**POLICY FOR PURCHASE OF REAL PROPERTY USING ARPA FUNDS**

# ARPA Capital Expenditure Pre-Approval (prior to entering into contract to acquire real property)

## Submission to GMO of the proposed real property, estimated purchase price, and proposed use.

## Submission to GMO of report and analysis of how the selection of the real property was fair and reasonable to minimize waste, and how capital expense is related and reasonably proportional to the overall impact/harm the project is intended to address.

## Submission to GMO of financial analysis, indicating that funds (either the federal grant or a combination of federal and other funds) are sufficient to pay the following:

### Purchase Price (a portion of which may be used as Earnest Money when entering into the Contract for Sale);

### Appraisal;

### ALTA Survey [see Section III(B)(1) for explanation];

### Phase I ESA [See Section III(B)(2) for explanation];

### Flood assessment, if needed;

### Title research, if needed;

### Closing costs;

### Upkeep and maintenance of the property.

## GMO may grant approval to enter into Contract for Sale, disapprove, or request additional information.

# ARPA Capital Expenditure Approval (prior to closing)

## Contract for Sale executed, providing for inspection of property, establishing sale price and closing date, and allowing for Buyer's cancellation/termination of the Contract for Sale if in the sole discretion of Buyer (with input from GMO) inspections indicate the real property is not appropriate for intended use. Copy of Contract for Sale to be provided to GMO.

## Submission to GMO of the following:

### ALTA (American Land Title Association) Survey Report—verifies legal description, identifies encumbrances such as easements, confirms zoning compliance, verifies access including vehicular access, and enables purchaser to obtain enhanced title insurance.

### Phase I ESA (Environmental Site Assessment) Report—identifies current and historical land usage that may have resulted in environmental risk to soil or groundwater. If the Phase I ESA indicates a possibility or contamination, a Phase II ESA will be recommended. The Phase II ESA involves analysis of soil and/or groundwater samples.

### Any additional information requested by GMO.

## Other pre-closing considerations:

### Does the purchase of real property require the approval of the Long-Range Capital Planning Commission? [See 74 O.S. §61.8];

### Insurance must be obtained on the property. 2 CFR 200.310.

### Are there any logistical tasks that need to be completed? (For example, does the Seller and/or Title Company need to be set up as a vendor in PeopleSoft? Does a purchase order need to be created?)

## GMO approves or disapproves the purchase of real estate.

# Closing

## Title is held in the name of the recipient of ARPA funds. 2 CFR 200.311(a). Note: Many state agencies do not have legal authority as a matter of state law to hold property, and in those cases, OMES typically holds title. (For example, the Grantee on a deed will be described as the Oklahoma Office of Management and Enterprise Services, on behalf of [insert name of state agency].) However, OMES may consider the granting and approval of the ARPA funds for the purchase of real property, and the approval of the GMO, as legal authority for the recipient to hold title to property as a matter of federal law.

## Title must be held in trust by the recipient of ARPA funds as trustee for the program or project beneficiaries for which the real property was acquired or improved. 2 CFR 200.316. Note: There is nothing in the law, regulations, case law, or guidance that defines what is meant by "in trust." Recipients must consult with legal counsel (either in-house counsel or the Office of the Attorney General) for legal advice on requirements for holding title to real property in trust in compliance with federal law.

## The US Treasury Department may require notice be filed in the land records that the real property has been acquired or improved with a federal grant and therefore there are restrictions on the use and disposition of the real property. 2 CFR 200.316. Note: The federal regulations mention that the US Treasury Department may require liens to be placed on the real property for the purpose of providing such notice; however, liens are not effective against public property under Oklahoma law. See *Broadway Med. Center v. State ex rel. DCS,* 25 P3d 311; *Bird Construction v. OKC Housing Authority,* 110 P3d 560.

# After Closing

## Recipient shall maintain insurance on the real property.

## Recipient shall document the continued proper use of the real property.

## Recipient shall maintain the real property.

## Recipient shall not encumber the real property.

## If improvements are made to the real property, recipient/subrecipient shall use strong labor standards, including project labor agreements (PLAs) and community benefit agreements that offer wages at or above the prevailing rate and that include local hire provisions.

# Disposition

## Recipient shall not sell or transfer the real property without first contacting the US Treasury for disposition instructions.