

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS  
AND  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES  
FOR  
BROADBAND ACCESS STUDY COMMISSION**

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) (MOU Number 2022-10), is made by and between the New Jersey Department of Community Affairs (“DCA” or “Grantor”) and the New Jersey Board of Public Utilities (“Board” or “BPU”), both instrumentalities of the State of New Jersey (“State”), to set forth the terms and conditions for the disbursement of American Rescue Plan Act – Coronavirus State Fiscal Recovery Fund monies to conduct the Broadband Access Study (“Study”) as required by P.L. 2021, c. 161. The DCA and the Board may sometimes hereinafter be collectively referred to as the “Parties”.

**PREAMBLES**

**WHEREAS**, due to the increase in the number of novel coronavirus (“COVID-19”) cases in New Jersey, the surrounding region and across the globe, the Governor of the State of New Jersey issued Executive Order No. 103 declaring a public health emergency and a state of emergency in the State on March 9, 2020, allowing for certain executive actions to respond to the increasing amount of COVID-19 cases in the State; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic (“COVID-19 Pandemic”) and on March 13, 2020, the President of the United States (“President”) declared a national state of emergency; and

**WHEREAS**, in response to the COVID-19 Pandemic, Congress enacted a series of laws to address the impacts of the COVID-19 Pandemic; and

**WHEREAS**, on March 11, 2021, the President signed the “American Rescue Plan Act of 2021” P.L. 117-2 (“ARP Act”) into law; and

**WHEREAS**, as part of the ARP Act, Congress at subtitle M of the ARP Act, amended Title VI of the Social Security Act (42 U.S.C. 801 et seq.) by adding Sections 602 and 603 to create the “Coronavirus State Fiscal Recovery Fund” (“CSFRF”); and

**WHEREAS**, CSFRF monies (“CSFRF Funds”) are to be used, generally: (a) to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (b) to respond to workers performing essential work during the COVID public health emergency by providing premium pay to eligible workers of the State who are performing such essential work, or by providing grants to eligible workers who perform essential work; (c) for the provision of government services to the extent of the reduction in revenue of the State due to the COVID-19 public health emergency relative to revenues collected

in the most recent full fiscal year of the State prior to the emergency; or (d) to make necessary investments in water, sewer, or broadband infrastructure; and

**WHEREAS**, the State received \$6,244,537,955.50 in CSFRF Funds under the ARP Act that must be used in conformance with the requirements of the ARP Act; and

**WHEREAS**, pursuant to the Fiscal Year 2022 Appropriations Act, P.L. 2021, c. 133, as may be amended from time to time, One Hundred Fifty Million Dollars (\$150,000,000) of CSFRF Funds were appropriated for allocation to Administrative Costs across COVID-19 Pandemic-related programs, subject to the approval of the Director of the Division of Budget and Accounting; and

**WHEREAS**, pursuant to P.L. 2021, c. 161, the Board established the Broadband Access Study Commission, which is tasked with developing and conducting the Study; and

**WHEREAS**, pursuant to P.L. 2021, c. 133, the Executive Director of the Governor's Disaster Recovery Office, with the approval of the Director of the Division of Budget and Accounting, has allocated Two Million Seven Hundred Sixty Eight Thousand Two Hundred Twenty Five Dollars (\$2,768,225) to the Board to conduct the Study; and

**WHEREAS**, pursuant to the Fiscal Year 2022 Appropriations Act, P.L. 2021, c.133, as may be amended from time to time, DCA is responsible for overseeing the entire portfolio of CSFRF Funds, consistent with CSFRF requirements, as the state-designated Grants Manager; and

**WHEREAS**, the State Treasurer has entered into a Memorandum of Understanding dated as of July 22, 2021, with DCA as Grants Manager for the CSFRF Funds, to provide those grant management functions and processes for the State that are necessary to administer, manage and monitor State entity grant awards and disburse funds accordingly; and

**WHEREAS**, DCA will use its SIROMS grant management system to track State entity expenditures and obligations, administer approved grant funds, and track compliance with applicable laws, regulations, guidance, and project requirements; and

**WHEREAS**, DCA is distributing a portion of the CSFRF Funds, in an amount not to exceed Two Million Seven Hundred Sixty Eight Thousand Two Hundred Twenty Five Dollars (\$2,768,225), to provide funding to the Board to, consistent with P.L. 2021, c. 161, conduct the Study, which the Governor's Disaster Recovery Office has determined as eligible for CSFRF Funds and which is described in Exhibit A attached hereto and is made a part hereof; and

**WHEREAS**, the Study shall be conducted in compliance with federal, State and local laws and regulations, as well as the requirements of the Study itself, Executive Order No. 166 (Murphy 2020) ("EO 166"), 31 CFR Part 35 U.S. Treasury Coronavirus State and Local Fiscal Recovery Funds – Final Rule, and Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("2 CFR Part 200"); and

**WHEREAS**, it is in the Parties' mutual interests, as well as in the public interest, to have the Parties' respective responsibilities concerning the funding of the Study memorialized in a written agreement.

**NOW, THEREFORE**, DCA and the Board agree as follows:

Section 1. Grant Award

1.1 Subject to the terms and conditions of this MOU, DCA, as Grantor, shall make available to the Board funds in the amount not to exceed Two Million Seven Hundred Sixty Eight Thousand Two Hundred Twenty Five Dollars (\$2,768,225) ("Grant Funds") for the purpose of funding the Study as reflected in Exhibit B attached hereto and made a part hereof. Upon full execution of this MOU, DCA will disburse one-quarter (25%) of the entire amount of the Grant Funds to the Board.

1.2 After the initial 25% disbursement, DCA will disburse subsequent funds totaling one-quarter of the entire amount of the Grant Funds upon written request by the Board to DCA. The request shall include the required documentation such as a Duplication of Benefits Certification and the financial reporting requirements identified by the DCA and included in Exhibit C. Exhibit C is attached hereto and made a part hereof.

1.3 DCA agrees to advance the requested funds within fifteen (15) calendar days of the Board's submission of a completed request as set out in Section 1.2 above and Exhibit C attached. The cash transfer to provide the Board with the advance will be recorded in SIROMS.

1.4 The Parties agree that DCA is advancing to BPU the Grant Funds using CSFRF funds and BPU shall reimburse DCA through the Capital Project Fund ("CPF") Grant upon approval by the United States Department of the Treasury ("U.S. Treasury") for BPU's use in conducting the Study.

1.5 All obligations of the Parties pursuant to this MOU are subject to appropriations and the availability of funds. A failure by the Parties to perform any condition on its part to be performed under this MOU resulting from the failure of the legislature to appropriate funds shall not in any manner constitute a breach of default by the Parties.

Section 2. Terms of the Grant Awards

2.1 The Board shall use the Grant Funds for the purpose of funding the Study. In the event there is a material change to the Study during the term of this MOU, DCA shall be consulted prior to the implementation of said change in order to confirm appropriate use of the CSFRF Funds, unless the change(s) is required to conform to federal requirements or a condition of funding.

2.2 The Board must meet the deadlines for the use of CSFRF Funds. Any CSFRF Funds not obligated by December 31, 2024 or not expended by December 31, 2026 to cover such incurred costs must be returned to the U.S. Treasury, unless the U.S. Treasury extends the deadline.

2.3 The Board must ensure that any entities that it provides CSFRF Funds to also obligates the Grant Funds by December 31, 2024 and expend the Grant Funds by December 31, 2026, unless the U.S. Treasury extends the deadline.

2.4 The Board will receive and must use the proceeds of the Grant Funds for Allowable Costs, pursuant to 2 CFR §200.403 et seq., all other applicable federal regulations, and approved as part of the Study encompassed by this MOU.

2.5 The Board may use the Grant Funds for Direct Costs, as defined in 2 CFR Part §200.413(a). The Board shall maintain full documentation of Direct Costs for all expenses incurred and provide access to DCA, the U.S. Treasury, and any other monitoring agency upon request.

2.6 The costs incurred to conduct the Study is classified as pre-project administrative costs under CSFRF requirements.

### Section 3. Responsibilities of the Board

3.1 Prior to December 31, 2024, to demonstrate compliance with Section 2.2, the Board shall provide a report to the DCA demonstrating actual or committed disbursement of Grant Funds and the need for and commitment to expend the Grant Funds by no later than December 31, 2026.

3.2 The Board shall provide the requisite staff and support required to conduct the Study.

3.3 The Board hereby binds itself, certifies, and assures that it will comply with all federal, State, and local laws and regulations, policies, guidelines and requirements, as may be related to the acceptance and use of federal CSFRF Funds, including all applicable State and federal Executive Orders. The Parties expressly acknowledge that the matters, which are the subject of this MOU, are governed by the ARP Act, including subtitle M, and administered by the U.S. Treasury, and may be subject to ongoing modifications and clarifications. The Board agrees to comply with all applicable CSFRF requirements and federal cross-cutting statutes and regulations as more fully described in the Schedule of Assurances attached hereto as Exhibit E and made a part hereof, in addition to the U.S. Treasury Guidance and Frequently Asked Questions and the U.S. Treasury Final Rule (31 CFR Part 35), as they may be updated from time to time, and subject to any other exceptions and waivers that may be issued by the U.S. Treasury that affect CSFRF Funds.

3.4 The Board is responsible for requiring all of its sub-recipients, contractors, and all tiers of subcontractors to adhere to all applicable State and federal laws and regulations, including the ARP Act, all other applicable federal statutes, U.S. Treasury regulations, as well as the requirements set forth in this MOU, including Exhibit E, and to conduct all necessary monitoring for such compliance.

3.5 The Board shall provide DCA with a report detailing the Study's progress and budgetary updates for inclusion in DCA's Interim Report, due to the U.S. Treasury on July 31, 2022, using the reporting criteria detailed in Exhibits C and D. Thereafter, the frequency of financial reporting will be monthly and the Study's progress reporting will be quarterly, unless determined otherwise by the Parties.

3.6 The Board shall submit a record of all their obligations and expenditures into SIROMS with necessary supporting documentation, along with other obligations such as grants, sub-recipient agreements and contracts. In addition to data entry, review and other document submittals, the Board shall upload all monthly and quarterly reports, as required herein, and other federal and State reports into SIROMS.

3.7 The Board agrees that in connection with its rights and obligations pursuant to this MOU, it shall cooperate with DCA, including the DCA monitoring team and the COVID-19 Integrity Oversight Monitor (“Integrity Monitor”), with regard to the audit of activities carried out pursuant to this MOU, including compliance with various operating and reporting procedures which may hereinafter be promulgated by DCA or federal funding sources. The Board shall provide DCA with access to and reporting from the Board’s financial records and management systems, which include, but are not limited to, paper documents, worksheets, grant management systems, contract management systems, and databases.

3.8 The Board may retain an Integrity Monitor pursuant to EO 166, but is not required to do so because the Grant is less than \$20 million. Nonetheless, should BPU decide to retain an Integrity Monitor, DCA will assist the Board to ensure any concerns or findings reported by the Integrity Monitor are addressed.

3.9 To the extent the U.S. Treasury audits the use of the Grant Funds, the Board shall coordinate with DCA in drafting a response to such audit(s). The Board shall cooperate with efforts to recoup the Grant Funds that the U.S. Treasury may require as a result of its audit findings.

3.10 The Board must comply with the audit requirements as outlined in 2 CFR Part 200, Subpart F, Audit Requirements, which mandates that if a non-federal entity expends \$750,000 or more in federal awards during the non-federal entity’s fiscal year, the entity must have a single or program-specific audit conducted by an independent auditor for that year. DCA acknowledges that if the Board presently undergoes a single audit by the State that this single audit satisfies this requirement herein.

3.11 In the event that the actual or committed disbursement of funds as stated in the report provided pursuant to Section 3.1 is less than the amount of the Grant Funds, or upon termination of the MOU, the Board shall promptly remit to DCA the balance of the remaining Grant Funds.

3.12 The Board is responsible for ensuring the use of Grant Funds do not constitute “Improper Payments,” as defined by the Uniform Administrative Requirements at 2 C.F.R. § 200.1. The Board shall establish appropriate policies and procedures to prevent Improper Payments and shall cooperate and coordinate with other State departments and agencies to prevent and rectify Improper Payments, which may include, but is not limited to, recoupment of Grant Funds.

3.13 The Accountability Officer for the Board relative to this MOU is the Chief Fiscal Officer of the Board, who shall be responsible for overseeing the successful performance and completion of the Board’s obligations as provided in this MOU and shall be the point of contact for DCA, Governor’s Office, and the Office of the State Comptroller along with the assigned state contract

manager from the Office of Cable Television and Telecommunications ("SCM"). The Accountability Officer is required to perform risk assessments related to the MOU and the SCM is responsible for overseeing completion of the Board's Study, along with hiring an Integrity Monitor consistent with Section 3.8 above, if necessary.

3.14 The Board shall provide to DCA any complaints of discrimination on the grounds of race, color, or national origin, and limited proficiency covered by Title VI of the Civil Rights Act of 1964, and information on any review, proceedings and outcome related to the complaint.

3.15 The Board shall maintain records for the period set forth in the State General Retention Schedule or seven (7) years for federal grants.

#### Section 4. General Provisions

4.1 This MOU may be modified or extended only by prior written agreement by the Parties. Either DCA or the Board may terminate this MOU upon thirty (30) days' prior written notice to the other.

4.2 This MOU is entered into for the sole purpose of evidencing the mutual understanding and intention of the Parties.

4.3 There are no third-party beneficiaries of this MOU.

4.4 This MOU shall be administered consistent with N.J.S.A. 52:14-1 et seq.

4.5 The effective date of this MOU shall be the later of the date executed by the Parties below and shall continue until March 31, 2027 or until such time as the obligations set out herein have been satisfied.

4.6 DCA and the Board shall retain all the powers, obligations, and immunities provided by law.

4.7 The Parties acknowledge that successful completion of their respective duties hereunder will require cooperation between the Parties. The Parties agree to work cooperatively to achieve the goals of this MOU.

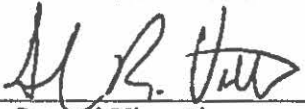
4.8 The recitals appearing before Section 1 are made part of this MOU and are specifically incorporated herein by reference.

4.9 This MOU may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument.

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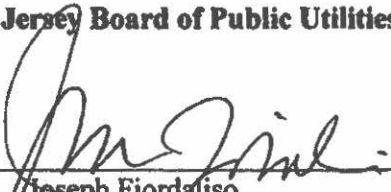
**IN WITNESS WHEREOF**, the Parties have executed and delivered this MOU on the date set forth next to their respective signatures below, but effective as of the date set forth above. The Parties agree to accept electronic signatures as if were an original signature.

**New Jersey Department of Community Affairs**

  
By: Samuel Viavattine  
Deputy Commissioner

Date: 5/19/2022

**New Jersey Board of Public Utilities**

  
By: Joseph Fiordaliso  
President

Date: 5/18/22

- Exhibit A – Description of the Program
- Exhibit B – Budget
- Exhibit C – Financial Reporting Requirements
- Exhibit D – Performance Reporting Requirements
- Exhibit E - Schedule of Assurances