

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF ALABAMA DEPARTMENT OF FINANCE
AND
THE ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS
FOR THE DISTRIBUTION AND ADMINISTRATION OF
CORONAVIRUS STATE FISCAL RECOVERY FUNDS**

This memorandum of understanding is made by and between the State of Alabama Department of Finance, at 600 Dexter Avenue, Montgomery, Alabama 36130 (“DOF”) and the Alabama Department of Economic and Community Affairs at 401 Adams Avenue, Montgomery, Alabama 36104 (“ADECA”). DOF and ADECA may be referred to herein individually as a “party” and collectively as the “parties.” This agreement becomes effective upon approval of the parties and the Governor of the State of Alabama.

I. Purpose and Scope

The federal American Rescue Plan Act of 2021, Public Law No. 117-2, 135 Stat. 4. (“ARPA”) was signed into law on March 11, 2021. ARPA amended the federal Social Security Act to add Section 604 to the Social Security Act, and by doing so, created the Coronavirus Capital Projects Fund (“CPF”). The ARPA appropriated \$10 billion to the CPF to make payments to state, local, territorial, and Tribal governments “to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).”

In September 2021, the U.S. Treasury Department published “Guidance for the Coronavirus Capital Projects Fund for States, Territories & Freely Associated States” (hereinafter “CPF Treasury Guidance”) which authorizes Recipients to award funds to Subrecipients such as other levels or units of government, non-profits, or private entities. Further, it directs that projects funded with CPF funds must meet the following criteria: 1) the project must invest in capital assets designed to directly enable work, education and health monitoring; 2) the project must be designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency; and 3) the project must be designed to address a critical need of the community to be served by it. Broadband infrastructure projects are presumptively eligible for CPF funding according to the CPF Treasury Guidance.

The State of Alabama has been awarded \$191,887,857 in CPF funding from the federal government. Section 3 of Alabama Act 2022-1 appropriates the State’s \$191,887,857 in CPF funding to DOF for the “delivery of broadband and related services to citizens of Alabama related to the coronavirus pandemic and to enable investment in capital assets providing necessary technology infrastructure for work, education, and access to critical services.” The Act authorizes DOF to delegate the funds through memoranda of agreement to ADECA’s Alabama Digital Expansion Division. ADECA intends to utilize the funds to support the state’s efforts to expand necessary broadband infrastructure in Alabama in accordance with the Statewide Connectivity Plan, as adopted by the Alabama Digital Expansion Authority (the “Broadband Initiative”).

The Broadband Initiative will comply with all rules and requirements set forth in ARPA and related guidance from the U.S. Treasury Department. These initiatives will focus on the

deployment and expansion of affordable and reliable broadband internet service. It will target areas with an identified need for additional broadband investment, including areas with unserved and underserved households and businesses. ADECA will ensure projects funded with CPF funds will comply with all applicable law, policy, and guidance, including, but not limited to, the CPF Treasury Guidance.

II. Parties' Responsibilities

A. ADECA agrees to the following:

1. To develop and implement Broadband Initiative in accordance with Alabama Act 2022-1, Act 2021-465, other applicable authority, and as described herein;
2. To use the funds provided by DOF under this agreement in accordance with Section 604 of the Social Security Act, the CPF Treasury Guidance, other applicable federal and state law and policy, and for the purposes set forth in this agreement and for no other purpose;
3. To keep a separate accounting of the administrative costs of implementing the program using generally accepted accounting principles;
4. To comply with all federal requirements applicable to Subrecipients, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.
5. To submit all required reports and grant plan submissions directly to U.S. Treasury, meeting all applicable deadlines, with a contemporaneous copy of each report or grant plan submission provided to the State Finance Director's Office;
6. To provide to DOF all information requested in a complete and timely manner;
7. To not obligate the funds for any purpose after December 31, 2024, and to not expend any obligated funds after December 31, 2026;
8. To return any funds that remain unobligated on January 1, 2025 by January 31, 2025; and
9. To return any funds that remain unspent on January 1, 2027 by January 31, 2027.

B. DOF agrees to the following:

1. Upon Treasury approval, to provide up to \$191,887,857 to ADECA from the State's CPF funds as described herein to fund the Broadband Initiative and for no other purpose;
2. To grant access to the U.S. Treasury portal to ADECA so that ADECA may make required reports and grant plan submissions to Treasury; and
3. ADECA may utilize a reasonable portion of the funds received, not to exceed 5%, to cover direct administrative costs associated with administering the Broadband Initiative program.

III. Termination of Agreement

Except as set forth in this section, this agreement may be terminated by either party for any reason with sixty days' written notice to the other party. If ADECA determines that it will not pursue this project for whatever reason, it may terminate this agreement upon written notice to the State Finance Director and upon return of any unspent funds. DOF may terminate this agreement immediately upon written notice to ADECA.

IV. Miscellaneous Provisions

- A. The terms and commitments contained herein shall not constitute a debt of the State of Alabama, which is prohibited by Section 213 of the Official Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.
- B. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- C. In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.
- D. DOF and ADECA understand the unprecedented and novel challenge that COVID-19 presents to the State. Therefore, ADECA cannot guarantee the success of its efforts under this Agreement. In addition to the reporting requirements in Section II.A.5, ADECA will immediately notify DOF of material changes that make ADECA's performance hereunder impracticable.
- E. In order to comply with federal requirements relating to the administration of grants and other federal assistance funds, DOF provides the following information to ADECA: This award is provided to ADECA through a grant to the State of Alabama in the amount of \$191,887,857 from the U.S. Treasury via Section 604 of the Social Security Act (42 U.S.C. 301 et seq.), known as the Coronavirus Capital Projects Fund of the ARPA, Pub. L. No. 117-2 (March 11, 2021) under Federal Award Identification Number CPFFN0162 Coronavirus Capital Projects Fund for the period March 3, 2021 to December 31, 2024, CFDA number 21.029. This award is provided in accordance with the requirements set forth in the ARPA and other applicable federal and state law and policy, and ADECA affirms that all information it has provided to DOF relating to this award is true and accurate. This award does not include research and development. The parties acknowledge and understand that each recipient of CPF funds will be evaluated in accordance with Code of Federal Regulations 200-331(b) for risk of noncompliance with federal statutes, regulations, and the terms and conditions of the award.

Further, each recipient and subrecipient's activities will be monitored as necessary to ensure that the award is used for authorized purposes, in compliance with law, and that performance goals are achieved. Other monitoring tools may be implemented depending on the level of risk posed by the subrecipient.

- F. Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that they are responsible for complying with all federal requirements applicable to this award, including the Single Audit Act and Code of Federal Regulations, Title 2, Part 200, subpart F regarding audit requirements.
- G. The parties acknowledge and agree that any subrecipient, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.
- H. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRP2635 awarded to the State of Alabama by the U.S. Department of the Treasury."

V. Amendment

This agreement may be amended only by a writing signed by each party or representatives of each party.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

In witness whereof, the parties hereto have caused this agreement to be executed by those officers, officials, and persons thereunto duly authorized.

State of Alabama
Department of Finance

Bill Poole *3/21/22*
Bill Poole
Finance Director

State of Alabama
Alabama Department of Economic and
Community Affairs

Kenneth W. Boswell
Kenneth Boswell
Director

APPROVED:

Kay Ivey *3/22/22*
Kay Ivey
Governor of Alabama