 500,000 are entitled to a per capita distribution of Funds, even though they are not eligible for direct payment from the Treasury Department. Instead, the state in which such local government is located is to act as a pass-through to distribute such Funds because each of the several states are in the best position to identify and work with the local governments within their territorial jurisdictions. Specifically, at least 45% of Funds distributed to a given state are to be distributed to local governments within that state using a per capita allocation formula. *See* 42 U.S.C. § 801(c)(5).

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<sup>1</sup> U.S. Geological Survey, *How Many Counties are in the United States?* (last accessed Jul. 12, 2020), [https://www.usgs.gov/faqs/how-many-counties-are-united-states?qt-news\\_science\\_products=3#qt-news\\_science\\_products](https://www.usgs.gov/faqs/how-many-counties-are-united-states?qt-news_science_products=3#qt-news_science_products).

29. On April 17, 2020, the Treasury Department published in the Federal Register an announcement that information about the Relief Fund is available on the Treasury Department’s website, <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> (the “Relief Fund Website”).<sup>2</sup>

30. The Relief Fund Website contains, among other things, two Treasury guidance documents related to the use and distribution of Funds by States and local governments. The first is the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments (“Guidance”). The second is the Coronavirus Relief Fund Frequently Asked Questions (“FAQ”).

31. The Guidance states that the “necessary expenditures” requirement of Section 601(d)(1) of the Social Security Act should be understood “broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending [Relief] Fund payments.”

32. The Guidance further provides a list of “Nonexclusive examples of eligible expenditures.” These include, among other things:

- Expenses for disinfection of public areas and other facilities in response to the COVID-19 emergency;
- Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and PPE;

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<sup>2</sup> Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 85 Fed. Reg. 21508 (Apr. 17, 2020).



- Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency;
- Costs of providing COVID-19 testing, including serological testing;
- Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions; and
- Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.

33. The FAQ provides that States may only impose restrictions on transfers of Funds to local governments “to the extent that the restrictions facilitate the state’s compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act. . . .” The FAQ further provides, unequivocally, that “[o]ther restrictions are not permissible.”

34. The FAQ recognize the role of states as a pass-through for payments to local governments as follows:

“To facilitate prompt distribution of [Funds], the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government’s per capita share of the statewide allocation. This statutory structure was based on a recognition that *it is more administratively feasible to rely on States*, rather than the

federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs *of all local governments* for funding to address the public health emergency, States *should transfer funds to local governments with populations of 500,000 or less*, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.” FAQ at 7 (emphasis added).

35. The “per capita allocation formula” referred to in the FAQ can be found in Section 601(b)(2) and Section 601(c)(3) of the Social Security Act.

36. Section 601(b)(2) provides that, where a unit of local government with a population over 500,000 receives a payment from the Treasury Department, the Secretary “shall reduce the amount determined for that State by the relative unit of local government population proportion amount described in subsection (c)(5) and pay such amount directly to such unit of local government.”

37. Section 601(c)(5) sets forth the per capita formula for distributing Funds to local governments as follows:

“For purposes of subsection (b)(2), the term ‘relative unit of local government population proportion amount’ means, with respect to a unit of local government and a State, the amount equal to the product of—

(A) 45 percent of the amount of the payment determined for the State under this subsection (without regard to this paragraph); and

(B) the amount equal to the quotient of—

(i) the population of the unit of local government; and

(ii) the total population of the State in which the unit of local government is located.”

38. Thus, States are required to distribute Funds to local governments pursuant to all relevant Idaho appropriations laws using the statutory per capita formula found in Section 601, and are prohibited from imposing restrictions on such distributions beyond those necessary to ensure the States’ compliance with Section 601(d).
39. The FAQ further outlines specific examples of permissible uses of Funds by States, Tribal governments, and local governments. These include, but are not limited to:
- COVID-19 public health emergency recovery planning;
  - Emergency financial assistance programs to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency;
  - Payroll or benefits expenses of public employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency; and
  - Expenses associated with contact tracing.

40. The FAQ recognizes that Funds may be used to meet payroll expenses for public safety, public health, health care, human services, and similar public employees (“First Responders”) *provided that* such payroll expenses are for

services substantially dedicated to mitigating or responding to COVID-19. The FAQ further provides that, as a matter of administrative convenience, local governments may presume that payroll costs for First Responders are payments for services “substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.” FAQ at 1 (emphasis added).

41. States, Tribal governments, and local governments are not required to use Funds as the source of funding of last resort.

**Treasury’s Payment of CARES Act Funds to the State, and Defendants’ Unlawful Administration of such Funds**

42. Congress mandated that the Treasury Department was to make Relief Fund payments to each of the 50 States in a minimum amount of \$1.25 billion.

43. The State of Idaho received a Relief Fund payment of \$1.25 billion. These funds are currently held in the State Treasury.

44. Pursuant to Section 601(c)(5) and Treasury regulations, including the Guidance and FAQ, Defendants were required to apportion 45% of its \$1.25 billion Relief Fund payment from Treasury for distribution to local governments within the State. The County is informed and believes, and thereon alleges, that the required per capita apportionment by Defendants to local governments is approximately \$562,500,000.

45. Contrary to these requirements, Defendants apportioned only \$282 million – or 22.56% of its \$1.25 billion Relief Fund Payment – for distribution to local governments. Defendants retained approximately \$658 million – or 52.64% of its \$1.25 billion Relief Fund payment – for use by State agencies.

46. Of the \$282 million Defendants distributed to local governments, Defendants apportioned only \$94 million to local governments and Tribal governments on the federally-mandated per capita basis, including approximately \$1.1 million allocated to the County.

47. The remaining \$188 is being withheld by Defendants (the “Withheld Funds”) as part of the “Governor’s Public Safety Initiative”. Defendants are limiting eligible expenses for the Withheld Funds to payroll costs only. Defendants are not allowing the Withheld Funds to be spent on any other category of expense, even though the CARES Act and Treasury regulations prohibit such restrictions.

48. In order to receive any portion of the Withheld Funds, Defendants are requiring local governments, including the County, to submit a Notice of Intent to participate in the program by no later than July 17, 2020. Defendants are requiring that the County include, as part of the Notice of Intent, a determination by the County that the requested amount of Funds will be an “eligible payroll expense”

for First Responder payroll expenses incurred between March 1, 2020 and December 30, 2020.

49. Defendants have conditioned the County's participation in the Public Safety Initiative – and therefore its access to the Withheld Funds – on the County's waiver of its 3% Capacity and its Foregone Capacity.

50. According to the most recent data available from the U.S. Census,<sup>3</sup> Bonner County has a population of approximately 45,739 people.

51. The total population of the State is approximately 1,787,065 people.

52. The County's population is approximately 2.56% of the population of the State.

53. The County is informed and believes, and thereon alleges, that if Defendants had utilized the per capita formula found in Section 601(c)(5) of the Social Security Act to the State's \$1.25 billion Relief Fund payment – as required by the CARES Act, Treasury regulations, the Guidance and the FAQ – that the County would receive an allocation of approximately \$14.4 million.<sup>4</sup>

54. The County is informed and believes, and thereon alleges, that the maximum amount of Funds Defendants will distribute to the County is approximately \$5.9 million – less than half of the \$14.4 million Defendants are

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<sup>3</sup> U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR COUNTIES IN IDAHO: APRIL 1, 2010 TO JULY 1, 2019 (March, 2020), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/counties/totals/co-est2019-annres-16.xlsx>.

<sup>4</sup>  $\$1,250,000,000 * .45 * (45,739 / 1,787,065) = \$14,396,895.19$ .

required to apportion to the County using the per capita distribution formula required by Section 601(c)(5) of the CARES Act, Treasury Department regulations, the Guidance and the FAQ.

55. Defendants will deny the County access to any portion of the Withheld Funds unless the County agrees, by July 17, 2020, to be bound by Defendants' unlawful conditions. Further, Defendants have demanded that the County determine by July 17, 2020 the amount of Funds it may need to cover future First Responder payroll expenses through the end of this year. If the County does not make this determination, Defendants will not distribute *any* of the Withheld Funds to the County and will instead either retain such Withheld Funds for use by the State or distribute such funds to other local jurisdictions.

56. Absent a declaration of rights and injunctive relief from this Court, Defendants will permanently and irrevocably injure the County by denying the County access to its per capita share of the Funds and instead reassigning those monies to State Agencies or other jurisdictions.

**Defendants' Unlawful Administration of the Idaho Department of Commerce Broadband Grant Program using CARES Act Funds**

57. Of the \$1.25 billion in CARES Act funding received by the State of Idaho, the State has also allocated \$50 million to the Idaho Department of Commerce Broadband Grant Program aimed at building out broadband infrastructure throughout the State.

58. Defendants are charged with administering, implementing, and funding the Idaho Department of Commerce Broadband Grant Program pursuant to a set of Broadband Grant Application Guidelines (“Guidelines”).

59. The Guidelines state that the Program “is designed to meet the CARES Act criteria, and help Idaho rebound from the COVID-19 public health emergency. Approximately 70% of the \$50 million received by the Idaho Department of Commerce will be allocated to this program aimed at households that lack access to broadband.”

60. Under Section 2 of the Guidelines, an eligible project must “be installed, owned, and operated by for-profit companies, or membership owned cooperative corporations... that provide broadband services to the public.” Likewise, Section 3 of the Guidelines states, “Broadband service may only be provided by for-profit companies or membership owned cooperative corporations[.]”

61. The Program includes as eligible projects only those projects that will provide “new broadband service...installed, owned, and operated by for-profit companies, or membership owned cooperative corporations...that provide broadband services to the public.”



62. The CARES Act restricts the use of funds provided under a payment made under section 5001 to cover only those costs that “were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

63. Eligible projects under the Household Broadband Grant include projects that are “completed, operable, paid for, and submitted to the Idaho Department of Commerce for payment no later than December 15, 2020.

64. Eligible costs of the Household Broadband Grant include construction and materials, new and rehabilitative construction contracts, architect and engineering services and legal and professional services, if required to complete the project by December 15, 2020, permitting fees, validation of service expenses, equipment related to broadband infrastructure, equipment installation, and expenses related to administering the grant.

65. Notwithstanding the requirement that a “for-profit company” must install, own, and operate the grant-funded projects, the Program requires Idaho local or tribal governments, including municipalities such as Bonner County, to serve as the “applicant” for the broadband grants and to “administer their own grants.”

66. In order to submit an application for grant funds, the applicant is required to provide to Idaho Department of Commerce specific information

regarding the nature of the project and the total cost of the project, including “broadband infrastructure and equipment costs[.]”

67. Section 8 of the Guidelines, entitled “Grant Administration,” requires local governments applying for Idaho Department of Commerce Broadband Grant funds to “comply with all applicable laws” related to the “procurement of goods and services purchased with or reimbursed under the Program,” including, Idaho Code Title 54, Chapter 19 – Public Works Contractors, Idaho Code Title 67, Chapter 23, Design Professional Qualification-Based Selection, and Idaho Code Title 67, Chapter 28 – Purchasing by Political Subdivisions.
68. Idaho Code § 67-2805 requires political subdivisions such as Bonner County to competitively bid any expenditure to procure public works construction valued at or in excess of \$50,000, and sets forth specific procedures the County must follow in order to award the bids on such projects.
69. Idaho Code § 67-2320 requires political subdivisions such as Bonner County to follow minimum guidelines in securing contracts for engineering, architectural, landscape architecture, construction management and land surveying services. These include the requirement that the County “[e]stablish and make available to the public the criteria and procedures used for the selection of qualified persons or firms to perform such services.”

70. Section 15010 of the CARES Act created a Pandemic Response Accountability Committee to make referrals for investigation and review whether competition requirements applicable to contracts and grants using covered funds have been satisfied.

71. Section 4018 of the CARES Act established the Office of the Special Inspector General for Pandemic Recovery with the authorities provided in section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) “who shall conduct, supervise, and coordinate audits and investigations of the management by the Secretary of any program established under the” CARES Act.”

72. Depending on whether an applicant is characterized as a subrecipient or a contractor under 2 C.F.R. § 200.330, the applicant may be subject to additional federal procurement regulations, including those set forth in 2 C.F.R. §§ 200.319 and 200.320.

73. In order to apply for grant funds under the CARES Act Idaho Department of Commerce Broadband Grant Program, Bonner County is required to submit one or more completed Applications by July 15, 2020.

74. As a condition of submitting the application(s), the Guidelines require applicants such as the County to provide “a notarized CARES Act certification that this project meets the CARES Act criteria.”

**FIRST CAUSE OF ACTION**

**Declaratory Judgment that Defendants Are Required to Appropriate CARES Act Funds on a Per Capita Basis without Additional Conditions**

(Against All Defendants)

75. Bonner County incorporates by reference the allegations contained in paragraphs 1 through 74, inclusive.
76. Under the CARES Act, Defendants were required to apportion at least 45% of the \$1.25 billion in CARES Act Funds received by the State of Idaho to local governments within Idaho using a per capita allocation formula. *See* 42 U.S.C. § 801(c)(5).
77. In the course of distributing Funds to local governments using the statutory per capita formula found in Section 601 of the Social Security Act, Defendants are prohibited from imposing restrictions on such distributions beyond those necessary to ensure the States' compliance with Section 601(d).
78. Under the Constitution of the State of Idaho, Article 7, section 13, "No money shall be drawn from the treasury, but in pursuance of appropriations made by law." Further, pursuant to Article 3, section 15, "No law shall be passed except by bill....provided, in case of urgency, two-thirds (2/3) of the house where such bill may be pending may, upon a vote...dispense with [the] provision" of reading the bill on three several days.

79. An actual and justiciable controversy now exists because Defendants, and each of them, have failed to appropriate the CARES Act Funds to Bonner County based on the formula set forth by Congress and made applicable to Bonner County through Treasury's guidance.

80. Defendant Little has not called the Legislature into special session.

81. The Idaho Legislature has not passed an appropriation regarding CARES Act funds.

82. Further, an actual and justiciable controversy exists because Defendants have imposed conditions on the limited Funds that have been offered or apportioned to Bonner County beyond those conditions necessary to ensure the States' compliance with Section 601(d).

83. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Bonner County seeks a declaratory judgment from this Court that Defendants are required to allocate CARES Act Funds to Bonner County after the Legislature appropriates said funds based on the per capita formula set forth by Congress and made applicable to Bonner County through Treasury's guidance, and without conditions or limitations beyond those conditions necessary to ensure the States' compliance with Section 601(d).

**SECOND CAUSE OF ACTION**

**Declaratory Judgment that State and Federal Procurement Laws Do Not Apply to Funds Distributed under the Idaho Broadband Grant Program**

(Against All Defendants)

84. Bonner County incorporates by reference the allegations contained in paragraphs 1 through 74, inclusive.
85. The Department of Commerce Household Broadband Grant Application requires applicants to certify that the proposal complies with the following Idaho Code competition requirements “Idaho Code Title 54, Chapter 19 (Public Works Contractors); Idaho Code title 67, Chapter 23 (Design professional qualification-based selection; Idaho Code Title 67, Chapter 28 (purchasing by political subdivisions).”
86. Likewise, the Broadband Grant Application requires applicants to certify that the project complies with the CARES Act.
87. Treasury’s July 8, 2020 FAQs states that fund payments are “subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.300 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

88. Bonner County intends to apply for grant funds pursuant to the Department of Commerce Household Broadband Grant Program.

89. However, the manner in which Defendants have administered the Program has made it impossible for Bonner County to make an unqualified certification of compliance with Idaho's procurement laws or with the CARES Act.

90. Specifically, the Idaho Department of Commerce Household Broadband Grant Application requires eligible "for-profit companies" to define the project scope and submit detailed estimated costs at the time of applying for grant funds and prior to an award of the funds or any related contract. The process set forth in the Guidelines and Application leaves no room for competitive bidding or procurement procedures because it is impossible for Bonner County to define the scope of the project and competitively bid the project under the current application process.

91. At least one specific contractor has provided specific project details to Bonner County for purposes of meeting the Broadband Grant guidance, and has requested Bonner County's cooperation in applying for Broadband Grant funds, which cooperation Bonner County has thus far given.

92. An actual and justiciable controversy exists because the Idaho Department of Commerce Household Broadband Grant Program imposes

conditions on the CARES Act funds available to Bonner County beyond those conditions necessary to ensure the States' compliance with Section 601(d).

93. Further, an actual and justiciable controversy exists because the Idaho Department of Commerce Household Broadband Grant Program makes state and federal compliance impossible by requiring Bonner County to blindly certify compliance with state and federal procurement laws even though the Program does not afford any discretion or control to the County or provide a process that would allow competitive bidding of the grant-eligible projects.

94. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Bonner County seeks a declaratory judgment from this Court that state and federal procurement laws, including Idaho Code Title 54, Chapter 19, Idaho Code title 67, Chapter 23, Idaho Code Title 67, Chapter 28, and 2 C.F.R. §§ 200.319 and 200.320 do not apply to CARES Act funds distributed under the Idaho Department of Commerce Household Broadband Grant Program.

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**THIRD CAUSE OF ACTION**

**Declaratory Judgment that Funds Distributed under the Idaho Broadband Grant Program Would Not Violate CARES Act's December 30 Cutoff Date and Would Not Constitute an Unlawful Misuse of Public Funds**

(Against All Defendants)

95. Bonner County incorporates by reference the allegations contained in paragraphs 1 through 74, inclusive.

96. Section 2 of the Idaho Department of Commerce Household Broadband Grant Application Guidelines requires an eligible project to “be installed, owned, and operated by for-profit companies, or membership owned cooperative corporations... that provide broadband services to the public.” Likewise, Section 3 of the Guidelines states, “Broadband service may only be provided by for-profit companies or membership owned cooperative corporations[.]”

97. The CARES Act restricts the use of funds provided under a payment made under section 5001 to cover only those costs that “were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.”

98. The Treasury’s June 30, 2020 Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments (June Treasury Guidance) states that section 601(d) of the Social Security Act as added by section 5001 of the

CARES Act permits a State, local, or tribal government to “use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.”

99. Defendants have implemented and administered the Idaho Department of Commerce Household Broadband Grant Program in a manner that is inconsistent with the CARES Act’s December 30, 2020 deadline because, after such date, broadband projects paid for with CARES Act funds will be owned by private “for-profit companies” and will still be in use.

100. If Bonner County applies for and receives CARES Act federal financial assistance through the State of Idaho under the Household Broadband Grant, it remains uncertain whether the Bonner County Commissioners, Auditor and Treasurer may lawfully use the funds to pay a private company to install, own, and operate new broadband service.

101. An actual and justiciable controversy exists because the Idaho Department of Commerce Household Broadband Grant Program imposes conditions on the CARES Act funds available to Bonner County beyond those conditions necessary to ensure the States’ compliance with Section 601(d), including the requirement that the broadband infrastructure must be “owned, and operated by for-profit companies.”

102. Further, an actual and justiciable controversy exists because the Idaho Department of Commerce Household Broadband Grant Program appears to encourage the misuse of federal funds by applicants, who are asked to turn over grant funds to private parties who will own and use the infrastructure built with those grant funds long after the CARES Act deadline of December 30, 2020.

103. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Bonner County seeks a declaratory judgment from this Court that Funds distributed under the Idaho Broadband Grant Program would not violate the CARES Act's December 30 cutoff date and would not constitute an unlawful misuse of public funds.

#### **FOURTH CAUSE OF ACTION**

##### **Declaratory Judgment that Bonner County May Lawfully Reimburse**

##### **Broadband Equipment Costs Using CARES Act Funds**

(Against All Defendants)

104. Bonner County incorporates by reference the allegations contained in paragraphs 1 through 74, inclusive.

105. According to the Idaho Household Broadband Grant, eligible projects must be completed by December 15, 2020, fifteen (15) days before the CARES Act covered period ends.

106. Bonner County is informed and believes, and thereon alleges, that the private for-profit company applicants are purchasing and taking title to the equipment that will be installed under the Idaho Household Broadband Grant in order to have such equipment operational by no later than December 15, 2020. The useful life of broadband equipment is several years. Bonner County would then reimburse the private for-profit company with CARES Act financial assistance in an amount equal to, *inter alia*, the entire purchase price of the equipment and installation cost.

107. The Guidance requirements are similar to those found in the CARES Act and state that a “recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.” Guidance, p. 2.

108. The Uniform Guidance and OMB Circular A-87 requires that Bonner County allocate and assign costs to cost objectives in reasonable proportion to the benefit received. 2 C.F.R. §§ 200.4 and 200.225; OMB Circular A-87.

109. An actual and justiciable controversy exists because Defendants have implemented and administered the Idaho Department of Commerce Household Broadband Grant Program in a manner that is inconsistent with the CARES Act’s December 30, 2020 deadline by delaying the implementation of necessary projects

involving durable goods that will still be in use for approximately ten (10) years after the covered period while only being in use for fifteen (15) days during the covered period.

110. An actual and justiciable controversy exists because if Bonner County determines that the installation of broadband equipment to provide household broadband coverage is necessary due to the public health emergency and applies for and receives CARES Act financial assistance through the State of Idaho under the Household Broadband Grant, it remains uncertain whether reimbursing a private for-profit company for equipment purchased to provide household broadband for fifteen (15) days of the covered period will qualify as a necessary expenditure under the CARES Act.

111. An actual and justiciable controversy exists because if the purchase and installation of the broadband equipment qualifies as a necessary expenditure under the CARES Act, it remains uncertain whether Bonner County may reimburse the private for-profit company who has, upon information and belief, already purchased and taken title in and to the equipment, or whether the County must depreciate the reimbursement based upon the useful life of the equipment in proportion to fifteen (15) days of use during the covered period.

112. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Bonner County seeks a declaratory judgment from this Court that reimbursing the

private for-profit company in full for the entire cost of the broadband equipment and installation for use during the last fifteen (15) days of the covered period qualifies as a necessary expenditure under the CARES Act and would not constitute an unlawful misuse of public funds or waste.

**FIFTH CAUSE OF ACTION**

**Declaratory Judgment that Bonner County's Participation in the Broadband**

**Grant Program Will Not Violate the Gift Clause**

(Against All Defendants)

113. Bonner County incorporates by reference the allegations contained in paragraphs 1 through 74, inclusive.

114. Under the Constitution of the State of Idaho, Article 8, section 4, “No county...shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.”

115. Under the Constitution of the State of Idaho Article 12, section 4, “No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, that cities and towns may

contract indebtedness for school, water, sanitary and illuminating purposes: provided, that any city or town contracting such indebtedness shall own its just proportion of the property thus created and receive from any income arising therefrom, its proportion to the whole amount so interested.”

116. Bonner County, “as a creature of the state, possesses and exercises only those powers either expressly or impliedly granted to it.” *Sandpoint Water & Light Co. v. City of Sandpoint*, 31 Idaho 498, 503, 173 P. 972, 973 (1918); *Boise Dev. Co. v. Boise City*, 30 Idaho 675, 688, 167 P. 1032, 1034-35 (1917).

117. Idaho has long recognized Dillon’s rule and under Dillon’s Rule, a municipal corporation may exercise only those powers granted to it by either the state constitution or the legislature and the legislature has absolute power to change, modify or destroy those powers at its discretion. *Caesar v. State*, 101 Idaho 158, 160, 610 P.2d 517, 519 (1980) (quoting *State v. Steunenberg*, 5 Idaho 1, 4, 45 P. 462, 463 (1896)).

118. Under *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 506 (1959), a “use of property to the public must be an exclusive use by the public, open to all the people on a basis of equality to such an extent as the capacity of the property admits.”

119. Under *State v. Parsons*, 58 Idaho 787 (1938), if a tax cannot be levied for a particular purpose, no appropriation of public money can be made for such purpose.

120. Purposes other than public purposes are not “legitimate current expenses for the lawful administration of the government of the county,” and donation or appropriation made to private for-profit companies would place county funds under the control of “individuals not officers of the county or amenable to the laws authorizing the expenditure of public moneys.” *Fluharty v. Board of Com’rs*, 29 Idaho 203 (1960).

121. An actual and justiciable controversy exists because the Household Broadband Grant requires Bonner County to reimburse any eligible project completed before December 15, 2020. After the Grants are executed, Bonner County will become liable in contract for a liability or debt to a private for-profit corporation in the State of Idaho because the private for-profit corporation is directly purchasing the broadband equipment and financing the cost of installation.

122. An actual and justiciable controversy exists because the Idaho Legislature has not authorized Idaho counties to levy a tax, make a donation to, or become responsible for any debt, contract or liability of any corporation in or out of the State of Idaho to develop broadband and the Idaho Constitution has not been amended to allow the same.



123. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Bonner County seeks a declaratory judgment from this Court that a donation of CARES Act financial assistance to private for-profit company to develop broadband pursuant to the Grant does not violate Idaho Constitution Article 8, section 4 or Article 12, section 4.

**SIXTH CAUSE OF ACTION**

**Declaratory Judgment that Bonner County is a Subrecipient of Federal Funds**

(Against All Defendants)

124. Bonner County incorporates by reference the allegations contained in paragraphs 1 through 74, inclusive.

125. Treasury Guidance provides: “Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.”

126. Pursuant to 2 C.F.R. § 200.330, “pass-through-entities” (“PTE”) must make “case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor.”

127. If Idaho State is a PTE and Bonner County is a subrecipient, Defendants were required to impose specific subaward conditions that comply with Treasury Guidance as to the Household Broadband Grant and as applied to Idaho's Payroll Replacement Program pursuant to 2 C.F.R. § 200.331(c).

128. Further instead of monitoring the activities of the subrecipient (Bonner County) to ensure that the subaward is used for authorized purposes as is required by 2 CFR 200.331(d), the Governor's Office through its chief counsel has advised Counties including Bonner to take a reckless approach to spending said funds in its Payroll Replacement Program proposal.

129. An actual and justiciable controversy now exists because Defendants, and each of them, have failed to properly characterize Bonner County as either a subrecipient or a contractor under 2 C.F.R. § 200.330. Instead, Defendants have employed a hybrid approach that affords Bonner County all of the responsibilities of a subrecipient with none of the discretion held by a subrecipient pursuant to the federal regulations.

130. Specifically, under the terms of the Broadband Grant and payroll program, Bonner County cannot determine who is eligible to receive what Federal assistance; Bonner County has no responsibility for programmatic decision making; Bonner County is not using the Federal funds to carry out a program for a public purpose specified in the CARES Act, but is providing goods and services

for the benefit of the pass-through entity and is being asked to provide assurances of CARES Act compliance.

131. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Bonner County seeks a declaratory judgment from this Court that Bonner County is a “subrecipient” entitled to all of the rights and responsibilities afforded to subrecipients under 2 C.F.R. § 200.330.

**RULE 57 REQUEST FOR SPEEDY HEARING**

Pursuant to Rule 57 of the Federal Rules of Civil Procedure, “The court may order a speedy hearing of a declaratory judgment action.” Bonner County hereby requests a speedy hearing of the matters presented in this Complaint based on the urgency of such matters and on the current deadlines for applying for, allocating, and using CARES Act funds.

**PRAYER FOR RELIEF**

WHEREFORE, Bonner County respectfully requests that the Court:

1. Enter judgment according to the declaratory relief sought;
2. Award Bonner County its costs in this action;

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3. Award such further relief to which Bonner County may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

DATED: July 14, 2020

/s/ D. Scott Bauer  
D. Scott Bauer  
BONNER COUNTY PROSECUTOR'S  
OFFICE

/s/ Darrin L. Murphey  
Darrin L. Murphey  
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**Coronavirus Relief Fund  
Frequently Asked Questions  
Updated as of August 10, 2020<sup>1</sup>**

The following answers to frequently asked questions supplement Treasury's Coronavirus Relief Fund ("Fund") Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, ("Guidance").<sup>2</sup> Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").

**A. Eligible Expenditures**

**1. Are governments required to submit proposed expenditures to Treasury for approval?**

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

**2. The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the "substantially dedicated" condition?**

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

**3. The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a "substantially different use" for purposes of the Fund eligibility?**

Costs incurred for a "substantially different use" include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty's ordinary responsibilities.

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<sup>1</sup> On August 10, 2020, these Frequently Asked Questions were revised to add Questions 49–52. The previous revision was made on July 8.

<sup>2</sup> The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

4. ***May a State receiving a payment transfer funds to a local government?***  
Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.
5. ***May a unit of local government receiving a Fund payment transfer funds to another unit of government?***  
Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.
6. ***Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?***  
No. For example, a county recipient is not required to transfer funds to smaller cities within the county’s borders.
7. ***Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?***  
No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.
8. ***Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?***  
Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments.

**9. *Are States permitted to use Fund payments to support state unemployment insurance funds generally?***

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

**10. *Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?***

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

**11. *The Guidance states that the Fund may support a "broad range of uses" including payroll expenses for several classes of employees whose services are "substantially dedicated to mitigating or responding to the COVID-19 public health emergency." What are some examples of types of covered employees?***

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

**12. *In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers' compensation coverage. Is the cost of this expanded workers compensation coverage eligible?***

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

**13. *If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?***

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

**14. *May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?***

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

**15. *May Fund payments be used for COVID-19 public health emergency recovery planning?***

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

**16. *Are expenses associated with contact tracing eligible?***

Yes, expenses associated with contact tracing are eligible.

**17. *To what extent may a government use Fund payments to support the operations of private hospitals?***

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

**18. *May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?***

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

**19. *May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?***

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

**20. *Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?***

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.



**21. May recipients create a “payroll support program” for public employees?**

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

**22. May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?**

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

**23. May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?**

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

**24. The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?**

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

**25. The Guidance provides that expenses associated with the provision of economic support in connection with the public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?**

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

**26. May Fund payments be used to assist impacted property owners with the payment of their property taxes?**

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

**27. *May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?***

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

**28. *Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?***

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

**29. *The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?***

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

**30. *The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?***

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

**31. *May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?***

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

**32. *Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?***

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

**33. *Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?***

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfers of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes. For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

**34. *May a State impose restrictions on transfers of funds to local governments?***

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions are not permissible.

**35. *If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?***

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the interest expense payable on TANs by the borrower and unbudgeted administrative and transactional costs, such as necessary payments to advisors and underwriters, associated with the issuance of the TANs.

**36. *May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?***

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

**37. *Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?***

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

**38. *May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?***

No. The Guidance says that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

**39. *May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?***

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

**40. *May recipients use Fund payments to provide loans?***

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.

**41. *May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?***

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

**42. *May funds be used to satisfy non-federal matching requirements under the Stafford Act?***

Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act.

**43. *Must a State, local, or tribal government require applications to be submitted by businesses or individuals before providing assistance using payments from the Fund?***

Governments have discretion to determine how to tailor assistance programs they establish in response to the COVID-19 public health emergency. However, such a program should be structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency and otherwise satisfies the requirements of the CARES Act and other applicable law. For example, a per capita payment to residents of a particular jurisdiction without an assessment of individual need would not be an appropriate use of payments from the Fund.

**44. *May Fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?***

Yes, non-profits may be used to distribute assistance. Regardless of how the assistance is structured, the financial assistance provided would have to be related to COVID-19.

**45. *May recipients use Fund payments to remarket the recipient's convention facilities and tourism industry?***

Yes, if the costs of such remarketing satisfy the requirements of the CARES Act. Expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to the public health emergency. Expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would not be incurred due to the public health emergency and therefore may not be covered using payments from the Fund.

**46. *May a State provide assistance to farmers and meat processors to expand capacity, such to cover overtime for USDA meat inspectors?***

If a State determines that expanding meat processing capacity, including by paying overtime to USDA meat inspectors, is a necessary expense incurred due to the public health emergency, such as if increased capacity is necessary to allow farmers and processors to donate meat to food banks, then such expenses are eligible expenses, provided that the expenses satisfy the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance.

**47. *The guidance provides that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. May Fund payments be used to cover such an employee's entire payroll cost or just the portion of time spent on mitigating or responding to the COVID-19 public health emergency?***

As a matter of administrative convenience, the entire payroll cost of an employee whose time is substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department.

**48. *May Fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?***

The statute requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As stated in the Guidance, a cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. If the cost of an employee was allocated to administrative leave to a greater extent than was expected, the cost of such administrative leave may be covered using payments from the Fund.

**49. Are States permitted to use Coronavirus Relief Fund payments to satisfy non-federal matching requirements under the Stafford Act, including “lost wages assistance” authorized by the Presidential Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (August 8, 2020)?**

Yes. As previous guidance has stated, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund’s eligibility criteria and the Stafford Act. States are fully permitted to use payments from the Fund to satisfy 100% of their cost share for lost wages assistance recently made available under the Stafford Act.

**50. At what point would costs be considered to be incurred in the case of a grant made by a State, local, or tribal government to cover interest and principal amounts of a loan, such as might be provided as part of a small business assistance program in which the loan is made by a private institution?**

A grant made to cover interest and principal costs of a loan, including interest and principal due after the period that begins on March 1, 2020, and ends on December 30, 2020 (the “covered period”), will be considered to be incurred during the covered period if (i) the full amount of the loan is advanced to the borrower within the covered period and (ii) the proceeds of the loan are used by the borrower to cover expenses incurred during the covered period. In addition, if these conditions are met, the amount of the grant will be considered to have been used during the covered period for purposes of the requirement that expenses be incurred within the covered period. Such a grant would be analogous to a loan provided by the Fund recipient itself that incorporates similar loan forgiveness provisions. As with any other assistance provided by a Fund recipient, such a grant would need to be determined by the recipient to be necessary due to the public health emergency.

**51. If governments use Fund payments as described in the Guidance to establish a grant program to support businesses, would those funds be considered gross income taxable to a business receiving the grant under the Internal Revenue Code (Code)?**

Please see the answer provided by the Internal Revenue Service (IRS) available at <https://www.irs.gov/newsroom/cares-act-coronavirus-relief-fund-frequently-asked-questions>.

**52. If governments use Fund payments as described in the Guidance to establish a loan program to support businesses, would those funds be considered gross income taxable to a business receiving the loan under the Code?**

Please see the answer provided by the IRS available at <https://www.irs.gov/newsroom/cares-act-coronavirus-relief-fund-frequently-asked-questions>.

## **B. Questions Related to Administration of Fund Payments**

**1. Do governments have to return unspent funds to Treasury?**

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

**2. *What records must be kept by governments receiving payment?***

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

**3. *May recipients deposit Fund payments into interest bearing accounts?***

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

**4. *May governments retain assets purchased with payments from the Fund?***

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

**5. *What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?***

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

**6. *Are Fund payments to State, territorial, local, and tribal governments considered grants?***

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments are not considered to be grants but are "other financial assistance" under 2 C.F.R. § 200.40.

**7. *Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?***

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

**8. *Are Fund payments subject to other requirements of the Uniform Guidance?***

Fund payments are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

**9. *Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?***

Yes. The CFDA number assigned to the Fund is 21.019.

**10. *If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients' total funding received from the federal government for purposes of the Single Audit Act?***

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

**11. *Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?***

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 C.F.R. § 200.425.

**12. *If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?***

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.



**Coronavirus Relief Fund  
Guidance for State, Territorial, Local, and Tribal Governments  
Updated June 30, 2020<sup>1</sup>**

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.<sup>2</sup>

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

***Necessary expenditures incurred due to the public health emergency***

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures. Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

***Costs not accounted for in the budget most recently approved as of March 27, 2020***

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the

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<sup>1</sup> This version updates the guidance provided under “Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020”.

<sup>2</sup> See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

***Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020***

Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (the “covered period”). Putting this requirement together with the other provisions discussed above, section 601(d) may be summarized as providing that a State, local, or tribal government may use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.

Initial guidance released on April 22, 2020, provided that the cost of an expenditure is incurred when the recipient has expended funds to cover the cost. Upon further consideration and informed by an understanding of State, local, and tribal government practices, Treasury is clarifying that for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the covered period, but not otherwise.

Furthermore, in all cases it must be necessary that performance or delivery take place during the covered period. Thus the cost of a good or service received during the covered period will not be considered eligible under section 601(d) if there is no need for receipt until after the covered period has expired.

Goods delivered in the covered period need not be used during the covered period in all cases. For example, the cost of a good that must be delivered in December in order to be available for use in January could be covered using payments from the Fund. Additionally, the cost of goods purchased in bulk and delivered during the covered period may be covered using payments from the Fund if a portion of the goods is ordered for use in the covered period, the bulk purchase is consistent with the recipient’s usual procurement policies and practices, and it is impractical to track and record when the items were used. A recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.

Given that it is not always possible to estimate with precision when a good or service will be needed, the touchstone in assessing the determination of need for a good or service during the covered period will be reasonableness at the time delivery or performance was sought, *e.g.*, the time of entry into a procurement contract specifying a time for delivery. Similarly, in recognition of the likelihood of supply chain disruptions and increased demand for certain goods and services during the COVID-19 public health emergency, if a recipient enters into a contract requiring the delivery of goods or performance of services by December 30, 2020, the failure of a vendor to complete delivery or services by December 30, 2020, will not affect the ability of the recipient to use payments from the Fund to cover the cost of such goods or services if the delay is due to circumstances beyond the recipient’s control.

This guidance applies in a like manner to costs of subrecipients. Thus, a grant or loan, for example, provided by a recipient using payments from the Fund must be used by the subrecipient only to purchase (or reimburse a purchase of) goods or services for which receipt both is needed within the covered period and occurs within the covered period. The direct recipient of payments from the Fund is ultimately responsible for compliance with this limitation on use of payments from the Fund.

*Nonexclusive examples of eligible expenditures*

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
  - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
  - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
  - Costs of providing COVID-19 testing, including serological testing.
  - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
  - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
  - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
  - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
  - Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
  - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
  - Expenses for public safety measures undertaken in response to COVID-19.
  - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
  - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
  - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
  - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.

- Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
  - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
  - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
    - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
    - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
    - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
  6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

***Nonexclusive examples of ineligible expenditures***<sup>3</sup>

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.<sup>4</sup>
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

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<sup>3</sup> In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

<sup>4</sup> See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.



Executive Department  
State of Idaho

EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE

EXECUTIVE ORDER NO. 2020-15

**DIRECTING IDAHO STATE TAX COMMISSION TO ADMINISTER  
THE BUDGET AND LEVY COMPONENTS OF THE GOVERNOR'S  
PUBLIC SAFETY GRANT INITIATIVE FOR CITIES AND  
COUNTIES**

WHEREAS, Congress has passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), which provided the State of Idaho \$1.25 billion through the Coronavirus Relief Fund for qualifying expenses; and

WHEREAS, on April 30, 2020, the Board of Examiners approved, pursuant to Idaho Code § 67-2516(2), non-cognizable spending authority for the Governor's Office in fund 0345 for the \$1.25 billion for the time period of March 1, 2020, through December 30, 2020; and

WHEREAS, on June 30, 2020, the United States Department of Treasury ("U.S. Treasury") issued guidance for state, territorial, local, and tribal governments on the proper uses of the Coronavirus Relief Fund; and

WHEREAS, the U.S. Treasury guidance ("U.S. Treasury guidance") outlines a non-exclusive list of eligible expenditures, including expenditures for payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency; and

WHEREAS, the U.S. Treasury guidance states that as a matter of administrative convenience, the entire public health and public safety payroll costs may be presumed to be substantially dedicated to mitigating or responding to the COVID-19 public health emergency; and

WHEREAS, the U.S. Treasury Secretary and senior staff of the U.S. Treasury are quoted in various outlets stating that this presumption of substantial dedication to COVID-19 efforts exists regardless of whether or not the payroll costs were accounted for in the budget most recently approved as of March 27, 2020; and

WHEREAS, the U.S. Treasury states that the funds may be transferred from the state to units of local government with the addition of certain restrictions to satisfy the requirements of the CARES Act and guidance; and

WHEREAS, the U.S. Treasury notes that for payments to be deemed necessary, they must be reasonably necessary for their intended use in the reasonable judgment of the government officials responsible for spending fund payments;

WHEREAS, in Executive Order 2020-07, I established the Coronavirus Financial Advisory Committee (CFAC) to make recommendations to me for prioritizing the use of Coronavirus Relief Funds; and

WHEREAS, CFAC is comprised of a broad group of stakeholders, including

legislators, representatives of local and tribal governments, and representatives from the Idaho Association of Cities and Association of Idaho Counties; and

WHEREAS, on May 4, 2020, I approved a recommendation from CFAAC to allocate \$94 million to local and tribal governments to cover their direct COVID-19 expenses, making Idaho one of the first states to provide local governments access to the fund, eliciting praise from the Trump Administration; and

WHEREAS, local governments have expressed that this initial \$94 million allocation is sufficient for and, in many cases in excess of, their direct COVID-19 costs and relatively little expenses have been incurred to date; and

WHEREAS, on May 28, 2020, CFAAC sent a letter to U.S. Treasury staff outlining the potential use of the Fund for a Public Safety Grant Initiative (the Initiative) with restrictions to ensure compliance with U.S. Treasury guidance; and

WHEREAS, CFAAC convened on June 11, 2020, and determined that, in its judgment, the expenditure of Coronavirus Relief Funds on local public safety payroll expenses was necessary to respond to COVID-19 and made unanimous recommendations to me on the expenditure of up to \$200 million with eligibility criteria targeted to the U.S. Treasury guidance; and

WHEREAS, CFAAC voted unanimously to allow local governments to voluntarily apply for a grant to receive this additional allocation of funds, which is on top of the original \$94 million allocated to local governments; and

WHEREAS, CFAAC established parameters for voluntary participation, aimed at advancing compliance with critical areas of U.S. Treasury guidance, namely (1) ensuring the receipt of this voluntary allocation does not constitute revenue replacement, which is not a permissible use of fund payments; and (2) ensuring that the allocation does not create a windfall that is used for non-COVID-19 related purposes; and

WHEREAS, CFAAC further saw that these voluntary restrictions could advance other areas of U.S. Treasury guidance, namely the allowance to provide economic support to those suffering from the widespread COVID-19 related closures and expenses; and

WHEREAS, on June 11, 2020, I accepted the recommendation of CFAAC and announced the program known as the Public Safety Grant Initiative that will provide funding for public safety payroll expenses to city and county governments that agree to participate in the Initiative and provide the resulting savings as property tax relief to the taxpayers of the participating units of local government by foregoing the taxes that would otherwise traditionally have been collected; and

WHEREAS, on July 6, 2020, CFAAC sent an updated letter to U.S. Treasury re-outlining the proposed Public Safety Initiative in the context of U.S. Treasury guidance; and

WHEREAS, on July 16, 2020, I met with senior U.S. Treasury and White House staff in Washington, D.C., to discuss the Initiative and received positive reinforcement that the proposed plan aligns with U.S. Treasury guidance; and

WHEREAS, 54 cities and 28 counties submitted Letters of Intent to participate in this voluntary grant program; and

WHEREAS, the Initiative would provide a grant to these local governments in an amount that would cover approximately 42-percent of their public safety budget, allowing the funds to be targeted to those frontline public safety and public health officials who are substantially dedicated to COVID-19 mitigation and response; and

WHEREAS, local governments have the ability to finalize their participation in

this voluntary grant program by discussing it in open, public meetings where public testimony on the merits may be taken; and

WHEREAS, I have agreed with the CFA a unanimous recommendation that this expenditure in necessary for its intended use.

NOW, THEREFORE, I Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state do hereby order:

1. The Idaho State Tax Commission shall ensure that the budget and levy effects of the Initiative remain neutral for those cities and counties that choose to participate. To accomplish this, the Idaho State Tax Commission shall not consider any subtraction from a participating entity's 2020 operating budget due to participation in this program when determining 2021 budget limitations according to Idaho Code § 63-802.
2. Urban renewal agencies that would otherwise lose funds due to the lowered levy rates of participating cities and counties shall be treated neutrally.
3. The Idaho State Tax Commission shall make such adjustments to the L-2 form as necessary to verify that participating cities and counties have met the requirements of the Initiative by certification.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 6<sup>th</sup> day of August in the year of our Lord two thousand and twenty.

  
BRAD LITTLE  
GOVERNOR



  
LAWRENCE DENNEY  
SECRETARY OF STATE

<b>Mirror Lake PD</b>	<b>Fluid &amp; Sons Logging PD</b>	<b>Mountain West Bank</b>
Julie Williams	Stan Pruitt	Bill Gutknecht PD
Travis Blackmore	Kevin Dinning	Rich Hodler PD
Caleb Blackmore	Jake High	Jerry Jirneinez
Ralph L	Matt Pluid	Frank Plantz PD
<b>KRI PD</b>	<b>Maggi Logging</b>	<b>Realm PD</b>
Jamie Porter	Matt Maggi PD	Ted Bricker
Mike Halford	Kevin Larson PD	Teague Mullen
Buster Richards	Joey Vilelli	Haven Burton
<del>Dick Oelmark</del>	Eddie Invernon PD	Mike Rogers
Jr. Porter		Jeff Boger
Kevin James		Joe Bopp
<b>JRS</b>	<b>Paint</b>	<b>The Duffers pd</b>
Dick Staples	John Driedger pd	Birch Rose
Travis Hinthorne	Kevin Dirks pd	Chris Blanford
Ed Moe	Adrian Bryan PD	Ben Staples
Steve Nelson	Kyle Dirks	Mark Kellogg
<b>Bag of Nuts PD</b>	Bruce Whikboldt	<b>Team Super 1 PD</b>
Scott Schopen	<b>Bennett LoggingPD</b>	John Youngwirth
Chad Iacolucci	Ron Bennett	Tim English
Tyler Pauls	John Solt	Matt Morgan
Wyatt Iacolucci	Mitch Vogl	Matthew Morgan
	Dan Robertson	<b>Bear Auto PD</b>
<b>oundary Tractor PD</b>	<b>Mountain Scape Inc.</b>	Jeremy Hill
David Anderson	Rod Starr	Keith Fairchild
Brian Poston	Caleb Mullen	Barry Davis
Steve Howlett	Evan Mcnelley	Mike Jelinick
Cyle Young	Travis Smith	Steve Numeyer
Gary Anderson		
<b>Naples Store PD</b>	<b>Mugsy's</b>	
Cody Reichart	Carrick Remaley	
Chad Kimball	Michael Stevens	
Bobby Invernon	Sam Acuna	
Brandon Reindbold	Pat Murphy	
	Chris Gadis	

You can also include any season pass holders & punch cards that are not on this list.

# Golf Course Volunteers

## MENS LEAGUE



# Golf Course Volunteers Ladies

Name

Ada Gardiner  
Anne Bonar  
Betty Dornhoff  
Betty Phalen  
Beverly Comegy  
Blanche Studer  
Bridget Basenberg  
Buzz Thiel  
Carrie Figgins  
Donna Irons  
Elaine Morgan  
Etta Mae Schmuertle  
Evelyn Rae  
Janet Renier  
Jeannie Richards  
Julie Williams  
Karen English  
Kim Mason  
Linda Bogdan  
Linda Hlett  
Linda Rupley  
Louise Carter  
Marie Villiell  
Maureen Blackmore  
Michelle Schuman  
Patti Howell  
Renee Murphy  
Rosemary Hill  
Ruth Ann Wilson  
Shirley Brooks  
Suzanne Cullinane  
Therese Helmer

## INDEPENDENT CONTRACTOR AGREEMENT

AGREEMENT made between the CITY OF BONNERS FERRY, a political subdivision of the state of Idaho, herein "ENTITY" and ASPLUNDH, herein "CONTRACTOR",

THE PARTIES AGREE AS FOLLOWS:

1. **CONTRACT:** ENTITY hereby employs CONTRACTOR as an independent contractor to complete and perform power line tree trimming system wide at the direction of the Electric Department.

CONTRACTOR agrees to provide all materials and services for the project(s) in accordance with the attached written specifications and quotes.

2. **TIME OF PERFORMANCE AND TERMINATION:** Parties agree that CONTRACTOR shall complete the project by September 30, 2021.

3. **COMPENSATION:** ENTITY agrees to pay CONTRACTOR as per Attachment 1 in an amount not to exceed \$50,000 without prior approval by Council.

4. **INDEPENDENT CONTRACTOR:** The parties agree that CONTRACTOR is the independent contractor of ENTITY and in no way an employee or agent of ENTITY and is not entitled to workers compensation or any benefit of employment with the ENTITY. ENTITY shall have no control over the performance of this Agreement by CONTRACTOR or its employees, except to specify the time and place of performance, and the results to be achieved. ENTITY shall have no responsibility for security or protection of CONTRACTOR'S supplies or equipment. CONTRACTOR agrees to pay and be responsible for all taxes due from the compensation received under this contract.

5. **WARRANTY:** CONTRACTOR warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. CONTRACTOR acknowledges that it will be liable for any breach of this warranty.

6. **INDEMNIFICATION:** CONTRACTOR agrees to indemnify, defend, and hold harmless ENTITY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of CONTRACTOR, CONTRACTOR'S agents, employees, or representative under this agreement.

7. **INSURANCE:** CONTRACTOR agrees to obtain and keep in force during its acts under this agreement a comprehensive general liability insurance policy in the minimum amount of \$1,000,000 which shall name and protect CONTRACTOR, all CONTRACTOR'S employees, ENTITY and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR'S acts. CONTRACTOR shall provide proof of liability coverage as set forth above to ENTITY prior to commencing its performance as herein provided, and require insurer to notify ENTITY ten (10) days prior to cancellation of said policy.

8. **WORKER'S COMPENSATION:** CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff that the CONTRACTOR may employ, and provide proof to ENTITY of such coverage or that such worker's compensation insurance is not required under the circumstances.

9. **COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all federal, state, city, and local laws, rules and regulations.

10. **ENTIRE AGREEMENT:** This is the entire agreement of the parties and can only be modified or amended in writing by the parties.

11. **ATTORNEY FEES:** Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ENTITY:

CITY OF BONNERS FERRY

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

James R. Staples, Mayor

Its: \_\_\_\_\_

ATTEST:

WITNESS:

Christine McNair, Clerk

Form and content approved by Andrakay Pluid as attorney for the City of Bonners Ferry on August 24, 2020.

## PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made between City of Bonners Ferry (CITY), a political subdivision of the state of Idaho, herein "ENTITY" and HDR Engineering, herein "(CONTRACTOR)".

The parties agree as follows:

1. SCOPE OF WORK: ENTITY engages CONTRACTOR to perform the work associated with engineering services as it relates to dam safety, specifically, additional services as described in the letter scope of work provided by HDR Engineers, as included in Exhibit "A" attached hereto.
2. PAYMENT: ENTITY agrees to pay CONTRACTOR for his services rendered under this Agreement an amount not to exceed the total sum of \$21,600.00 for said services. The parties agree that CONTRACTOR will invoice ENTITY for payment under this Agreement for services rendered herein.
3. RIGHT OF CONTROL: ENTITY agrees that it will have no right to control or direct the details, manner, or means by which CONTRACTOR accomplishes the results of the services performed hereunder. CONTRACTOR has no obligation to work any particular hours or days or any particular number of hours or days. CONTRACTOR agrees, however, that his other contracts or services shall not interfere with the performance of his services under this Agreement.
4. INDEPENDENT CONTRACTOR RELATIONSHIP: CONTRACTOR is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of ENTITY. ENTITY shall determine the work to be done by CONTRACTOR, but CONTRACTOR shall determine the legal means by which it accomplishes the work specified by ENTITY.
5. FEDERAL, STATE, AND LOCAL PAYROLL TAXES: Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by ENTITY on behalf of CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. CONTRACTOR understands that CONTRACTOR is responsible to pay, according to law, CONTRACTOR's income tax. CONTRACTOR further understands that CONTRACTOR may be liable for self-employment (Social Security) tax to be paid by CONTRACTOR according to law.
6. LICENSES AND LAW: CONTRACTOR represents that he possess the skill and experience necessary and all licenses required to perform the services under this agreement. CONTRACTOR further agrees to comply with all applicable laws in the performance of the services hereunder.
7. FRINGE BENEFITS: Because CONTRACTOR is engaged in its own independently established business, CONTRACTOR is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of ENTITY.

8. WORKER'S COMPENSATION: CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff that the CONTRACTOR may employ, and provide proof to ENTITY of such coverage or that such worker's compensation insurance is not required under the circumstances.
9. EQUIPMENT, TOOLS, MATERIALS OR SUPPLIES: CONTRACTOR shall supply, at CONTRACTOR's sole expense, all equipment, tools, materials and/or supplies to accomplish the services to be provided herein.
10. EFFECTIVE DATE: This contract deliverables will be completed by CONTRACTOR by December 31, 2020.
11. WARRANTY: CONTRACTOR warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. CONTRACTOR acknowledges that it will be liable for any breach of this warranty.
12. INDEMNIFICATION: CONTRACTOR agrees to indemnify, defend, and hold harmless ENTITY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the act and/or any performances or activities of CONTRACTOR, CONTRACTOR's agents, employees, or representatives under this Agreement.
13. INSURANCE: CONTRACTOR agrees to obtain and keep in force during its acts under this Agreement a comprehensive general liability insurance policy in the minimum amount of \$1,000,000.00, which shall name and protect CONTRACTOR, all CONTRACTOR's employees, ENTITY, and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR's acts. CONTRACTOR shall provide proof of liability coverage as set forth above to ENTITY prior to commencing its performance as herein provided, and said require insurer to notify ENTITY ten (10) days prior to cancellation of said policy.
14. NONWAIVER: Failure of either party to exercise any of the rights under this Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.
15. CHOICE OF LAW: Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the state of Idaho.
16. ENTIRE AGREEMENT: This is the entire Agreement of the parties and can only be modified or amended in writing by the parties.
17. SEVERABILITY: If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

18. ATTORNEY FEES: Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ENTITY:

CONTRACTOR:

By \_\_\_\_\_  
(Name)

*James R. Staples, Mayor*

ATTEST:

Its \_\_\_\_\_  
(Title or Office)

*Christine McNair  
City Clerk of Bonners Ferry*

WITNESS:

\_\_\_\_\_  
(Signature of Witness or Notary Public)

Form and content approved by Andrakay Pluid, attorney for the City of Bonners Ferry.

**Exhibit A**

**HDR Letter Scope**



July 23, 2020

Mr. Mike Klaus, PE  
City Administrator/Engineer  
City of Bonners Ferry  
PO Box 149,  
Bonners Ferry, Idaho 83805

*Via Email: [mklaus@bonnersferry.id.gov](mailto:mklaus@bonnersferry.id.gov)*

**RE: Moyie Dam –Dam Safety Services**

Dear Mike,

HDR appreciates the opportunity to provide the City of Bonners Ferry with this proposal for additional dam safety services for the Moyie Project.

**Background**

HDR completed the Tenth CSIR in April 2018. In a letter dated May 12, 2020, FERC acknowledged receipt the Part 12 report and required that the City of Bonners Ferry provide supplemental information. The main items requested are; a Dam Breach Model Report, a Supplementary Stability Analysis Report and a Supplement Memo to the Tenth CSIR. This scope of work covers the Supplement Memo and the Supplementary Stability Analysis Report. Updated inundation studies were previously developed by others.

**Scope of Work**

**Task 1 –Supplement to the Tenth CSIR Dam Safety Report and Project Management**

HDR will prepare a supplement a supplement to the Tenth CSIR Dam Safety Report. The supplement will include the following items:

- Phone discussion with FERC to present the planned scope of this effort to confirm that it meets expectations.
- Status of recommendations from the Ninth CSIR 1.3.3-2, 1.3.4-2 and 1.3.4-3.
- Provide a discussion of the appropriateness of the inflow design flood and whether it is appropriate for this project given the new dam break study and the fish hatchery recently constructed downstream of the dam.
- An evaluation of the spillway discharge capacity as it relates to the IDF/PMF and the spillway's capacity to pass the PMF.



- A description of the stability analysis presented in the Ninth CSIR as it pertains to developing an updated stability analysis. Topics for description of the analysis include: methods, procedures, critical elements, assumptions, elements, or input/design parameters for the dam stability analysis and resulting factors of safety and how these items relate to the planned updated Stability Analysis memo described in Task 2.

**Deliverables:**

- *Email documentation of call with FERC*
- *Memo Supplement to the Tenth CSIR Report*
- *Monthly invoices and status reports.*

**Assumptions:**

- *Additional work requested or required by FERC uncovered during the phone call may require revision to the scope and costs to meet FERC expectations.*
- *Tetra Tech's "Inundation Study Update. Report prepared for the City of Bonners Ferry, Idaho. Updated March 2018" is assumed to fulfill the dambreak study requirements and this scope does not include additions or modification to the inundation mapping or a dam break study.*

**Task 2 – Gravity Stability Analysis**

HDR will prepare a 2D gravity stability analysis of the Moyie Dam to respond to recommendations from the Tenth CSIR for the normal case, flood case and post-seismic case based on FERC dam safety criteria

The report shall include following:

- An introduction detailing background information on the dam and the available information on concrete and foundation material properties.
- A narrative section describing the analysis process, including design guidance and assumptions.
- A description of load components and load combinations.
- Accounting for potential effects of load transfer between adjacent dam monolith blocks and foundation keys.
- Spillway geometry for analysis section to limit contributions from the thinner downstream section.
- Concrete and foundation stresses and loading diagrams representative of the loading conditions for the above mentioned load cases.

- Concrete and foundation stresses and loading diagrams representative of the loading conditions for the above mentioned load cases.

**Deliverables:**

- *Draft Analysis Report: one (1) electronic copy.*
- *Final Analysis Report: one (1) electronic copy*

**Assumptions:**

- *The scope of work assumes the analysis will be performed utilizing software such as MathCAD, Microsoft Excel, with hand calculations to support the analysis.*
- *No additional seismicity information will be developed as part of this scope.*
- *Post seismic case will consider liquefied silt, and a range of friction angles.*
- *A single draft report will be submitted to the City for review and comments prior to preparation of the final report.*

**Team**

The team will be as follows:

- Keith Moen PE Independent Consultant/Project Manager
- Adam Jones, Senior Review QA/QC
- Yosep Supranata, Structural Analysis
- Farzad Abedzadeh, Structural Review
- Malcolm Schaffer, Seismicity Review
- Jennifer Gagnon, Hydrology/Dambreak Review
- Others include EIT report preparation support, clerical/administrative support and accounting

**Schedule**

Notice to Proceed .....	Mid August, 2020
Draft Gravity Stability Analysis .....	Late October, 2020
Final Gravity Stability Analysis .....	Mid November, 2020
Draft Memo Supplement to Tenth CSIR .....	Mid November, 2020
Final Memo Supplement to Tenth CSIR .....	Mid December, 2020

**Budget**

HDR recommends a budget based on a time-and-materials basis. Not to exceed (without written permission from City) \$21,600.

**Contract**

HDR has successfully negotiated a contract with The City for dam safety work, and we suggest using the previous terms for this work.

Please do not hesitate to contact me at (206) 495-5951 or Kate Eldridge at (208) 387-7019 if you have any questions or comments regarding this proposal.

Sincerely,  
HDR Engineering



Keith Moen  
*Project Manager/  
Senior Dam Safety Engineer*



Kate Eldridge  
*Vice President/  
Idaho Area Manager*

**RESOLUTION #2020-09-01**

**A RESOLUTION BY THE CITY COUNCIL OF BONNERS FERRY,  
BOUNDARY COUNTY, IDAHO, AUTHORIZING AN INTERFUND LOAN  
FROM THE SEWER FUND TO THE WATER FUND**

**WHEREAS**, the Water Department received an interfund loan from the Electric Fund for the purpose of financing construction of the Cassia Water Storage Tank by Resolution 2015-12-01, and subsequently amended by Resolution 2017-05-01, and

**WHEREAS**, the Water Department has been making the scheduled payments to the Electric Fund and is current on its obligations with \$572,806.00 still owed, and

**WHEREAS**, the Electric Fund will now benefit from repayment of the loan made in 2015 in full versus the planned repayment schedule for the purposes of bolstering its reserve balance, however the Water Fund cannot make the full repayment at this time, and

**WHEREAS**, the Sewer Fund has a sufficient reserve balance that it can loan to the Water Fund the repayment amount still owing to the Electric Fund and such loan will not jeopardize the City's Sewer Department operations, and

**WHEREAS**, the loan from the Sewer Fund to the Water Fund will be repaid with interest at three percent per annum, and

**WHEREAS**, it is in the best interests of the citizens of the City of Bonners Ferry to borrow the financing for the loan repayment from the Sewer Fund.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF BONNERS FERRY, BOUNDARY COUNTY, IDAHO**, as follows:

**Section 1: AUTHORIZATION OF INTERFUND LOAN.**

The City of Bonners Ferry Sewer Fund ("Sewer Fund") has sufficient funds to provide a loan of funds to the City of Bonners Ferry Water Fund ("Water Fund") in order to enable the full repayment of the 2015 loan to the Electric Fund. The Council finds that the Sewer Fund is able to receive interest on the unpaid balance in an amount in excess of the interest rate that would otherwise be received on investments of the City, and that providing these funds to the Water Fund to make repayment to the Electric Fund is in the best interests of the City.

**Section 2: TERMS OF INTERFUND LOAN.**

The City Council hereby authorizes an interfund loan between the Sewer Fund of the City and the Water Fund. The total amount of the loan shall be \$572,806.00. Yearly payments shall be made on the first day of March in the years 2021 and 2022 in the amount of \$202,504.00. Final payment shall be made on the first day of March 2023, in the amount of \$202,505.00. These payment amounts reflect a rate of three percent (3%)

per annum interest on the unpaid balance. In no event shall the interfund loan extend beyond March 2, 2023, without additional action by the City Council.

**Section 3: CONFORMANCE WITH STATE LAWS.**

All actions and proceedings necessary for the issuance, sale, and payment of the Loan, including the interest thereon, shall in all particulars be had in accordance and in conformity the provisions of Idaho Code.

**Section 4: SEVERABILITY.**

If one or more provisions of this Resolution shall be declared by any court of competent jurisdiction to be contrary to law, then said provision shall be null and void, and shall be deemed separable from the remaining provisions of this resolution, and shall in no way affect the validity of the other provisions of this Resolution.

**Section 5: REPEALER.**

All resolutions or parts thereof in conflict herewith, to the extent of such conflict, are hereby repealed.

**Section 6: EFFECTIVE DATE.**

This Resolution shall be in full force and effect immediately upon adoption.

ADOPTED by the Mayor and City Council of the City of Bonners Ferry, Boundary County, Idaho on \_\_\_\_\_, 2020.

CITY OF BONNERS FERRY  
Boundary County, Idaho

\_\_\_\_\_  
James R. Staples, Mayor

ATTEST:

\_\_\_\_\_  
Christine McNair, City Clerk

## INDEPENDENT CONTRACTOR AGREEMENT

AGREEMENT made between City of Bonners Ferry, a political subdivision of the state of Idaho, herein "ENTITY" and Bear Auto Inc. herein "CONTRACTOR".

THE PARTIES AGREE AS FOLLOWS:

1. **CONTRACT:** ENTITY hereby employs CONTRACTOR as an independent contractor to complete and perform the following project and work:

To perform as-needed, as-directed, general mechanical work on city equipment, including but not limited to city police equipment, golf equipment, streets equipment and utility equipment. The contractor agrees that should any work be needed on city first responder's vehicle that he will do best to give those priorities over other work so as to insure the least amount of time where the vehicle is out of commission.

CONTRACTOR agrees to provide all materials and services for the project in accordance with the attached written specifications.

Specifications and scope of work will be provided to CONTRACTOR at beginning of work.

2. **TIME OF PERFORMANCE AND TERMINATION:** Parties agree that:

[X] CONTRACTOR will work at various times as directed by the City from September 1, 2020 and continue until September 1, 2021 unless this Agreement is terminated with thirty (30) days written notice by either party.

3. **COMPENSATION:** ENTITY agrees to pay CONTRACTOR as compensation:

[X] The sum of \$78, per hour for general mechanical work.

4. **INDEPENDENT CONTRACTOR:** The parties agree that CONTRACTOR is the independent contractor of ENTITY and in no way an employee or agent of ENTITY and is not entitled to workers compensation or any benefit of employment with the ENTITY. ENTITY shall have no control over the performance of this Agreement by CONTRACTOR or its employees, except to specify the time and place of performance, and the results to be achieved. ENTITY shall have no responsibility for security or protection of CONTRACTOR'S supplies or equipment. CONTRACTOR agrees to pay and be responsible for all taxes due from the compensation received under this contract.

5. **WARRANTY:** CONTRACTOR warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. CONTRACTOR acknowledges that it will be liable for any breach of this warranty.

6. **INDEMNIFICATION:** CONTRACTOR agrees to indemnify, defend, and hold harmless ENTITY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of CONTRACTOR, CONTRACTOR'S agents, employees, or representative under this agreement.

7. **INSURANCE:** CONTRACTOR agrees to obtain and keep in force during its acts under this agreement a comprehensive general liability insurance policy in the minimum amount of \$1,000,000 which shall name and protect CONTRACTOR, all CONTRACTOR'S employees, ENTITY and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR'S acts. CONTRACTOR shall provide proof of liability coverage as set forth above to ENTITY prior to commencing its performance as herein provided, and require insurer to notify ENTITY ten (10) days prior to cancellation of said policy.

8. **WORKER'S COMPENSATION:** CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff that the CONTRACTOR may employ, and provide proof to ENTITY of such coverage or that such worker's compensation insurance is not required under the circumstances.

9. **COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all federal, state, city, and local laws, rules and regulations.

10. **ENTIRE AGREEMENT:** This is the entire agreement of the parties and can only be modified or amended in writing by the parties.

11. **ATTORNEY FEES:** Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ENTITY:

\_\_\_\_\_ CITY OF BONNERS FERRY \_\_\_\_\_  
(Governmental Entity) By \_\_\_\_\_ (Owner/business)

CONTRACTOR:

By \_\_\_\_\_ Its \_\_\_\_\_ Mayor \_\_\_\_\_  
James R. Staples (Title or Office)

ATTEST:

\_\_\_\_\_ Christine McNair, Clerk \_\_\_\_\_  
(Signature of Witness or Notary Public)

WITNESS:

Form and content approved by \_\_\_\_\_ as attorney for \_\_\_\_\_  
(Governmental Entity).



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Pace-Kerby & Co., Inc. P. O. Box 809	CONTACT NAME: House Account
Bonnerr's Ferry INSURED Bear Auto Inc PO Box 1056 1657 Moon Shadow Rd Bonnerr's Ferry	PHONE (A/C, No. Ext): (208) 267-3123 FAX (A/C, No.): (208) 267-6880 E-MAIL ADDRESS: insure@pace-kerby.com
ID 83805	INSURER(S) AFFORDING COVERAGE
	INSURER A: Acuity NAIC # 14184
	INSURER B:
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

**COVERAGES** CERTIFICATE NUMBER: CL2082806688 REVISION NUMBER:

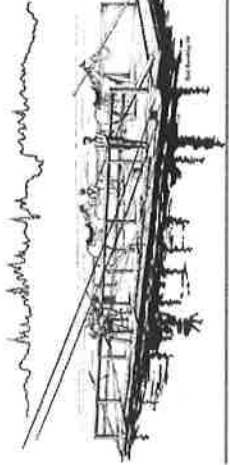
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD/INSUR (INSD, LWD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:  AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY  <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB  <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$  WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Z10980	01/01/2020	01/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 Garagekeepers Liability \$ COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$  PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
City of Bonnerr's Ferry PO Box 149 Bonnerr's Ferry	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
ID 83805	AUTHORIZED REPRESENTATIVE 





## CITY OF BONNERS FERRY

7232 Main Street  
P.O. Box 149  
Bonners Ferry, Idaho 83805  
Phone: 208-267-3105 Fax: 208-267-4375

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**TO:** Mayor and City Council  
**FROM:** Lisa Ailport, City Administrator *LMA*  
**DATE:** August 27, 2020  
**RE:** Approval of Street Superintendent Job Description

The 2011 job description for the Streets Superintendent is very outdated to the actual job duties that the current position does. The attached job description is present to council and reflects for the current duties and potential future duties.

Please let me know if you have any questions.

## JOB DESCRIPTIONS

### CITY STREET AND PARK SUPERINTENDENT

#### STATEMENT OF DUTIES:

The primary function of the Street and Park Superintendent is to supervise and perform journeyman level construction and maintenance work on city streets, rights-of-ways and manage the day-to-day maintenance of city parks and trees.

The Street and Parks Superintendent will operate heavy equipment and perform much of the same work as subordinates employees, but serves as the primary responsible supervisor who monitors various street, parks and facilities maintenance projects. The work is performed under the general supervision of the City Administrator and City Engineer, although leeway is provided for independent judgment and initiative.

The principal duties of this position are performed in an outdoor environment and may include working in adverse weather conditions and hazards involving the use of power tools and equipment.

#### ESSENTIAL DUTIES AND RESPONSIBILITIES:

- Budget monitoring and fiscal responsibility of all expenses related to operations and maintenance of the Streets and Parks Department;
- Responsible for the preparation of annual street budget;
- Handles applications associated with streets and/or parks Department, including encroachment and access permits;
- Schedules, supervises, and performs daily maintenance, repair, work assignments of street and park crews;
- Monitors work assignments for quality, completion, and safe work practices;
- Ensures equipment, supplies, and a sufficient work crew is available at assigned job sites;
- Sets procedures, methods, techniques, and equipment for projects;
- Maintains records, documentation, and logs of work orders, including materials, tools, supplies, equipment, and labor for work assignments;
- Reads and interprets work assignments, job orders, construction drawings and specifications;
- Performs survey work including staking, leveling, evaluation and line right of way;
- Operates a variety of vehicles and heavy equipment, including but not limited to, tractor mowers, dump trucks, front end loaders and attachments, sweepers, pavers, backhoes, water tankers, snow removal vehicles, graders, and related equipment;
- Operates a variety of hand tools and power tools, including but not limited to, sledges, hammers, picks, air compressors, air hammers, jacks, sprayers, and related equipment;
- Performs scheduled and assigned maintenance, repair, and service work on City streets, rights-of-ways, storm drain systems, sidewalks, curbs, alleys, medians, and structures;
- Erects, maintains, and repairs fences, guard rails, and traffic signs and signals;
- Performs asphalt and concrete repair and replacement, including operation of cutters and saws, setting forms, and finishing;

## JOB DESCRIPTIONS

- Removes debris and other safety hazards from streets, curbs, storm drains, alleys, and adjacent public areas;
- Places erosion and sediment control devices;
- Responsible for proper work zone traffic control devices and insures proper flagging is provided on city street projects;
- Schedules routine maintenance on vehicles and equipment and maintains service and maintenance records;
- Operates heavy and medium-sized construction vehicles and equipment, and power tools, snow removal equipment;
- Demonstrates knowledge of federal, state and local code requirements; participates in safety programs, promotes safe working habits, and encourages the use of protective equipment;
- Trains, motivates and evaluates the work of employees;
- Keeps immediate supervisor and designated others fully and accurately informed concerning work progress, including present and potential work problems and suggestions for new or improved ways of addressing such problems;
- Responds to all internal and external customers (City employees, other governmental representatives, business organizations, community groups and/or the public) in a courteous and friendly manner to promote a service orientation;
- Communicates and coordinates regularly to maximize the effectiveness and efficiency of interdepartmental operations and activities;
- Performs all work duties and activities in accordance with City policies, procedures and safety practices.

### Other Duties and Responsibilities

- On call after regular hours to respond to emergency situations;
- Performs other related duties as required.

## **REQUIRED KNOWLEDGE, SKILLS AND ABILITIES**

### Knowledge of

- Methods, materials, procedures, and standard practices of street and right-of-way construction and maintenance, vegetation control and removal, and related duties;
- Methods, materials, procedures, and standard practices of snow removal, sanding, and de-icing;
- Equipment and tool operation and maintenance practices;
- Employee supervision and training methods;
- City policies regarding safe work practices relating to use of power tools, heavy equipment and vehicles;
- Ability to deal effectively with public;
- Establish effective working relationships with others employees in other departments;
- Perform employee reviews and take disciplinary action, where necessary.

## JOB DESCRIPTIONS

### SPECIAL QUALIFICATIONS

- Possess or obtain within six months of hire date, a State of Idaho Class “A” CDL, with tanker endorsement, without record of suspension or revocation in any state;
- Pool Operator Certification;
- Flagger and/or Traffic Control Certification.
- Sufficient clarity of speech and hearing, with or without reasonable accommodation, which permits the employee to discern verbal instructions and alarm and warning systems, including backup alarms, and communicate effectively with other employees and the public;
- Sufficient visual acuity, with or without reasonable accommodation, which permits the employee to comprehend written work instructions and work orders;
- Sufficient manual dexterity, with or without reasonable accommodation, which permits the employee to operate motor vehicles, including heavy equipment, and operate a variety of power and hand tools and to make adjustments to equipment;
- Sufficient strength to lift and carry objects up to 80 pounds;
- Sufficient personal mobility, stamina, flexibility, and balance to perform maintenance and repair operations that require bending, stooping, kneeling, stretching, and other physical exertions in an outdoor environment, including extremes of heat and cold.

### ACCEPTABLE EXPERIENCE AND TRAINING

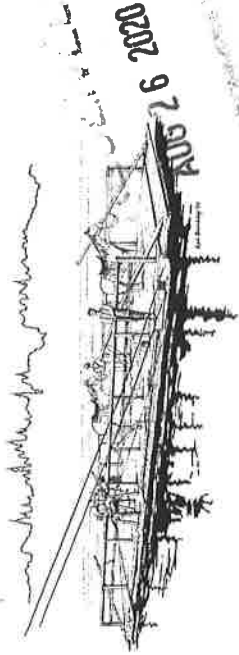
- High school diploma or GED equivalency is required; and
- Three (3) to four (4) years experience in street construction, facility maintenance, or a related field, preferably including supervisory experience; or
- Any equivalent combination of experience and training which provides the knowledge and abilities necessary to perform the work.

### NECESSARY LICENSES:

The employee shall be required to maintain in good standing the following licenses:

- Current, valid Idaho driver’s license;
- Idaho Class A Drivers License

CITY OF BONNERS FERRY  
SPECIAL EVENT PERMIT  
APPLICATION



NAME OF EVENT: 9/11 Memorial

DATE OF EVENT: September 11, 2020

TIME OF EVENT: Start: 0830 End: 0930

LOCATION OF EVENT (include street names, property names, etc.): Visitor Center  
Parking lot

NUMBER OF PEOPLE IN ATTENDANCE: unknown - public invited

WILL EVENT OCCUPY OR REQUIRE CLOSURE OF A PUBLIC STREET: Yes: No: X  
If yes, please attach diagram of proposed closures. ITD contacted regarding closing off Southbound turn lane on Hwy 95.

WILL ALCOHOL BE SERVED: Yes: No: X

IF YES, HAS CATERING PERMIT BEEN SECURED: Yes: No: N/A

DESCRIPTION OF EVENT: Memorial observance of 9/11 tragedy - flags, readings, bell toll, etc. All fire, law enforcement, EMS agencies expected to participate/attend with vehicles & personnel

DESCRIPTION OF EXTRA POLICE OR FIRE PROTECTION NEEDED:

Need visitor center end of parking lot blocked off, along with possibly the east side parking spaces. Otherwise, none.

NAME OF APPLICANT/ORGANIZATION: Providence Bible Presbyterian Church

ADDRESS: 6530 Washington Street, BF

PHONE NUMBER: 208-267-3327

NAME OF PRIMARY CONTACT PERSON: Len Pine

PHONE NUMBER: 208-746-9761

EMAIL: lenpine@gmail.com

Sponsoring Bomby County Chaplain Corp

PLEASE ATTACH OR SUBMIT THE FOLLOWING ITEMS WITH APPLICATION:

- Proof of a comprehensive general liability insurance policy in the amount of one million dollars (\$1,000,000), naming the City of Bonners Ferry as a co-insured party.
- Permit fee and clean up fee as set by resolution of the City Council.

**\*\*SPECIFIC RULES FOR PARADE APPLICANTS\*\***

- No throwing candy or items from other vehicles (must hand out)
- No sirens during parade
- No debris left on streets. If animals are to be part of the parade, there must be someone designated to follow behind and clean up after the animals.

**INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

By this application, the applicant shall, waive, indemnify, and hold harmless the City of Bonners Ferry, its agents, its employees and authorized volunteers from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of the permitted activity or the conduct of applicant's operation of the event if such claim (1) is attributed to personal injury, bodily injury, disease or death, or to injury or to destruction of property, including the loss of use there from, and (2) is not caused by any gross negligent act or omission or willful misconduct of the City of Bonners Ferry or its employees acting within the scope of their employment.

Signature of Applicant:  \_\_\_\_\_

Printed Name: Leonard Frie \_\_\_\_\_

Office/Title: Pastor \_\_\_\_\_

Date: 8-26-20 \_\_\_\_\_

**Clerk's Office Use:**

Fee Paid \_\_\_\_\_ Date \_\_\_\_\_ Receipt No. \_\_\_\_\_

Chief of Police \_\_\_\_\_ Date \_\_\_\_\_

Fire Chief \_\_\_\_\_ Date \_\_\_\_\_



## Liability Coverage Summary

MinistryEssentials<sup>SM</sup> commercial multi-peril policy Declarations continued...

For application of limits, see For application of limits, see Church Organization Commercial Liability Coverage form form (MEL101C 2.0).

### Key Liability Coverage Facts: Schedule of Limits

GENERAL OCCURRENCE LIMIT	\$1,000,000
GENERAL AGGREGATE LIMIT	\$3,000,000

### Principal Liability Coverages

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Bodily Injury/Property Damage Liability (L)	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Medical Payments (M)	\$10,000*+	\$3,000,000*	MEL101C 2.0
Products/Completed Work (N)	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Fire Legal Liability (O)	\$300,000*	\$900,000*	MEL101C 2.0

### Supplemental Coverages

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Incidental Contractual Liability	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Incidental Medical Malpractice Injury	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Mobile Equipment	\$1,000,000*	\$3,000,000*	MEL101C 2.0

### Additional Coverages

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Personal Injury Liability	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Membership Emotional Injury	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Nursery Supervision	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Nursery Corporal Punishment	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Food Preparation Liability	\$1,000,000*	\$3,000,000*	MEL101C 2.0
Damage to Property of Others			
Not in Your Control	\$1,000*+	\$3,000,000*	MEL101C 2.0
In Your Control	\$2,500*+	\$3,000,000*	MEL101C 2.0
Prosthetic Devices	\$500*+	\$3,000,000*	MEL101C 2.0
Incidental Camper Medical	\$10,000*+	\$3,000,000*	MEL101C 2.0
Nonowned Property Damage Liability			
Real Property	\$300,000*	\$3,000,000*	MEL101C 2.0
Personal Property	\$10,000*	\$3,000,000*	MEL101C 2.0

### Defense Coverage

Applies in addition to the liability limit unless otherwise specifically stated in an applicable coverage form.

\* Only a single limit applies to the loss. All coverage limits are subject to the general occurrence limit and all aggregate limits are subject to the general aggregate limit.  
+ per person limit



**Brotherhood Mutual**  
Insurance Company

NAMED INSURED  
POLICY NUMBER  
POLICY PERIOD

Providence Bible Presbyterian  
11MAA0446971  
07/13/2020 to 07/13/2023 at 12:01 a.m.

## Liability Coverage Summary

MinistryEssentials<sup>SM</sup> commercial multi-peril policy Declarations continued...

For application of limits, see For application of limits, see Church Organization Commercial Liability Coverage form (MEL101C 2.0).

### Nonowned Vehicle Coverage

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Nonowned Vehicle Liability Coverage	\$1,000,000*	\$3,000,000*	MEL711 2.0
Defense Coverage: Authorized Operator	(In addition to Limit)	(In addition to Limit)	MEL711 2.0
Rental Vehicle Physical Damage Coverage	\$60,000*	\$120,000*	MEL711 2.0
Loss of Use Coverage	\$2,000*	\$6,000*	MEL711 2.0
Trip Occupant Coverage	\$1,000*+	\$10,000*	MEL711 2.0
Damage to Property of Others Coverage	\$1,000*+	\$3,000*	MEL711 2.0
Nonowned Vehicle Deductible Reimbursement Coverage	\$1,000*+	\$3,000*	MEL711 2.0

### Directors and Officers Liability Coverage

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Director and Officers Liability Coverage	\$1,000,000*	\$3,000,000*	MCL811 2.0

### Computer-Related Liability Coverage

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Computer Use Liability Coverage	\$1,000,000*	\$3,000,000*	MCL879 1.0
Electronic Commerce Liability Coverage	\$1,000,000*	\$3,000,000*	MCL879 1.0
Computer Supervision Liability Coverage	\$1,000,000*	\$3,000,000*	MCL879 1.0

### Athletic Medical Coverage

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Religious Operations Athletic Medical Coverage	\$3,000*+	\$3,000,000*	MCL901 1.0

### Worldwide Liability Extension

COVERAGE DESCRIPTIONS	COVERAGE LIMIT	COVERAGE AGGREGATE LIMIT	FORM
Limited Worldwide Kidnap and Extortion Expense Reimbursement Coverage	See form	See form	MCL111T 1.0
Expanded Medical Coverage for Short-Term Foreign Trip Participants	See form	See form	MCL111T 1.0

\* Only a single limit applies to the loss. All coverage limits are subject to the general occurrence limit and all aggregate limits are subject to the general aggregate limit.  
+ per person limit