

**** CONFIDENTIAL ****

MEMORANDUM

DATE: July 31, 2023

TO: Mayor Jonathan F. Mitchell, City of New Bedford
Christina Connelly, Chief Operating Officer
Eric Jaikes, City Solicitor
Emily Arpke, City Auditor
Michael D'Ortenzio, KP Law

FROM: Richard J. Taylor, CPA, ARPA Consultant
with Jennifer A. Maxwell, Senior Grants Auditor and Procurement Officer

RE: New Bedford Research & Robotics
ARPA Grant

This memorandum is in reference to the grant conditionally awarded to New Bedford Research and Robotics (NBRR) through the American Rescue Plan Act Vacant or Abandoned Property Rehabilitation Program. The conditional award letter, dated January 18, 2023, states an award of up to \$2,250,000 for eligible project costs, subject to NBRR compliance with the funding's terms and conditions and the execution of a Grant Agreement. Such terms and conditions are partly set out by the American Rescue Plan Act (ARPA) and the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) rules and regulations, including but not limited to, the Department of the Treasury's SLFRF Final Rule and 2 C.F.R. 200.

Risk Assessment

Prior to issuing the award as the pass-through entity, the City reviewing team headed by this author was mandated to conduct an assessment of the subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, for the purposes of assessing whether the prospective subrecipient has an adequate level of the financial and operational capability and determine the appropriate level of subrecipient monitoring.

A **risk assessment** includes consideration of the prospective subrecipient's following areas (2 CFR 200.206);

- **Financial stability.** Financial stability;
- **Management systems and standards.** Quality of management systems and ability to meet the management standards;
- **History of performance.** The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
- **Audit reports and findings.** Reports and findings from Single Audits under the Uniform Guidance or the reports and findings of any other available audits; and
- **Ability to effectively implement requirements.** The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities

Additional consideration included such factors as:

- The subrecipient's prior experience with the same or similar subawards;
- Whether the subrecipient has new personnel or new or substantially changed systems; and
- The extent and results of Federal awarding agency monitoring (e.g. if the subrecipient also receives Federal awards directly from a Federal awarding agency).

Subrecipient monitoring may take on various forms and is not limited to the practices described below. 2 CFR 200 outlines the following monitoring activities necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward.

Monitoring of the subrecipient must include:

- Reviewing financial reports required by the pass-through entity (City);
- Reviewing performance reports required by the pass-through entity;
- Following up to ensure that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means;
- Issuing a management decision for audit findings pertaining to the federal award provided to the subrecipient from the pass-through entity as required by 2 CFR 200.521;
- Verify that every subrecipient is audited as required by Subpart F – Audit requirements of this part when it is expected that the subrecipient's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR 200.501;

- Consider where the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records;
- Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR 200.338;
- In the cases of entities receiving more than \$750,000 in federal funding, those organizations must be prepared for the Single Audit (per the Uniform Guidance), or, if applicable, an Alternative Compliance Examination Engagement (per the US Treasury Compliance Supplement, April 2022).

Depending upon the results of the risk assessment, the City of New Bedford may:

- Make the award;
- Deny the applicant and not execute the award; or
- Award with "specific conditions" (2 CFR 200.208).

A positive (low risk) assessment indicates that the applicant possesses the necessary management competence to plan and carry out the program and that the applicant will practice mutually agreed upon methods of accountability for funds and other assets provided by the USG. A negative (high risk) assessment indicates that there is a high risk that the subrecipient will fail to meet project or programmatic objectives or incur significant deficiencies in financial, regulatory, reporting, or other compliance requirements.

In our review of NBRR, we examined the organization's systems to determine whether the prospective subrecipient has the necessary organization, experience, accounting and operational controls, and technical skills necessary to achieve the objectives of the program, or whether specific conditions would be needed.

Based upon the results of this review and factors as of this date, it is our opinion that NBRR is a very high-risk organization and that an award should not be issued.

This recommendation encompasses five main facets:

- Experience and Financial Capability: NBRR is a brand-new non-profit organization with little track record of performance, few assets, few employees, and a lack of staff with appropriate management and financial expertise;
- Organizational Structure: NBRR's head has simultaneously created a for-profit organization with a similar name, with which there is already intermingling of assets;
- Claims Against Assets: the for-profit single-entity LLC Southcoast Research and Robotics (SCRR) has secured a mortgage using the future assets of the non-profit (NBRR) as collateral, including assets ineligible for funding;

- ARPA Investment: the ARPA grant represents a majority of the project funding (at least 62.5%); and
- Accompanying Factors including procurement measures that may be viewed as noncompliant and NBRR's unknown future sustainable revenue stream, all of which put donor programs at significant risk.

The results of the issues uncovered during this review are discussed below.

Experience and Financial Capability: p. 4

Organizational Structure: pp. 4-5

Claims Against Assets: pp. 5-7

ARPA Investment: p. 8

Accompanying Factors: pp. 8-13

EXPERIENCE AND FINANCIAL CAPABILITY

NBRR is a brand-new non-profit organization. The most current IRS Form 990-EZ, dated November 4, 2022, for the period July 1, 2021 through June 30, 2022, shows very minimal activity (revenue less than \$20,000). We are unable to provide a positive finding for the capability of NBRR to engage in its stated mission and successfully perform its programmatic responsibilities without a highly significant infusion of capital.

It is our understanding that the only substantive assets owned by NBRR have been donated by the Siegal Foundation to be used exclusively for 501©(3) activities. These funds cannot be used for mortgage payments to Bay Coast Bank; however, there is the possibility that these funds would be used by NBRR to pay rent to SCRR.

ORGANIZATIONAL STRUCTURE

Mark Parsons established in 2021 a for-profit LLC (Southcoast Research & Robotics) and a non-profit organization (Research & Robotics d/b/a New Bedford Research & Robotics). Both list Parsons as the holder of every office. The latter, NBRR, is the applicant for City ARPA funding. The name similarities of the two entities (both entities may be referred to as "Research & Robotics") invite confusion with regard to status, purpose, and funding. And within this structure, the for-profit entity is already absorbing assets of the non-profit, including those proposed to be financed by ARPA funds.

We are unable to discern whether SCRR is merely an entity created for the purpose of owning the property at 1265 Purchase Street with no other business interests as indicated in Mark Parsons' correspondence to us, or a multi-purpose for-profit business enterprise as described in its Certificate of Organization. If SCRR operates as indicated in the description/ general-purpose section of its Certificate, then there may be significant

overlap of programmatic activities between SCRR and NBRR, causing potential confusion amongst stakeholders, including donors and oversight bodies

Without a formal matrix that details the functional activities of both organizations, there is a strong likelihood that revenues, expenditures, personnel activities, etc. may be comingled.

CLAIMS AGAINST ASSETS

The for-profit SCRR applied for a mortgage with Bay Coast Bank for the purchase of the property located at 1265 Purchase St, New Bedford MA. According to the Bay Coast Bank mortgage letter dated November 7 2022, whereas SCRR is the Borrower, the Guarantor is Research and Robotics, LLC d/b/a New Bedford Research and Robotics and Mark Parsons. **The term for this \$840,000 loan is two years.** The letter further states in Collateral: "1st lien in All business Assets of New Bedford Research and Robotics".

This loan was executed on December 15, 2022. Interestingly, that predates the ARPA notice of conditional award dated January 18, 2023.

USG Program Assets Put at Risk

*An organization receiving USG funding may **not** use any assets purchased with ARPA funds, or any other Federal grant funds, as collateral for a loan. When an organization accepts a USG award, it must follow certain requirements of the Federal government regarding the use of the grant funds. Using grant-funded assets as collateral would place the grant at risk should the grantee be unable to meet the lender's conditions for any reason. Should this occur, the grant-funded item could be taken from the awardee and sold.*

USG awardees agree to "... use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without the approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally sponsored activities..." 2 CFR 215.34(c) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)

Furthermore, as a non-profit organization, NBRR's assets are not the property of the owner of SCRR and should not be used as collateral for a separate for-profit entity. This may be considered an act of "self-dealing" and/or "unacceptable private benefit" by the IRS, and may result in loss of an entity's non-profit status and potential penalties.

Unacceptable Private Benefit

A private benefit applies when an individual (owner of for-profit SCRR) reaps a benefit that is not keeping within the exempt purposes of the non-profit (NBRR) organization.

A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization.

Building Purchase

The two-year, \$840,000 mortgage is expected to be paid through SCRR contracts and consultation, as well as rents and leases. It is unknown at this time whether there are committed renters or leases at 1265 Purchase Street.

There is a significant investment in assets that may be granted by the City of New Bedford ARPA funds to NBRR for construction activities. As stated above, these assets cannot be used as collateral for a mortgage loan by SCRR. As funds provided by USG as a grant, the assets derived must be disposed of in accordance with the stipulations of the grant instrument. The funds used for construction must be capitalized and accounted for properly. If the non-profit organization dissolves, the value of the assets must be disbursed to a non-profit that performs closely related activities or funds returned to the grantor.

1265 Purchase St is owned by a for-profit corporation, SCRR. Since this property is a large expenditure, paying the mortgage would be a high priority. This leads to a number of questions regarding income generated by NBRR operations.

When asked to describe the relationship between the borrower and the guarantor of the Bay Coast Bank mortgage, the director of SCRR, Mark Parsons, responded that SCRR is essentially a holding company for the building and will not perform business related functions. Excerpted text:

“South Coast Research and Robotics LLC is the borrower. SCRR is a single owner LLC (Mark Parsons) specifically for this purpose with no other business interests or investments. Mark Parsons is the guarantor.”
(Parsons email dated July 11, 2023)

This would seem to indicate that all proceeds from program activity should accrue to NBRR, with the possible exception of rents from tenants. However, this statement is a direct contradiction to the description/general purpose from the Certificate of Organization of SCRR (filed with the Commonwealth of Massachusetts, dated April 7, 2021):

"To engage in the execution, delivery, and management of technological and creative programmatic endeavors, including without limitation in the area of robotics; to undertake in the development of intellectual property with regard to research, creative projects, support and development of entrepreneurial activities and organizations, and educational programs that serve the local, regional, and national communities and to engage in any lawful business."

When asked to elaborate upon the listed collateral for the purchase, SCRR director Mark Parsons responded that his home is the collateral. Excerpted text:

"Mark Parsons' home."
(Parsons email dated July 11, 2023)

Although Parsons stated that the guarantor of SCRR is Mark Parsons and the collateral is Mark Parsons' home, the Bay Coast Bank mortgage letter indicates that the guarantor is New Bedford Research and Robotics. And, although the home is one of the listed items of collateral, the Bay Coast Bank mortgage letter indicates that the first lien collateral is against NBRR assets.

These issues lead the reviewers to question the financial viability and risk involved in ownership of the building located at 1265 Purchase Street.

Risk of Non-Profit and For-Profit Sharing Facilities and Staff

Federal and State laws prohibit nonprofits from diverting their charitable assets from the purposes for which they were received or earned. There is a risk that the non-profit organization (NBRR) may act as a vehicle to subsidize the expenses of the for-profit company (SCRR). NBRR is anticipated to hold the lease for the entire building, which would likely be used to pay the SCRR building mortgage.

If SCRR is the entity that holds the commercial contracts, there is a risk that SCRR will not participate in its allocable share of indirect costs such as rent, utilities, building space, administrative costs, and staff salaries, potentially subsidizing the for-profit entity. In addition, the amount of the lease should be a fair and reasonable market rate to ensure that the lease revenue does not become a profit center of SCRR.

NBRR/SCRR must have an allocation plan to outline how indirect/overhead and common costs are shared in each organization's accounting system. It is essential that separate books be maintained that accurately reflect the revenues and expenses of each entity to comply with USG (Donor Agency and IRS laws, rules and regulations).

Technical Equipment

NBRR requested that City ARPA funds be used to purchase the digital manufacturing equipment that is the cornerstone of the activities that the non-profit entity intends as programmatic activities. This equipment is not eligible for ARPA funding, and NBRR has been repeatedly advised as such. Regardless, since NBRR appears not to be in possession of its necessary equipment, the following questions arise: 1) How will NBRR perform its intended mission?; and 2) From where will the funds be derived to purchase the digital manufacturing equipment?

ARPA INVESTMENT

The City RFR for the Vacant or Abandoned Property Rehabilitation program specifies that the ARPA grant cannot fund more than 50% of the project costs. Per the most recent NBRR budget provided below (May 16, 2023), ARPA is already tipping the balance at 50.7%.

SUMMARY OF MATCHING FUNDS

FUNDING SOURCE	AMOUNT
Acquisition Loan (Bay Coast Bank)	\$840,000.00
Owner Equity	\$447,255.00
Massdev - Underutilized Properties	\$900,000.00
New Bedford ARPA	\$2,250,000.00
TOTAL	\$4,437,255.00

However, it is inaccurate to include the acquisition loan, since it was not made to NBRR. And which owner is providing the equity – NBRR or SCRR? Removing the acquisition loan, the numbers adjust as below, with **ARPA funding the majority of the project at 62.5%**. Again, this is not factoring in the unknown ownership of the equity, which could skew the percentage even higher.

SUMMARY OF MATCHING FUNDS

FUNDING SOURCE	AMOUNT
Owner Equity	\$447,255.00
Massdev - Underutilized Properties	\$900,000.00
New Bedford ARPA	\$2,250,000.00
TOTAL	\$3,597,255.00

ACCOMPANYING FACTORS

Given all of the circumstances listed above, there is grave concern from the reviewers with regard to the risk inherent in NBRR, particularly pertaining to its ability to generate revenue to support and sustain its programs. Additionally, it should be noted that procurement for the project posed particular challenges. Although every effort has been made to resolve these issues and bring procurement into compliance, should questions

arise in the event of an audit, it is likely that some aspects of procurement will not stand up under scrutiny and thus will be viewed as noncompliant.

Again, based upon the results of this review and factors as of this date, it is our opinion that NBRR is a very high-risk organization and that an award should not be issued.

Should the City of New Bedford, however, ultimately decide to provide federal grant funding to NBRR, we recommend that the “specific conditions” clauses of 2 CFR 200.208 be implemented *to the highest extent possible*.

It is the City of New Bedford’s responsibility to minimize the risk posed by high-risk organizations. If the City is unable to make a positive risk determination, the City may decide to not make the award or award with “specific conditions”. The City, however, may consider this choice *only if it appears likely that the potential subrecipient can correct its deficiencies within a reasonable period of time*.

Means to Minimize Risk

The City of New Bedford may consider requiring any of the following specific conditions: 1) Requiring payments as reimbursements rather than advance payments; 2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period; 3) Requiring additional, more detailed financial reports; 4) Requiring additional project monitoring, which can include site visits; 5) Establishing additional prior approvals; or 6) Requiring the subrecipient to obtain technical or management assistance.

When the City determines that more oversight is necessary, it may:

- Issue a contract to a third party to provide technical assistance to the subrecipient;
- Require the subrecipient to contract for technical assistance;
- Assign City staff to provide technical assistance directly to the subrecipient.

The City of New Bedford must notify the successful applicant of: 1) The nature of the additional requirements; 2) The reason why the additional requirements are being imposed; 3) The nature of the action needed to remove the additional requirement, if applicable; 4) The time allowed for completing the actions if applicable; and 5) The method for requesting reconsideration of the additional requirements imposed. Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

§ 200.208 Specific conditions

- (a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.
- (b) The Federal awarding agency or pass-through entity may adjust specific Federal award conditions as needed, in accordance with this section, based on an analysis of the following factors:
- (1) Based on the criteria set forth in § 200.206;
 - (2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;
 - (3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or
 - (4) A responsibility determination of an applicant or recipient.
- (c) Additional Federal award conditions may include items such as the following:
- (1) Requiring payments as reimbursements rather than advance payments;
 - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
 - (3) Requiring additional, more detailed financial reports;
 - (4) Requiring additional project monitoring;
 - (5) Requiring the non-Federal entity to obtain technical or management assistance;
- or
- (6) Establishing additional prior approvals.
- (d) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:
- (1) The nature of the additional requirements;
 - (2) The reason why the additional requirements are being imposed;
 - (3) The nature of the action needed to remove the additional requirement, if applicable;
 - (4) The time allowed for completing the actions if applicable; and
 - (5) The method for requesting reconsideration of the additional requirements imposed.
- (e) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

In order to ensure the ARPA funding is properly utilized for the purposes intended post-award, we recommend including a clause (example below) that addresses USG furnished property in case of liens on the property or the dissolution of NBRR.

Liens on Property or Dissolution of Non-Profit

A non-profit corporation is a unique type of business entity because its goal is not to make a profit; instead, revenue is donated in a way that will provide value to the general public.

Many nonprofit corporations come to an end. Whatever the reason for the closing of a non-profit, the process to officially dissolve the business is very different than that of a for-profit business. When a non-profit corporation is dissolved, the remaining assets do not go to shareholders. The assets also cannot be transferred to volunteers, employees, or individuals who were served by the organization. Legally, the non-profit must transfer all remaining assets to another comparable tax-exempt organization or to a federal, state, tribal, or local government. If the assets are transferred to another organization, not a government, that organization must have a tax-exempt public charity designation.

This raises the issue that, in the case of NBRR, the ARPA funds would be going to one organization (NBRR), but will benefit a separate company (SCRR). Since SCRR is a for-profit company, it is vital to ensure that the USG funds used to purchase any real property (Real Property means land, including land improvements, structures, and appurtenances, including permanent fixtures) remain for the charitable purposes intended and do not benefit or enhance an individual or corporation.

If the City of New Bedford ultimately decides to award a grant to NBRR, we recommend incorporation of the following (or similar to) clause into the grant language to protect the City and USG's interests in case of a lien on NBRR assets or its dissolution (specific language highlighted in yellow).

Example of "Title To And Use Of Property" Award Provision for Non-Profit Organizations

TITLE TO AND USE OF PROPERTY

- a. Title to all Property financed under this award vests in the subrecipient upon acquisition unless otherwise specified in this award.
- b. Property means equipment, supplies, real property, and intangible property, each defined individually below, financed under this award or furnished by the City of New Bedford using ARPA funds:
 - (1) Equipment means tangible nonexpendable personal property (including information technology systems) having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. However, consistent with the recipient's policy, lower limits may be established.
 - (2) Supplies means tangible personal property excluding equipment. A computing device is a supply if the acquisition cost is less than \$5,000 per unit.

(3) Real Property means land, including land improvements, structures, and appurtenances, including permanent fixtures.

(4) Intangible Property includes, but is not limited to, intellectual property, such as trademarks, copyrights, patents and patent applications, and debt instruments, such as bonds, mortgages, leases, or other agreements between a lender and a borrower.

c. The subrecipient agrees to use and maintain all Property for the purpose of this award in accordance with the following procedures:

(1) The subrecipient must use the Property for the program for which it was acquired during the period of this award, and must not provide any third party a legal or financial interest in the property (e.g., through a mortgage, lien, or lease) without approval of the City of New Bedford.

(2) When the Property is no longer needed for the program for which it was acquired during the period of this award, the subrecipient must use the Property in connection with its other activities, in the following order of priority:

- (i) Activities funded by the City of New Bedford; then
- (ii) Activities funded by other United States Government (USG) agencies; then
- (iii) As directed by the authorized grant.

ci. The subrecipient must maintain the Property in good condition, have management procedures to protect the Property, and maintain an accurate inventory of all Property. Maintenance procedures must include the following:

(1) Accurate description of the Property, including serial number, model number, or other identifying number, acquisition date and cost, location and condition, and data on the disposition of any Property (date of disposition, sales price, method used to determine current fair market value, etc.), as applicable.

(2) A physical inventory of Property that must be taken, and the results reconciled with the equipment records, at least once every two years during the period of this award.

(3) A control system must be in effect to maintain the Property and ensure adequate safeguards to prevent loss, damage, or theft of the Property. The subrecipient must maintain appropriate insurance equivalent to insurance the recipient maintains for its own property. Any loss, damage, or theft must be investigated and fully documented, and the recipient must promptly notify the City of New Bedford. The subrecipient may be liable where insurance is not sufficient to cover losses or damage.

- e. Upon completion of this award, the subrecipient must submit to the City a property disposition report of the following types of Property, along with a proposed disposition of such Property.
 - (1) All equipment that has a per unit current fair market value at the end of this award of \$5,000 or more.
 - (2) New/unused supplies with an aggregate current fair market value at the end of this award of \$5,000 or more.
 - (3) Real or intangible property, of any value.
- f. The subrecipient must dispose of Property at the end of this award in accordance with the subrecipient's property disposition report, unless the City of New Bedford directs the subrecipient in writing within 60 days of the City's receipt of the subrecipient's property disposition report to dispose of the Property in a different manner. Disposition may include the following:
 - (1) The subrecipient may retain title with no further obligation to the City of New Bedford.
 - (2) The subrecipient may retain title, but must compensate the City of New Bedford for the ARPA funding share, based on the current fair market value of the Property.
 - (3) The subrecipient may be directed to transfer title to the City of New Bedford or a third party, including another implementing partner. In such case, the subrecipient will be compensated for its proportional share of the Property that the subrecipient financed with its own funds, if any, based on the current fair market value of the Property.
- g. The City of New Bedford may direct, at any time during this award, that title to the Property vests in the USG or a third party. In such cases, the subrecipient must maintain custody and control of the Property, until directed otherwise, and must allow reasonable access to the Property to the title holder. While in its custody and control, the subrecipient must follow the provisions above for protection and maintenance of the Property, and provide the City with an annual inventory of such Property and follow any additional instructions on protection and maintenance as may be provided by the City.
- h. This provision must be included in all subawards and contracts.

[END OF PROVISION]

**** END OF MEMORANDUM ****

**** CONFIDENTIAL ****

**NEW BEDFORD RESEARCH & ROBOTICS
RE: CONDITIONAL AWARD OF FEDERAL FUNDS
RISK ASSESSMENT ISSUES**

BAY COAST BANK MORTGAGE

Initial concern was raised about the financing of the 1265 Purchase Street property by the for-profit South Coast Research & Robotics (SCRR) when Parsons' description of the mortgage did not correspond with the bank's mortgage letter; in fact, the divergence was stark. Accordingly, this point became a red flag in the due diligence/risk assessment process.

Why was the term of the mortgage established for two years?

How is this two-year, \$840,000 loan to be paid, i.e. what cash flow of the for-profit entity, SCRR, is expected to repay the debt in such a short period? Furthermore, the mortgage is eight months in as of mid-August; what payment amounts have been made and is the loan current? What are the amounts and scheduled due dates for the next payments? This data must be provided, as it is documentation of other funding sources vital for the success of the grant-funded project.

The bank mortgage letter dated November 7, 2022 states that the first lien is against the assets of the non-profit New Bedford Research & Robotics (NBRR). NBRR is also one of the guarantors of the loan. SCRR has no legal right to the assets of NBRR. **A lien against a non-profit organization's assets for a separate for-profit entity's benefit is non-compliant with IRS and other USG regulations (2 CFR 215.34(c)).** A 501 (c)(3) non-profit is set up as a tax-free entity to serve a public good. It *cannot* be used to enrich a for-profit entity or individual.

The most obvious way to rectify this violation of IRS and Treasury regulations is to refinance the mortgage without the use of NBRR assets.

How does SCRR plan to rectify its federal government non-compliance issues, above?

Although the loan was executed on December 15, 2022, the ARPA notice of conditional award was dated *over a month later*, on January 18, 2023.

How was a mortgage secured with collateral that apparently did not exist, and that would not be allowed to be utilized for such a purpose in any case? Were other actual or potential donors to NBRR (such as MassDevelopment and the Seigel Family Foundation) made aware that their programs are at risk due to SCRR's property mortgage?

*The ARPA conditional award is conditional **subject to compliance with the terms and conditions of the funding.***

BUDGET (NBRR 6-YEAR BUDGET DATED OCTOBER 24, 2022)

What is the amount of annual building rent for NBRR? Tab 3 states \$75,000 for the first year, escalating thereafter, summing to \$406,000+ across five years. Tab 5 indicates NBRR rent as \$250,000 for the first year. Please explain the difference.

Please provide an update/explanation regarding the budget for the Summary sheet on Tab 1. According to the budgetary estimates, NBRR will incrementally ramp up to a cash balance of approximately \$5 million and net assets of approximately \$7 million by 2027-2028. This is not within the normal range of a non-profit organization's financial evolution. Please explain in detail the viability of such aggressive growth modeling.

This non-profit income buildup plan is akin to a for-profit model, meaning that NBRR plans to accumulate cash rather than expend on programming (e.g. a mere \$21,000 for programming in year 6, when there is a projected \$1.5 million net revenue).

Where is the program services portion of the budget that is intended to benefit the city and community? What are the estimates of grant revenue and project expenditures by program (STEM, Community programs, etc.) area?

FINANCE

Provide Financial Statements for NBRR (Statement of Financial Position, Statement of Activities, and the Statement of Cash Flows) and SCRR (Balance Sheet, Income Statement, and the Statement of Cash Flows) for all years in existence and as of July 31 of the current fiscal year.

OPERATIONS

Due to contradictory responses to inquiries, it is not possible to determine whether the for-profit SCRR is merely an entity created for the purpose of owning the property at 1265 Purchase Street with no other business interests *as stated in correspondence to the due diligence/risk assessment reviewers*, or if it is a multi-purpose for-profit business *as described in its Certificate of Organization*. If SCRR operates as indicated in the description/general-purpose section of its Certificate, then there may be significant overlap of programmatic activities between SCRR and NBRR, causing potential confusion amongst stakeholders, including donors, oversight bodies, and even within the staff of the two organizations. Without a detailed depiction of the functional activities of both organizations, as well as separate accounting systems, there is the possibility that revenues, expenditures, personnel activities, etc. may be comingled.

Please delineate how the two companies (non-profit NBRR and for-profit SCRR) will operate; the use of a matrix may be the most logical format.

It is essential that separate books be maintained that accurately reflect the revenues and expenses of each entity, to comply with USG (Donor Agency and IRS laws, rules, and regulations).

How does NBRR and SCRR intend to demonstrate compliance with USG per above?

PROGRAMS/PROJECTS ACHIEVED

NBRR has been in operation since 2021. Have there been any restricted funds provided as grants for a specific scope of work activity? If so, what was the budget and the actual costs incurred, and what are the results of the program?

Please summarize the programs initiated by NBRR that align with NBRR's mission statement, including budget and actual costs incurred.

GRANT COMPARISON: ARPA V. MASSDEVELOPMENT

A comparison of the scope of the ARPA grant with that of the MassDevelopment grant appears to show overlap.

It is imperative that an allocation of USG funds not go to an organization for effort that has already been paid by another source. That could lead to the same invoices being provided as support for two separate grant makers. Part of basic due diligence is to make enquiry as to the breakout of scope being funded to ensure that there is no overlap.

PROJECT MATCHING CONTRIBUTION

Per the City of New Bedford RFR #22130143 Vacant and Abandoned Property, ARPA funds may not be used to cover more than 50% of total project costs. What are the sources of private funding for the rehabilitation project at 1265 Purchase St?

*Note that donations and contributions to a non-profit (NBRR) **cannot** be included as contributions to the project, as these funds are for use of charitable public good only per IRS regulations. In addition, only project expenditures identified as "eligible activities" per the RFR may qualify as matching project funding.*

In the federal grant world, matching applies to a specific grant, not unrelated projects, programs, or capital purchases.

At present estimate, the ARPA grant would be funding **71.43%** of this project.

FUNDING SOURCE	AMOUNT
MassDevelopment grant	\$900,000.00
New Bedford ARPA grant	\$2,250,000.00
TOTAL	\$3,150,000.00
ARPA SHARE	71.43%

Provide the most current budget for the NBRR project, outlining the items requested to be funded via ARPA.

**** END OF MEMORANDUM ****

MEMORANDUM

TO: Christina Connelly, Chief Operating Officer
Robert Ekstrom, Chief Financial Officer
Emily Arpke, City Auditor
Molly Gilfeather Rodriguez, Director of Purchasing
Michael D'Ortenzio, KP Law

FROM: Richard J. Taylor, CPA, ARPA Consultant
with Jennifer A. Maxwell, Senior Grants Auditor and Procurement Officer

SUBJECT: Follow-Up to Risk Assessment/ Due Diligence Memorandum
dated July 31, 2023 and Risk Assessment Issues Memo dated August 17,
2023

RE: New Bedford Research & Robotics
ARPA Grant

DATE: February 1, 2024

This memorandum is in reference to the grant conditionally awarded to New Bedford Research and Robotics (NBRR) through the American Rescue Plan Act Vacant or Abandoned Property Rehabilitation Program. The conditional award letter, dated January 18, 2023, states an award of up to \$2,250,000 for eligible project costs, subject to NBRR compliance with the funding's terms and conditions and the execution of a Grant Agreement. Such terms and conditions are partly set out by the American Rescue Plan Act (ARPA) and the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) rules and regulations, including but not limited to, the Department of the Treasury's SLFRF Final Rule and 2 C.F.R. 200.

Risk Assessment Follow-Up Scope of Work

Prior to issuing the award as the pass-through entity, the City reviewing team, headed by these authors, was requested to conduct an assessment of the subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, for the purposes of assessing whether the prospective subrecipient has an adequate level of financial and operational capability and to determine the appropriate level of subrecipient monitoring.

Based on the standard risk assessment criteria, NBRR was declared a high-risk organization. The initial memorandum disclosed numerous risk areas and potential red flags, most notably concerning the relationship between the potential subrecipient, New

Bedford Research & Robotics, a non-profit organization, and South Coast Research & Robotics (SCRR), a for-profit corporation. Specifically, it was noted that there appeared to be no discernable operational separation between the two legal entities. Mark Parsons is the founder and sole owner of SCRR, as well as the founder and executive director of NBRR. The grant application included combined financial information of both entities rather than the non-profit that was the applicant of the ARPA award. The assets of NBRR were used to collateralize the SCRR property purchase per the mortgage documents, which is a violation of IRS non-profit law and a risk to US Government assets (ARPA funds). The major risks for the ARPA funds, as determined by the analysts, were that NBRR was not fully compliant with US Government regulations, did not demonstrate adequate operational capacity and financial capability, and funds intended to benefit the non-profit organization may inure to the for-profit organization.

Based upon the initial risk assessment, a summary of the most significant issues was prepared for discussion with NBRR (Risk Assessment Issues Memo dated August 17, 2023). A meeting was held on August 22, 2023 between Jennifer Maxwell and Richard Taylor (representing City of New Bedford) and Mark Parsons and Tom Ryan (representing NBRR) to examine the major items disclosed during the initial risk assessment. All “red flags” were thoroughly discussed, and Mr. Parsons agreed to take the necessary steps to eliminate them.

NBRR undertook the following actions to remediate the major issues that resulted in the analysts’ recommendation to not award the grant.

SCRR Bay Coast Bank Property Mortgage:

The mortgage was modified to eliminate NBRR as guarantor and 1st lien (collateral) against assets for SCRR (Parson’s for-profit entity) property mortgage.

Modification of SCRR Certificate of Organization to Reflect Intended Purpose:

The Certificate of Organization was modified to reflect Mark Parsons’ stated purpose of SCRR as a realty holding company for the 1265 Purchase Street property, in lieu of its previous description that exactly matched NBRR’s (the non-profit entity) purpose in its Articles of Incorporation.

Independent Lease Analysis:

Review of the lease expenditures included in the NBRR 6-year budget (dated September 12, 2023) indicated an annual cost of \$72,000 for the first two years (likely reflecting the interest-only-for-2-years nature of the mortgage), then a significant increase in Year 3 to \$102,000 per annum. Knowing that the property was owned by the same individual that controlled the non-profit, there was concern that the lease may be overstated (higher than market rate) in order to use non-profit charitable contributions and grants to pay off the for-profit property mortgage.

Lori Nery of Coastal Realty was engaged to perform a lease appraisal of the property. The "Broker Opinion of Value for Leased Premises" report by Coastal Realty, dated September 14, 2023, estimated the lease amount to be \$13,500 per month. Although the report reflected the annual lease amount to be \$135,000, it was pointed out by NBRR that the report contained a math error, and the actual annual amount should be \$162,000 (\$13,500 X 12). We are unaware whether Ms. Nery was informed of the mathematical error.

On October 29, 2023, SCRR and NBRR executed a formal lease agreement that reflects \$175,219 for Year 3. This is comparable to the estimate of Coastal Realty of \$162,000 for the same/similar time period.

Although this falls outside of the scope of this limited assessment (due to the Coastal Realty report indicating that the lease cost is within the reasonable range), it should be noted for the record that SCRR/NBRR's lease agreement appears to far exceed the actual amounts paid to Bay Coast Bank as mortgage payments. According to banking records, SCRR was paying approximately \$4,882 per month in mortgage payments from January 2023 through August 2023, whereas the lease agreement (dated October 29, 2023) requires NBRR to pay \$7,292 during the same/similar time period. Charging more for the lease than the cost of the mortgage will result in windfall profit for SCRR, and because the lease amount is scheduled to increase annually through Year 10, wherein it will become \$230,577 (\$19,215 monthly), it is highly likely that the for-profit entity will reap significant profit on investment. Additionally, the lease is structured as a triple-net instrument, whereby the lessee bears the full cost of utilities/maintenance, insurance, and taxes for the property.

NBRR provided an updated 6-year budget dated November 29, 2023 to reflect the increased lease expenditures offset by a corresponding increase in *expected* grants, resulting in an annual budget projection that is now in a positive annual net assets balance.

Cost Sharing/Matching:

It should be noted that the analysts' opinion remains that NBRR did not comply with the City RFR requirement for the Vacant or Abandoned Property Rehabilitation program that the ARPA grant cannot fund more than 50 percent of the project costs. According to the current budgetary figures, ARPA will fund approximately a 71 percent majority share of the NBRR project. As noted previously, the acquisition loan to SCRR should not be included within the cost share computation, as SCRR is a separate legal organization.

The Chief Operating Officer made a determination on September 11, 2023 that the RFR requirement was imposed by the City of New Bedford and was not an ARPA Final Rule condition, therefore the matching requirement may be omitted. A selective after-the-fact change of the ARPA grant selection criteria may open the risk for other potential subrecipients to protest the award because they could not qualify due to lack of cost share

funding. In addition, a revision to the award selection criteria in order to benefit a subrecipient could cause reputational damage to the City as it may present an appearance of favoritism for the subrecipient. If selection criteria of an award are changed, it is best practice to reopen the RFR process under the revised criteria. It should also be stated that this particular award of \$2.25 million is not only one of the largest granted by the City from its \$82 million of ARPA funds, but it is also significantly larger than any other award granted under the Vacant or Abandoned Property Rehabilitation criteria.

Conclusion

Based upon our follow-up review, NBRR has addressed the most significant issues identified in the pre-award risk assessment. This, by no means, should be interpreted to imply that NBRR is a model of business competence, financial capability, or organizational capacity; nor is it indicative of risk mitigation and/or predictive of overall project success, longevity, and/or benefit to the community. NBRR remains a high-risk subrecipient, however, providing that specific conditions are incorporated as mitigating controls into the grant agreement, the ARPA funds should be adequately protected.

As such, specific conditions (2 CFR 200.208) must be incorporated into the grant agreement as mitigating controls

- Real property clause requiring a lien to be filed and recorded
- Non-profit dissolution clause
- 10% retainage
- Direct payments by the City to vendors

These conditions are necessary in order to have reasonable assurance that ARPA funds will be adequately protected. Attorney Michael d'Ortenzio is researching the appropriate legal language to include in the contract. We await his draft contract.

MEMO

CITY OF NEW BEDFORD ARPA

To: File
From: Christina Connelly
CC: Jessica Bailey, Kate Miller, Jennifer Maxwell
Date: 10/22/2024
Re: New Bedford Research and Robotics grant

COMMENTS:

Among several concerns cited in his Memorandum regarding the pending grant to New Bedford Research and Robotics the City's contracted auditor Richard Taylor referred to the grant amount of \$2.25 million exceeding the required ARPA funding ratio (1:1) for the program under which the grant was awarded—the Vacant and Abandoned Properties Rehabilitation Program, and suggested that moving forward with a grant in that amount would be out of compliance with the City's stated program requirements. In calculating the ratio, Mr. Taylor understandably used only the leveraged funds attributed to the non-profit corporation itself, New Bedford Research and Robotics, which clearly did not meet the requirement.

However, the unique nature of this project, which involves both a real estate ownership entity and a non-profit corporation, for both of which Mark Parsons is a Principal, caused the internal ARPA team to look at all the funding raised or borrowed by both entities in its totality. This decision was made by the ARPA team and communicated to the Review Committee with no concern or objection raised. When taken in its totality, the amount of non-ARPA funds available for the phase of the project to which ARPA funds were granted (including a commercial construction loan and Mr. Parsons own monetary contribution), the project budget exceeded the match requirement, and thus was recommended for funding by the Review Committee and acted upon favorably by the Administration.