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October 25, 2024

Jackson County, Missouri
Bryan Covinsky, County Counselor
415 E. 12th Street, 2nd Floor
Kansas City, Missouri 64106

RE: Disposition of Real Property Purchased with ARPA Funding

Dear Mr. Covinsky:

I have been requested to provide an opinion regarding the requirements placed on Jackson County, Missouri ("County") when disposing of real property purchased with funds authorized by the Federal American Rescue Plan Act ("ARPA"). Specifically, I have been asked to address questions with respect to restrictions or requirements placed on the proceeds of the sale of real property purchased with ARPA funds.

<u>Factual Background</u>

The County received funds through ARPA and disburses them from the County's American Rescue Plan Fund through legislative procedures that are compliant with the ARPA guidance and rules. On April 4, 2022, the County adopted an Ordinance appropriating $9,050,000.00 from the 2022 County Improvement Fund using ARPA funds for the purchase of commercial real estate. On November 28, 2022, the County authorized the transfer of these funds through Resolution No. 21108 and purchased the real property for $9,000,000 and has invested approximately $792,935 relating to design work for the building. I further understand that one hundred percent (100%) of the purchase price was funded with ARPA funds. We understand that a Resolution was recently proposed to sell the subject real property. As a result of the introduction of that Resolution, certain questions were raised relating to the legal considerations relating to the sale of the real property and the potential financial impact to Jackson County.

<u>Summary</u>

In the event a Resolution was adopted approving the sale of the subject property, Jackson County would be required to obtain disposition instructions from the federal awarding agency relating to the disposition of the asset – in this case, U.S. Department of Treasury. For a proposed sale of the property, if otherwise authorized, we anticipate that those disposition instructions would provide procedures for the sale of the subject property and would require compensating the Federal awarding agency out of the sale proceeds. The amount paid will be calculated based on the percentage of the purchase price funded by federal funds to the proceeds of the sale after deduction of actual and reasonable selling and fixing up expenses. If the Federal award has not been closed out, the net proceeds from the sale may be offset against the original purchase cost of the property. Thus, it appears that this process would potential result in a sale of the subject property and result in a return of the amount of ARPA funds used in acquiring and design work for the building likely being returned to the federal government. If sale of the property is authorized, the County would be required to utilize sales procedures that provide for competition to the extent practicable and that result in the highest possible return.

<u>Legal Authority</u>

ARPA created the Coronavirus Local Fiscal Recovery Fund (“CLFRF”). Access to ARPA and CLFRF funds are governed by Treasury’s 2021 Interim Final Rule, 2022 Final Rule, 2023 Interim Final Rule, Obligation Interim Final Rule, various FAQs and guidance documents, and other applicable federal statutes and regulations, and reporting requirements.

Section 13.16 of the FAQs discuss use and disposition requirements of assets purchased with SLFRF funds. During the “performance period,” which runs through December 31, 2026, the asset may be used for purposes other than the initial purpose for the purchase or improvement, provided that such other purpose is consistent with eligible use requirements under ARPA. If the recipient changes the use of the asset to an ineligible use or disposes of property during the performance period, the disposition procedures provided by the regulations apply. However, it is important to note that the FAQ distinguishes between changing the use of the property and disposing of it and determining the use of proceeds of sale. The disposition of property purchased with ARPA funds during the performance period must comply with the guidance and regulations.

The title, use, and disposition of property purchased with ARPA and CLFRF funds is governed by 2 CFR § 200.300, et seq. Specifically, § 200.311 covers the title, use, and disposition of real property. Section (c) provides that the non-Federal disposing entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of three alternatives:

> (1) The non-Federal disposing entity may retain title after compensating the Federal awarding agency. The amount paid will be computed based on the percentage of

purchase price funded by Federal funds to the fair market value of the property. If the non-Federal entity is acquiring replacement property under the same Federal award, the cost of replacement property may offset the amount owed to the Federal awarding agency.

(2) The non-Federal disposing entity may sell the property and compensate the Federal awarding agency. The amount paid will be computed based on the percentage of purchase price funded by Federal funds to the proceeds of the sale after deduction of actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original purchase cost of the property. If the non-Federal agency is directed to sell the property, it must use sales procedures that provide for competition to the extent practicable and result in the highest possible return.

(3) The non-Federal disposing entity may transfer title to the Federal awarding agency or a third party designated and approved by the Federal awarding agency. The non-Federal agency will be entitled to compensation based on the percentage of non-Federal funds used to purchase the property to the current fair market value of the property.

The disposition instructions will dictate how the proceeds of the sale may be used by the County and whether there are any restrictions or requirements. For the first two alternatives, the asset or the proceeds of the sale will be released from any ARPA restrictions or requirements after the Federal awarding agency is compensated for the purchase price covered by ARPA. In the third alternative, the Federal awarding agency compensates the County for the portion of the fair market value unrelated to the ARPA funds used for the purchase. In each case, the amount retained by the County will not be connected to ARPA and will have no restrictions. The only method that retains any restrictions or requirements is if the County acquires replacement property under the same Federal award under the first alternative.

Procedure for Sale

The County must follow both its own legally mandated procedures for disposition of real property and those set forth in the regulations issued pursuant to ARPA. To do so, the County must adopt an order or ordinance to dispose of the subject property in accordance with its own internal requirements, but the order or ordinance cannot contain any specific sales mechanisms or price. Following approval of the sale, the County must then request that its contact for administration of ARPA funds issue disposition instructions. The County should review such instructions to ensure that they materially comply with one of the three options listed above. The County must then follow the instructions provided by the government.

The Resolution in question presents the possibility of disposing of real property purchased with ARPA funds during the performance period. In that event, the County must dispose of the real property using the procedures outlined in 2 CFR § 200.311. If the County follows these procedures outlined above, the disposition of real property will be in compliance with ARPA laws and regulations. Failure to do so may result in penalties to the County.

Qualifications

The opinions expressed in this letter are subject to the accuracy of the information provided to me. Changes in facts that I am unaware of may result in a different application of the law and render this opinion invalid. I am not expressing any opinion as to the adequacy of any procedures used by the County to dispose of the real property.

If you have any questions, don't hesitate to reach out to me.

Sincerely,

Travis A. Elliott

Travis A. Elliott

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