



M E M O

County Administrator

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TO: County Commissioners
FROM: Robert W. Wilson
DATE: October 13, 2022
SUBJECT: ARPA Use of Funds Policy Authorization

In September 2021, the Board approved County Policy 13.22, Use of American Rescue Plan Act (ARPA) Funds. Adopting a policy governing the use of ARPA funds is a 'Best Practice' that was recommended by the National Association of Counties (NACo) as local governments utilized this unprecedented funding provided by the federal government in response to the COVID-19 pandemic.

The intent of the policy is to ensure expenditures are appropriately tracked, reported, and utilized for eligible projects within required time frames. The policy is attached. It describes the total ARPA funds received by Cass County, eligible uses, and United States Treasury reporting requirements.

The attached SLFRF Funding and Eligibility Summary was developed at the same time and intended to provide the project information needed to satisfy the policy reporting requirements. This report relates to the County engagement with Klein McCarthy for architectural and construction management services for the Jail Housing Addition project. A similar report and authorization will be prepared for the Board's consideration when the County procures construction services for this project.

SUGGESTED MOTION: Authorize an expenditure of Cass County ARPA funds for architectural design and construction management services for the Cass County Jail Housing Addition project as described in the agreement with Klein McCarthy Architects.

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SUBJECT: USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS

ADOPTED DATE: SEPTEMBER 7, 2021

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Authorization & Funding Provided:

The American Rescue Plan Act (ARPA) was signed into law on March 3, 2021. The legislation includes authorization of Coronavirus State and Local Fiscal Recovery Funds (SLFRF) distributed directly to local governments, including Cass County.

Cass County Government is scheduled to receive \$35,336,410, distributed in two tranches. The first (\$17,668,205) was received in May of 2021. The second (\$17,668,205) is scheduled for distribution in May of 2022.

Eligible & Prohibited Uses of SLFRF Funds:

Guidance regarding eligible uses of SLFRF funds and reporting requirements is provided by the United States Department of Treasury in the *Interim Final Rules* ([link provided to full document](#)) and is subject to updates. The *Interim Final Rules* describe in great detail examples of eligible expenses as well as prohibited uses of SLFRF funds.

Eligible uses of SLFRF funds generally fall into one of four categories:

- Responding to the public health emergency or its negative economic impacts.
- Providing premium pay to eligible workers
- Providing government services (providing for lost revenue)
- Making necessary investments in infrastructure

Prohibited uses of SLFRF funds include:

- Contributions to pension systems
- Backfilling reserves
- Funding litigation expenses

U.S. Treasury Reporting Requirements:

Reporting requirements vary by size and type of organizations receiving SLFRF Funds.

Reporting requirements applicable to Cass County include:

1. Submission of Interim Report by August 31, 2021 (Activity to July 31, 2021)
2. Submission of first Quarterly Project & Expenditure Reports by October 31, 2021 (Activity to September 30, 2021)
3. Ongoing Quarterly Project and Expenditure Reports are due 30 days after the end of each quarter through June 30, 2026 (due July 31, 2026) or until all funds are expended and reported, whichever occurs first.

SUBJECT: USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS

ADOPTED DATE: SEPTEMBER 7, 2021

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Commission Authorization Required for Expenditure of SLFRF Funds:

Funding requests to utilize SLFRF funds will be considered in accordance with existing Cass County policy for authorization for use of funds. In addition to all other policy requirements proposing departments or outside agencies will provide a completed Project Description/Eligible Use Worksheet at the time the funding request presented to the Commission for consideration.

Utilization of Funds:

Within the authorized use guidelines provided by the U.S. Treasury, SLFRF fund recipients have wide latitude to identify and fund projects or initiatives that are most beneficial to the recipient organizations. Consideration of an expenditure by the Board of Commissioners or submission of a funding requests/project proposal in no way obligates the Commission to approve and fund a request, even if it is an authorized use according to U.S. Treasury guidelines.

Project Documentation/Auditing:

Projects shall meet all requirements as determined by County Finance Office including completion of a Schedule of Expenditures and Financial Awards as required by law.

HISTORICAL REFERENCE DATE: September 7, 2021



SLFRF Funding & Eligibility Summary

(Project Title)

(Date)

Prepared by: (Author & Position)

- I. **Background:** (General information about background and current state pre-COVID.)
- II. **Impact of COVID-19:** (How was background & current state was impacted by COVID)
- III. **Intended Result Summary:** (Describe the intended result of this SLFRF expenditure)
- IV. **Solution Costs:** (Anticipated budget & funding request)
- V. **Estimated Beginning & Completion date of project/expenditure:**
- VI. **Program area of the American Rescue Plan:**
(*Authorized use category within Interim Final Rules*)
 - i. Responding to the public health emergency or its negative economic impacts
 - ii. Providing premium pay for eligible workers
 - iii. Providing government services (providing for lost revenue) &
 - iv. Making necessary investments in infrastructure



SLFRF Funding & Eligibility Summary
Cass County Jail Housing Addition – Architectural Services
October 10, 2022
Prepared by Robert Wilson, County Administrator

I. Background: (General information about background and current state pre-COVID.)

The Cass County Jail was constructed as a 248-bed facility in 2002 and expanded to the current 348-bed capacity in 2008. Prior to the COVID-19 pandemic the Cass County Jail had adequate housing capacity. Neither the Cass County Sheriff nor jail staff were recommending an increase in the number of housing units.

According to a Jail Booking-Area Masterplan document prepared by Klein McCarthy Architects in January 2019 the average daily population was 252 inmates. That masterplan identified the increasing number of inmates being booked in and processed through the facility on a yearly basis as the sole growth factor that required attention. In response to the needs identified in the masterplan, a jail booking area expansion was designed and is currently under construction. This project is scheduled to be completed in late fall 2022.

II. Impact of COVID-19: (How was background and current state was impacted by COVID)

With the onset of the COVID-19 pandemic in March 2020, additional jail housing units became an almost immediate need for Cass County. To maintain public health and public safety, incoming inmates and inmates suspected of being COVID-positive had to be single bunked and quarantined until their COVID status could be determined. Confirmed COVID-positive inmates required housing in negative air-flow areas or had to be grouped together in housing units that could not be utilized for other inmates. Housing units have a capacity of 48 inmates, with five of eight housing units being designed as double bunk or dormitory style housing, and nearly 80% of single bunk cells being used to house inmates that are not suitable for multiple occupancy cell placement for safety reasons involving significant mental illness, violent conduct, or vulnerability. The facility currently has four negative air-flow cells. Due to the housing design, any COVID-positive inmates beyond four must be housed in the immediate area of healthy inmates, which increases exposure risk. When any outbreaks of COVID positivity occur, a limited availability of regular airflow single bunk cells can only be addressed by reducing capacity in double bunk cells.

As the pandemic entered a new phase in the last year, an additional direct effect has presented itself. To reduce the jail population during the height of the pandemic many individuals suspected of committing crimes who otherwise would have been arrested were given personal recognizance bonds and ordered to appear for their court hearings. This was done to create more space needed for social distancing within the jail. When the court system felt they could safely resume a court schedule, many of those who had been ordered to appear for court at a later date failed to appear. This created a sharp



increase in the number of individuals in the community who have failure to appear warrants. Now as the Courts work through a normal volume of criminal files, there is also a significant increase in the number of arrest warrants for individuals in the community. One of the Sheriff's Office's statutory obligations is to apprehend and detain individuals with active warrants. The pressure on the jail to house those who commit crimes now while also working through the on-going backlog of warrants is intense.

III. Intended Result Summary: (Describe the intended result of this SLFRF expenditure)

In order to address the needs and challenges experienced as a result of the COVID-19 pandemic and responsibly scale a housing addition onto the jail facility, Cass County engaged Klein McCarthy Architects to complete a Population Forecast and Design Options masterplan. The plan was delivered in July 2022 and recommends an addition of 96 single bunk cells, half of which have the ability to be remodeled into double bunk cells at a later date.

IV. Solution Costs: (Anticipated budget and funding request)

The estimated total project cost is between \$36,000,000 and \$39,000,000. This report applies exclusively to the architectural services and construction administration required to develop building plans and manage this project. The contracted price for Klein McCarthy Architects to complete this task is 6.5% of the total project cost. Based on the estimated construction cost, the design and construction administration cost will be between \$2,340,000 and \$2,535,000.

V. Estimated Beginning & Completion date of project/expenditure:

The agreement to engage Klein McCarthy to provide design and construction management services for the Cass County Jail Housing Addition project was considered and approved on October 5, 2022. The timeline anticipates bidding the construction portion of this project in early spring 2023. Due to the construction administration element of this project this engagement will not end until final construction completion and project closeout, scheduled for summer/fall 2025.

VI. Program area of the American Rescue Plan:

(Authorized use category within Final Rules)

Responding to the public health emergency or its negative economic impacts

Cass County has diligently reviewed the Department of the Treasury Interim Final Rules and Final Rules to verify this expenditure of funds meets the guidelines published in the Federal Register dated January 27, 2022, effective April 1, 2022. The following excerpts from the 'Final Rule' document support the conclusion that this is an eligible project:

II. Eligible Uses

A. Public Health and Negative

Economic Impacts

Background

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, "the recipient [is required] to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . .] [E]ligible uses



under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.” The enumerated eligible uses were presumed to meet this criterion. Pg. 4341

In response to comments,

Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule. Pg. 4342

This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds. The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. Pg. 4342

The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: (1) COVID-19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence. Pg. 4343

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures. Pg. 4343

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID-19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID-19 mitigation tactics; Pg. 4389

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Pg. 4390

For projects with total expected capital expenditures of \$1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. Pg. 4390

Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time and resource-intensive options that may be available and would be equally or more effective. Pg. 4390

The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. Pg. 4390

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made.

1. Description of harm or need to be addressed:

2. Explanation of why a capital expenditure is appropriate:

3. Comparison of the proposed capital expenditure against alternative capital expenditures: pg. 4390

Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Pg. 4390/4391

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. A comparison of the effectiveness of the capital expenditures in addressing the harm identified. Pg.4391

\$10 million or more: Written Justification required, and recipients must submit as part of regular reporting to Treasury.