

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
AND
THE NEW JERSEY BOARD OF PUBLIC UTILITIES
FOR
SCHOOL AND SMALL BUSINESS ENERGY EFFICIENCY STIMULUS PROGRAM**

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) (MOU Number 2021-03), is made by and between the New Jersey Department of Community Affairs (“DCA” or “Grantee”) and the New Jersey Board of Public Utilities (“Board”), an instrumentality of the State of New Jersey (the “State”), to set forth the terms and conditions for the disbursement of American Rescue Plan Act – Coronavirus State Fiscal Recovery Fund monies to implement P.L. 2021, c.200, the School and Small Business Energy Efficiency Stimulus Program (“Program”). The DCA and the Board may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party.”

PREAMBLES

WHEREAS, due to the increase in the number of novel coronavirus (“COVID-19”) cases in New Jersey, in 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 of New Jersey (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 (the “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 (the “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-19 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, pursuant to the Fiscal Year 2022 Appropriations Act, L. 2021, c. 133, as may be amended from time to time, DCA is responsible for overseeing the entire portfolio of funds, consistent with CSFRF requirements, as the State-designated Grants Manager; and

WHEREAS, pursuant to P.L. 2021, c. 200, the State Legislature has appropriated monies to the Board for the School and Small Business Energy Efficiency Stimulus Program with three quarters (75%) of the appropriation for the School and Small Business Ventilation and Energy Efficiency Verification and Repair Program (“SSB-VEEVR”) and one quarter (25%) of the appropriation for the School and Small Business Noncompliant Plumbing Fixture and Appliance Program (“SSB-NPFA”); and

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

WHEREAS, the State Treasurer has entered into a Memorandum of Understanding dated 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 \$180,000,000, to provide funding to the Board for the implementation of the Program that the Governor’s Disaster Recovery Office and DCA have determined is eligible for CSFRF Funds; the Program is described in Exhibit A attached hereto and is made a part hereof; and

WHEREAS, the implementation of the Program shall be undertaken in compliance with Federal, State, and local laws and regulations, as well as the requirements of the Program, 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 implementation of the Program memorialized in a written agreement.

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

Section 1. Grant Award

1.1 Subject to the terms and conditions of this MOU, DCA, as Grantee, shall make available to the Board funds in the amount not to exceed \$180,000,000.00 (the “Grant Funds”) for the purpose of funding the Program. Three quarters (75%) of the total appropriation shall fund the SSB-VEEVR Program and one quarter (25%) shall fund the SSB-NPFA Program. Upon full execution of this MOU, DCA will disburse one-quarter (25%) of the entire amount of the Grant Funds, or \$45 million, to the Board.

1.2 After the initial advance, DCA will disburse subsequent advances as agreed to by the Parties, evidenced by pipeline data provided by the Board, upon written request by the Board to DCA. The request shall include the required documentation, such as a Duplication of Benefits Certification and the reporting requirements that include performance objectives proposed by the Board, as identified in Exhibits C and D. Exhibits C and D are 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 complete request. The cash transfer to provide the Board with the advance will be recorded in SIROMS.

Section 2. Terms of the Grant Awards

2.1 The Board shall use the Grant Funds for the purpose of funding the Program. Any material changes to the Program must be approved by DCA prior to implementation, except to the extent such changes are required to conform with federal requirements or conditions 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 United States Department of the Treasury (“U.S. Treasury”), unless the deadline is extended by U.S. Treasury.

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

2.4 The Board will receive and must use the proceeds of this Grant for “Allowable Costs,” meaning costs that are acceptable pursuant to 2 CFR § 200.403, all other applicable federal regulations, and approved as part of the Program encompassed by this MOU.

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

2.6 The Administrative costs for the Board may not exceed 2.5% of the cost of the Grant. However, the CSFRF Funds for Administrative costs are additive to the Grant Funds allocated to the Program.

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 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 implement the Program.

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 they relate 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 detailed in the Schedule of Assurances attached hereto as Exhibit C 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 U.S. Treasury that affect CSFRF Funds.

3.4 The Board shall be responsible for requiring that all of its subrecipients, contractors, and all tiers of subcontractors 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 C, and to conduct all necessary monitoring for such compliance.

3.5 The Board shall provide DCA with a report detailing Program progress and budgetary updates for inclusion in DCA's reporting to U.S. Treasury, using the reporting criteria detailed in Exhibits C and D. The frequency of financial reporting will be monthly and Program 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, subrecipient 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 (read) 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 must retain an Integrity Monitor, pursuant to EO 166, because the Grant equals or exceeds \$20 million. DCA will follow-up with the Board to ensure that any concerns or findings reported by the Integrity Monitor are addressed.

3.9 To the extent that U.S. Treasury audits the use of the Grant Funds, the Board shall coordinate with DCA a response to such audit(s). The Board shall also be responsible for any recoupment of the Grant Funds that U.S. Treasury may require as a result of 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.

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 Grant Funds do not constitute a "Duplication of Benefits" as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. The Board shall establish appropriate policies and procedures to prevent Duplication of Benefits and shall cooperate and coordinate with other State departments and agencies to prevent and rectify Duplication of Benefits, which may include, but is not limited to, recoupment of Grant Funds.

3.13 The Accountability Officer for the Board is the Building Electrification Manager 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. The Accountability Officer is required to perform risk assessments and is responsible for overseeing the Board's Program, along with hiring an Integrity Monitor where appropriate.

3.14 The Board shall provide 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 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. Non-federal entities not subject to State retention requirements shall maintain records for the period set forth in 2 CFR § 200.333.

Section 4. General Provisions

4.1 Termination and Amendments. This MOU may be modified or extended only by prior written agreement by the Parties. This MOU may be terminated by either DCA or the Board upon thirty (30) days prior written notice to the other Party.

4.2 This MOU is being 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.

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

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

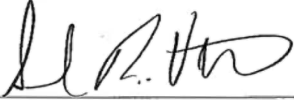
4.8 The recitals appearing before Section 1 are made part of this MOU and are specifically incorporated herein by reference.

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

[The remainder of this page is intentionally left blank.]

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.

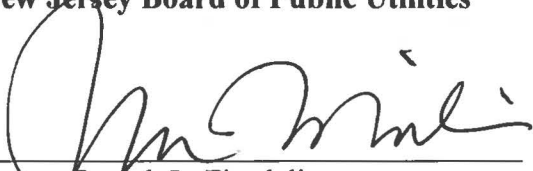
New Jersey Department of Community Affairs



By: Samuel Viavattine
Deputy Commissioner

Date: 10/8/2021

New Jersey Board of Public Utilities



By: Joseph L. Fiordaliso
President

Date: 10/6/21

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