



Order

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2022-06

AN ORDER OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, IMPLEMENTING AMERICAN RESCUE PLAN ACT FUNDS FOR HOUSEHOLD ASSISTANCE THROUGH A UTILITY AID PROGRAM AND AUTHORIZING AND DIRECTING THE ENTERING INTO AN AGREEMENT WITH WACOG TO ADMINISTER ELIGIBILITY SCREENING AND OTHER ADMINISTRATIVE SERVICES TO REDUCE THE NEGATIVE ECONOMIC IMPACTS OF THE COVID-19 PUBLIC HEALTH EMERGENCY.

BE IT SO ORDERED by the Mayor and City Council of the City of San Luis, Arizona:

Section 1: Using the federal American Rescue Plan Act ("ARPA") and its regulations, appropriate city staff shall provide household assistance through a utility aid program using the city's ARPA allocation and the \$50,000 the city designated for the program on January 12, 2022, under Order No. 2022-1.

Section 2: The Western Arizona Council of Governments ("WACOG") shall administer eligibility screening and other administrative services as more fully described in the attached agreement, Exhibit "A" to this order. A true copy of the Agreement with WACOG is attached as Exhibit A. This reference incorporates it into this order as though set forth again in full here.

Section 3: Eligible household utility customers for the utility aid program shall be San Luis, Arizona residents who are low to moderate-income as defined by 31 CFR § 35.3.

Section 4: The City adopts and approves the attached agreement, Exhibit "A," and the city's officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this order.

PASSED, ADOPTED, and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this ____ day of May 2022.

Gerardo Sanchez, Mayor

ATTEST:

APPROVED AS TO FORM:

Sonia Cornelio, City Clerk

Kay Marion Macuil, City Attorney

Order No 2022-06
Exhibit A

**WESTERN ARIZONA COUNCIL OF GOVERNMENTS
ADMINISTRATION OF ASSISTANCE UNDER
THE SAN LUIS ARPA HOUSEHOLD ASSISTANCE, UTILITY AID PROGRAM**

This agreement (“Agreement”) is entered into this _____ day of May 2022, between

City of San Luis City Hall 1090 East Union Street (physical) P.O. Box 1170 (mailing) San Luis, Arizona 85349 an Arizona municipal corporation (“City”) and	Western Arizona Council of Governments 1235 South Redondo Center Drive Yuma, Arizona 85365 in its capacity as an Arizona non-profit corporation (“WACOG”).
---	---

This Agreement distributes a portion of the American Rescue Plan Act (“ARPA”) Funds allocated to the City to respond to the COVID-19 public health emergency or its negative economic impacts by assisting low- and moderate-income households residing in San Luis, Arizona, with their past due municipal Utility Bills for running water, wastewater removal system and solid waste collection (“Utility Bills”).

RECITALS

Background – City Responses to COVID-19 Impacts

- A.** San Luis City Council (“City Council”) chose ARPA’s utility aid to assist households impacted by COVID-19 and designated \$50,000.00 of the City’s ARPA Fund allocation at their regular meeting on January 12, 2022, under Order No. 2022-1.
- B.** City Council passed Resolution No. 2127 on April 29, 2020, for charges incurred from March 13, 2020, through September 1, 2020, (1) suspending late fees and (2) suspending water shut-offs for non-payment.
- C.** City Council passed Resolution No. 2138 on August 26, 2020, (1) continued through November 1, 2020, to suspend water late fees and water shut-offs for non-payment, and (2) deferred shut-offs and charges through June 30, 2021, for those who enter into an installment payment plan with the City and comply with the conditions specified in the resolution.
- D.** The City suspended water shut-offs for December during the COVID-19 pandemic years 2020 and 2021.
- E.** Despite the temporary suspension of shut-offs for non-payment, many City utility customers

continue to have past due Utility Bills and endure the COVID-19 public health emergency's negative economic impacts.

ARPA Federal Program

F. ARPA became law on March 11, 2021, and created a Fund for local governments called the Coronavirus Local Fiscal Recovery Fund "Fund," codified at 42 U.S.C. § 803.

G. 42 U.S.C. § 803(c)(1)(A) authorizes cities to use the cities' Fund allocations to respond to the COVID-19 public health emergency or its negative economic impacts by assisting households by December 31, 2024.

H. Under 42 U.S.C. § 803(f) and (g)(8), ARPA authorized the U.S. Secretary of the Treasury to issue such regulations as may be necessary or appropriate to carry out ARPA as it relates to local governments (42 U.S.C. § 803).

I. The U.S. Secretary of the Treasury issued her Final Rule on January 27, 2022, codified at 31 C.F.R. Part 35.

Federal Regulatory Presumptions for People Eligible

J. Impacts: Rule 31 C.F.R. § 35.6(b)(2)(i) rule presumes that low- and moderate-income households (defined under 31 C.F.R. § 35.3) are impacted by the COVID-19 public health emergency or its negative economic impacts.

K. Disproportional Impacts: Rule 31 C.F.R. § 35.6(b)(2)(iii) presumes that low-income households and households that qualify for federal benefits listed at 31 C.F.R. § 35.6(b)(2)(iii)(A) are disproportionately impacted by the COVID-19 public health emergency or its negative economic impacts.

Federal Eligible Uses – Includes Utility Aid

L. Rule 31 C.F.R. § 35.6(b)(3)(ii)(A)(1) enumerates eligible uses of the Fund to respond to the negative economic impacts, including assistance to households.

M. Utility aid is allowed under the expenditure category called Negative Economic Impacts #2.2 as described in the U.S. Department of the Treasury publication. *Project and Expenditure Report User Guide: State and Local Fiscal Recovery Funds*. April 1, 2022 (version 2). Appendix C, page 76. Available at:

<https://home.treasury.gov/system/files/136/April-2022-PE-Report-User-Guide.pdf>.

Accessed 5/17/2022.

City as Conduit for Federal Utility Aid Program

N. The City is a custodian or conduit for the City's allocation of the Fund because the Fund is purely a federal source.¹

O. The City supports the Federal goals and will channel the City's allocation of the Fund to provide utility aid to the City's low- and moderate-income households to secure running water, wastewater removal, and solid waste collection.

Engaging WACOG for Eligibility Screening

P. For decades, WACOG has provided direct social services that assist low-income households and vulnerable populations in San Luis, and WACOG has proven knowledgeable and trustworthy in using federal Funds for these purposes.

Q. The City chooses WACOG to administer the San Luis ARPA Household Assistance, Utility Aid Program because WACOG has the professionalism and proven expertise in federal household assistance programs.

R. WACOG is willing to provide its expert services to the City for the compensation of ten percent (10%) of the \$50,000 City Council allocated.

S. Ten percent (10%) is reasonable because, under 15 U.S.C. § 9058a (c)(5), the U.S. Congress determined no more than 10% of federal funding should go to administrative costs for a similar household stabilization program to sustain and pay for the type of services WACOG will perform under this Agreement;

NOW, THEREFORE, the Parties, in consideration of the foregoing recitals (which are incorporated in this Agreement by this reference) and the following mutual covenants, agree:

DEFINITIONS

Defined words are capitalized. A capitalized, defined word in the plural means the plural of the defined word.

Agreement means this Agreement.

Applicant means the City's utility customers, which the City refers to WACOG.

ARPA means the American Rescue Plan Act passed into federal law on March 11, 2021, HR 1319, Public Law 117-2, 135 Statutes at Large 4, codified in relevant part at 42 U.S.C.

¹ See Navajo Tribe v. Ariz. Dept. of Admin., 111 Ariz. 279, 281, 528 P.2d 623, 625 (1974).

§ 803 titled Coronavirus Local Fiscal Recovery Fund as it may be amended through the life of this Agreement.

City means City of San Luis, Arizona, a Party to this Agreement.

City Council means the City Council for San Luis, Arizona.

Eligible Customer means a City residential utilities customer who meets all of the following:

- (1) is a resident within the city limits of the City (San Luis, Arizona) who the City has referred to WACOG,
- (2) resides at the utility service address,
- (3) does not have more than one residential utility account, and
- (4) is eligible for utility aid under this Agreement, 42 U.S.C. § 803, the Final Rule, Guide, and reporting requirements of the U.S. Department of the Treasury, as these federal laws, regulations, guidance, and requirements may change during the life of this Agreement.

Note: Commercial utilities customers are **not** eligible.

Final Rule means the U.S. Treasury's "Rules and Regulations for Coronavirus State and Local Fiscal Recovery Funds, 87 FR 4338-01(January 27, 2022)," codified at 31 C.F.R. Part 35, as it may be amended through the life of this Agreement.

Fiscal Year means July 1 through June 30.

Fund means the Coronavirus Local Fiscal Recovery Fund created under ARPA codified at 42 U.S.C. § 803

Guide means the U.S. Department of the Treasury. *Project and Expenditure Report User Guide: State and Local Fiscal Recovery Funds*. April 1, 2022 (version 2). Available at: <https://home.treasury.gov/system/files/136/April-2022-PE-Report-User-Guide.pdf>, as it may be updated through the life of this Agreement.

Party means either the City or WACOG.

Parties mean the City and WACOG

Program means the San Luis ARPA Household Assistance, Utility Aid Program San Luis, which WACOG and the City are implementing under this Agreement.

Utility Bill means City's utility charges for water, wastewater, and solid waste services, which include but are not limited to monthly service charges, shut-off fees, late fees, and any current charges and unpaid arrearages. It does **not** include (1) future charges and (2) deposits.

Tool means the Tool for determining low- and moderate-income through the US Department of Treasury's website, under the heading "Resources on Determining Eligible Uses of Funds under the Final Rule" at this link:

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

Voucher means the written document WACOG creates indicating the dollar amount of utility aid the City is to pay on an Eligible Customer's Utility Bill with the ARPA Funds City Council designated for the Program in Order No. 2022-01. Vouchers must **not** include deposits.

WACOG means Western Arizona Council of Governments, a Party to this Agreement.

I. **WACOG RESPONSIBILITIES**

Commencing July 1, 2022, and to the extent permitted by law:

A. WACOG shall work jointly with the City's Finance Department and Billings & Collection Division to administer the Program and devise forms and procedures for efficient disbursement to the Eligible Customers

B. **Criteria to Determine Eligible Customers**. WACOG shall determine Eligible Customers from the City's utility customers, which the City refers to WACOG ("Applicants"), using the following criteria.

1. **Applicants' Household Income**

WACOG may either determine the Applicant's household income by proof of income or proof of categorical eligibility.

a. **Income Eligibility**. Applicant's household income is 300% or less of the federal poverty level using the US Department of Treasury website, under the heading "Resources on Determining Eligible Uses of Funds under the Final Rule" for determining low- and moderate-income at this link:

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds> ("Tool").

Note: WACOG shall prioritize household income 185% or less of the Federal Poverty Level using the Tool over those household incomes between 186% to 300% of the Federal Poverty Level.

b. **Categorical Eligibility**. Applicant's Household qualifies for at least one of the benefits listed in Exhibit 1. Exhibit 1 is incorporated into this Agreement by this reference.

Note: WACOG shall prioritize households that qualify for at least one benefit listed on Exhibit 1 under the heading, “*Presumptively disproportionately impacted by the COVID-19 public health emergency*” over the remaining listed benefits on Exhibit 1.

2. Applicants’ Residence

- a. Applicant must be a San Luis, Arizona resident.
- b. Applicant must reside at the utility service address.

3. Applicants’ Utility Account

- a. Applicant shall not have more than one City residential utility account.
- b. Only residential utility accounts (not commercial accounts) are eligible for assistance.
- c. Applicant must have a past due account, but assistance cannot be used for arrears that are in a collections service nor for deposits.
- e. Applicant or the account or both must not have any unauthorized activities within the last twelve (12) months.

4. Applicant’s Assistance History

- a. Applicant is not eligible who has received \$250.00 in assistance within the last twelve (12) months.
- b. Applicant is not eligible who has received assistance twice within the last twelve (12) months.

- C. WACOG shall use a comprehensive application and income verification process to determine the financial hardship of the Applicants to determine whether they are Eligible Customers.
- D. WACOG shall Conduct screening interviews with the Applicants to determine if such customers meet the Program’s eligibility requirements as Eligible Customers.
- E. Issue a Voucher, in a form approved in writing by the City’s Finance Department staff, for Eligible Customers for unpaid City Utility Bills. WACOG shall email the Vouchers to the City’s Billing & Collections Division. WACOG shall email the Vouchers to the City’s Billing & Collections Division.
- F. Submit a check to the City within fifteen (15) calendar days after the end of each month for the amount equal to the aggregate value of the Vouchers distributed in the Program for the preceding month. Submit to the City a monthly report within

fifteen (15) calendar days after the end of each month that this Agreement is in effect containing all the applicable information the City must report to the U.S. Secretary of the Treasury under ARPA, the Final Rule, the Guide, and any other applicable law.

The report, at a minimum, shall list the following information for the preceding month:

1. number of persons applying for Program assistance;
2. number of applicants approved for Program assistance;
3. total dollar amount of Vouchers distributed in the Program;
4. any information needed for reporting to the U.S. Treasury; and
5. any additional statistical information requested by the City that the City considers beneficial to aid in future Program refinements or improvements.

- G. WACOG shall provide with the above monthly report copies of supporting Vouchers.
- H. Provide (in conjunction with City staff) Program applicants with educational materials and information regarding water conservation and measures that applicants can implement to reduce water usage.
- I. Maintain accurate records of the dollar amounts of each Voucher issued and an accurate running total not to exceed \$25,000.00 in the first Fiscal Year starting July 1, 2022. If WACOG issue less than \$25,000.00 in Vouchers by June 30, 2023, then the running total cannot exceed \$45,000.00 by the Program's expiration.
- J. WACOG shall provide the City:
1. a written report on or before July 1, 2022:
 - a. the names and addresses of the current officers and directors,
 - b. a copy of the current WACOG bylaws and articles of incorporation, including any amendments to the documents;
 2. written notice within thirty (30) days after WACOG changes any officer, director, bylaws, or articles of incorporation.

II. COMPENSATION

The City shall compensate WACOG at a rate of 10% of the value of Vouchers WACOG submits monthly. The City shall pay monthly within 30 days of WACOG's invoice, submitted with its monthly report. The total maximum the City shall pay is \$5,000.00.

III. CITY RESPONSIBILITIES

The City shall transfer by check to WACOG \$45,000 from the utility aid the City Council

designated for the Program in Order No. 2022-01. WACOG shall use this to pay the City directly for City's Eligible Customer's Vouchers.

When the City pays a Voucher on the Eligible Customer's Utility Bill, the Finance Director shall have the discretion to waive the deposit on that Eligible Customer's utility account.

IV. TERM OF AGREEMENT

- A. The term of this Agreement shall commence on July 1, 2022, and expire the earlier of December 31, 2024, or when the \$45,000 are exhausted, or the Agreement terminates under the termination provisions in this Agreement, or the Agreement is extended as provided by federal law and approved by the City
- B. This Agreement's Funding may be subject to federal law amendments and City Council's revision Order No. 2022-1 for ARPA Fund designations.
- C. The City and WACOG shall coordinate and make every reasonable effort to distribute all the Funds available for eligible applicants before or by December 31, 2024.
- D. In no event shall WACOG use any monies received from the City under this Agreement to increase the compensation of any WACOG employee, officer, or official. "Compensation" as used in this Agreement includes salary, wages, or commissions. However, WACOG may use part of the administrative compensation for reimbursements for expenses (such as travel, supplies, and materials) WACOG incurs to further the objectives of this Agreement.

V. TERMINATION

- A. The City may terminate this Agreement at any time if any of the following occur:
 - 1. At the City's sole discretion, without cause, in which case the City shall provide thirty (30) days written notice.
 - 2. WACOG breaches this Agreement or defaults on any of its obligations stated in this Agreement. Before such termination, the City shall provide WACOG thirty (30) days' written notice of the specific grounds for termination and provide a reasonable time for remedial action by WACOG. In no event shall such time exceed thirty (30) days.
 - 3. Both Parties mutually consent in writing to terminate the Agreement.
- B. If this Agreement terminates before the Funds are fully depleted, WACOG shall return to the City any unused Funds as of the termination date. WACOG shall return such Funds by check issued to the City of San Luis within thirty (30) days after the termination date.

VI. INDEMNIFICATION

To the fullest extent permitted by law, WACOG shall defend, indemnify and hold harmless the City, and the City's agents, representatives, officers, directors, officials, volunteers, and employees from and against all claims, liabilities, demands, damages, losses, injuries to property or persons (including death), and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively "Claims") to the extent that such Claims result from and/or arise out of WACOG's intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions, in performance of this Agreement. This includes any intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions of WACOG's employees, agents, advertisers, contractors, subcontractors, or any other person for whom WACOG may be legally liable in the performance of this Agreement.

The amount and type of insurance coverage requirements stated in this Agreement will in no way be construed as limiting the scope of the indemnity in this paragraph. The indemnity requirements stated in this Agreement will not be construed as limiting the insurance required in this Agreement.

VII. INSURANCE

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of WACOG, WACOG shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona under Arizona Revised Statutes ("A.R.S.") § 20-206, as amended, with an AM Best, Inc. rating of A with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements stated in this Agreement or failure to identify any insurance deficiency shall not relieve WACOG from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials, and employees as

Additional Insured as specified under the respective coverage sections of this Agreement.

4. Waiver. Except for Professional Liability, all policies shall contain an endorsed waiver of rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, officers, and employees for any claims arising out of the work or services of WACOG. WACOG shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
5. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed, and formally accepted by the City unless specified otherwise in this Agreement.
6. Primary Insurance. WACOG's insurance shall be primary or endorsed to be primary, non-contributory insurance with respect to the performance of this Agreement and in the protection of the City as an Additional Insured.
7. Claims Made. If any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
8. Policy Deductibles and/or Self-Insured Retentions. The policies stated in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. WACOG shall be solely responsible for any such deductible or self-insured retention amount.
9. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, WACOG shall execute written agreements with its subcontractors containing the indemnification provisions stated in this Section and insurance requirements stated herein protecting the City and WACOG. WACOG shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
10. Evidence of Insurance. Before receiving any Funds or commencing any work or services under this Agreement, WACOG will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by WACOG's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the

required coverages, conditions, and limits of coverage specified in this agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage. However, such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, WACOG shall forward renewal certificates and declaration page(s) to the City thirty (30) days before the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title of this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials, and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- b. WACOG's insurance shall be primary, non-contributory insurance with respect to the performance of the Agreement.
- c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials, and employees for any claims arising out of work or services performed by WACOG under this Agreement.

B. Required Insurance Coverage.

1. Commercial General Liability. WACOG shall maintain "occurrence" for Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and advertising injury. Coverage under the policy will be at least as broad as ISO policy form C.G. 00 010 93 or its equivalent, including but not limited to separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form C.G. 20 10 03 97, or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal to or broader in coverage scope than underlying insurance.
2. Professional Liability. If this Agreement is the subject of any professional services or work, or if the WACOG engages in any professional services or work adjunct or residual to performing

the work under this Agreement, the WACOG shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the WACOG, or anyone employed by the WACOG, or anyone for whose negligent acts, mistakes, errors, and omissions the WACOG is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

- C. Cancelation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days prior written notice to the City.
- D. Workers Compensation. WACOG understands and agrees that WACOG's employees, agents, contractors, volunteers, and directors, are not serving as an employee of the City in any manner and therefore are not entitled to any of the City's industrial benefit coverages, including Workers' Compensation coverages. WACOG acknowledges that any injury its employees sustain in the performance of this Agreement will not be eligible for industrial benefits from the City of San Luis, and any necessary treatment will be WACOG, or WACOG's insurer's, sole responsibility.

VIII. GENERAL CONDITION

- A. Non-Discrimination Laws. WACOG shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, as amended, State Executive Order 2009-09, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disability Act of 1990. In addition, WACOG shall include similar requirements of subcontractors in any contracts entered into for the performance of WACOG's obligations under this Agreement.
- B. Financial Review. WACOG shall make its financial records available for inspection by the City, or its designee, upon reasonable notice during regular business hours of the City. If the City desires a financial audit by a certified public accountant of the WACOG's financial records to verify the use of City Funds according to the terms and conditions of this Agreement, WACOG shall cooperate fully in the performance of such audit. WACOG shall be responsible for the cost of such an audit if requested by the City and is entitled to a copy of any resulting reports that the City receives.
- C. Compliance with Laws. WACOG shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, WACOG shall include similar requirements of subcontractors in any contracts entered into for the performance of WACOG obligations under this Agreement.
- D. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

- E. Attorney Fees and Costs. In the event any action or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing Party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration, and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
- F. Laws Governing and Venue. This Agreement shall be governed by the Laws of the State of Arizona as to validity, interpretation, and performance. Any and all suits for any and every breach of this Agreement or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in a venue of competent jurisdiction in Yuma County, Arizona.
- G. Non-Waiver. The failure or delay of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
- H. Severability. If any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- I. Entire Agreement and Amendments. This instrument contains the entire Agreement between the Parties. No oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement or specifically referred to in this written Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by both Parties.
- J. Relationship of Parties. The Parties understand and expressly agree that WACOG is an independent contractor and not a City employee. Nothing in this Agreement constitutes a partnership or joint venture between the Parties, and neither Party is the principal or agent of the other.
- K. Rights and Obligations of Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing in this Agreement shall create any rights or duties favoring any potential third-party beneficiary or other person, agency, or organization.
- L. Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of WACOG of any obligation shall apply only to the particular transaction to which it relates. It shall not apply to any other obligation or transaction.

- M. Dispute Resolution. Claims, disputes, or other matters in question between the Parties to this Agreement arising out of or relating to this Agreement or its breach shall be subject to and decided by arbitration under the Arizona Uniform Rules of Procedure for Arbitration currently in effect unless the Parties mutually agree otherwise. Request for arbitration shall be filed in writing with the other Party to this Agreement.
- N. Conflict of Interest. This contract shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.
- O. Environmental Conditions. WACOG shall take all steps necessary to ensure WACOG compliance with all applicable federal, state, and local environmental laws, regulations, and ordinances, and shall indemnify and hold the City harmless for any remediation required and from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising because of injury or death to any person or damage to any property or the environment of any nature whatsoever arising out of violations of such laws, regulations, and ordinances.
- P. E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, WACOG and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). WACOG's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

The City retains the legal right to inspect the papers of any WACOG contractor or subcontractor employee who works on this Agreement to ensure that WACOG or subcontractor is complying with this warranty.

- Q. Political Activities. Employees, directors, board members, officers, and volunteers of WACOG are prohibited from engaging in any political activity with respect to candidates for political office beyond the private expression of personal opinion, registering as a member of a political party, signing petitions, and voting in any special, general, or primary election. No employee, director, board member, officer, or volunteer shall solicit any contribution in cash or service from any WACOG employee, director, board member, officer, or volunteer to support any candidate for public office. No employee, director, board member, officer, or volunteer shall use the name of WACOG or use their affiliation with WACOG to engage in any political activity of any kind or to solicit any contribution in cash or services to support any candidate for public office. If an employee, director, board member, officer, or volunteer should engage in said activities, they shall make it clear that they are doing so in their personal and private capacity and are not associated with WACOG in any way while engaging in said activity. Employees, directors, board members, officers, and volunteers will refrain from engaging in any political activity while attending or participating in any WACOG function or event.

R. Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, and other communications (collectively “Notices”) required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of the receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or five (5) calendar days after mailing whichever comes first, in the case of notices that are mailed.:

To City:

City of San Luis
Attn: Billing and Collections
P.O. Box 3750
San Luis, Arizona 85349

Copy
San Luis City Attorney
P.O. Box 1170
San Luis, Arizona 85349

To WACOG

WACOG
Attn: Executive Director
1235 South Redondo Center Drive
Yuma, Arizona 85364

S. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein, and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

T. Non-Designation. Every designation of the City under this Agreement is conditioned upon the availability of ARPA Funds to fulfill such designations. Notwithstanding any other provision of this Agreement, if Funds are not designated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the Funds are available. No liability shall accrue to the City if this provision is exercised. The City shall not be designated or liable for any future payments resulting from termination under this paragraph.

[Intentionally left blank, signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

City of San Luis, Arizona

Gerardo Sanchez, Mayor

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Kay Marion Macuil, City Attorney

Western Arizona Council of Governments

Signature

Print Name

Title

Exhibit 1

Criteria for Utility Aid

Customer Eligibility

Eligible Customers for Vouchers as Described in the Agreement for the San Luis-ARPA Utility Aid Program and Final Rule Reference

For the criteria for WACOG to determine Eligible Customers, the City relies on presumptions to identify beneficiaries presumptively *impacted or disproportionately impacted* by the COVID-19 public health emergency or its negative economic impacts under 31 CFR § 35.6(b)(2)(i), which are households that:

Presumptively impacted by the COVID-19 public health emergency

- (a) qualify for the Children’s Health Insurance Program (42 USC 1397aa et seq.), and
- (b) qualify for Childcare Subsidies through the Child Care and Development Fund Program (42 USC 9857 et seq. and 42 USC 618).
- (c) qualify for Medicaid (42 USC 1396 et seq.),

Further, the City relies on presumptions to identify beneficiaries presumptively *disproportionately impacted* by the COVID-19 public health emergency or its negative economic impacts under CFR § 35.6(b)(2) (iii)(A), which are households that:

Presumptively

disproportionately impacted by the COVID-19 public health emergency

- (a) receive services provided by Tribal governments,
- (b) receive services provided by territorial governments,
- (c) qualify for Temporary Assistance for Needy Families (42 USC 601 et seq.),
- (d) qualify for Supplemental Nutrition Assistance Program (7 USC 2011 et seq.),
- (e) qualify for Free and Reduced Price School Lunch and/or Breakfast programs (42 USC 1751 et seq. and 42 USC 1773),
- (f) qualify for Medicare Part D Low-income Subsidies (42 USC 1395w-114),
- (g) qualify for Supplemental Security Income (42 USC 1381 et seq.),
- (h) qualify for Head Start (42 USC 9831 et seq.),
- (i) qualify for Early Head Start (42 USC 9831 et seq.),
- (j) qualify for the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786),
- (k) qualify for Section 8 Vouchers (42 USC 1437f),
- (l) qualify for the Low-Income Home Energy Assistance Program (42 USC 8621 et seq.), or
- (m) qualify for Pell Grants (20 USC 1070a) .