

Contract #0000000000000000000066868

MEMORANDUM OF UNDERSTANDING

**Between the
INDIANA STATE BUDGET AGENCY
and the
OFFICE of LIEUTENANT GOVERNOR
OFFICE of COMMUNITY AND RURAL AFFAIRS**

This Memorandum of Understanding ("MOU") is entered into by and between the Lieutenant Governor's Office of Community and Rural Affairs ("OCRA") and the Indiana State Budget Agency ("SBA"). In consideration of those mutual undertakings, the parties agree as follows:

WHEREAS, SBA, an agency of the Office of Management and Budget ("OMB"), is designated by OMB to accept and administer Coronavirus Capital Project Funds ("CPF") from the federal American Rescue Plan (ARPA) Act, section 604 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "Act"), Pub. L. No. 117-2 (Mar. 11, 2021); and

WHEREAS, OCRA has the authority under IC 4-4-38.5 to develop programs to deploy broadband infrastructure; and

WHEREAS, the parties enter into the MOU to memorialize their understanding of the mutual advantages of this cooperative relationship.

NOW, THEREFORE, the parties agree to the terms and conditions set forth below:

I. Purpose

The purpose of this MOU is to memorialize an agreement to reimburse OCRA for necessary expenditures in compliance with the ARPA Act, as more fully set forth in Attachment A, (the "Program") and provide guidance to OCRA for the purpose of complying with federal requirements of the Program.

II. Grant Information

- a. Assistance listing (CFDA) number: 21.029
- b. Federal Award Name: Coronavirus Capital Projects Fund
- c. Federal Award Identification Number: CPFFN0193
- d. Federal Award Date: March 11, 2021
- e. Name of Federal Agency: U.S. Department of the Treasury
- f. Total Amount of Funds obligated to sub-state agency: \$187,000,000
- g. Statutory Uses:
 - The Capital Project invests in capital assets designed to directly enable work, education, and health monitoring.
 - The Capital Project is designed to address a critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency.
 - The Capital Project is designed to address a critical need of the community to be served by it.
- h. Period of time sub-state agency can obligate funds: The period of performance begins on February 8, 2022 and ends on December 31, 2026. OCRA shall not expend award funds or incur any obligation to be paid with funding from this award after such period of performance ends.
- i. Period of time sub-state agency can expend funds: CPF funds must be expended by
- j. December 31, 2026. Federal regulations applicable to this award include, without limitation, the following:

1. Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, 2 C.F.R. Part 200, other than such provisions Treasury may determine are inapplicable to this award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 2. Universal Identifier and System for Award Management (SAM), 2 C.F.R Part 25, and pursuant to the award term for in Appendix A to 2 C.F.R Part 25 is hereby incorporated by reference.
 3. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 4. OMB guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R Part 180 and Treasury's implementing regulation at 31 C.F. R Part 19.
 5. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2.C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R Part 20.
 6. New Restrictions on Lobbying, 31 C.F.R Part 21.
- k. OCRA agrees that with respect to any completed Broadband Infrastructure project:
- The Project will be designed to deliver, upon completion, service that reliability meets or exceeds symmetrical download and upload speeds of 100 Mbps. If it would be impracticable to do so for the reasons articulated in the approved Grant Plan for Program Plan, any such Broadband Infrastructure Project will be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and is scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.
 - That OCRA will provide pricing data to Treasury and SBA as part of program performance and monitoring for such Broadband Infrastructure Project.
 - That OCRA will require that any service provider for a completed Broadband Infrastructure Project participate in federal programs that provide low-income consumers with subsidies on broadband internet access services. OCRA agrees that it will require completed service offerings funded by the award to allow subscribers in the service area to utilize the Federal Communication Commission's Emergency Broadband Benefit Program (if available) or the Affordable Connectivity Program (ACP), OCRA further agrees that it will require that any service provider for a completed Broadband Infrastructure Project will participate in ACP for the duration of the ACP or until the date the Broadband Infrastructure Project funded by this award is no longer in use.
- l. Compliance with ARPA Act, CPF Statute and guidance which may be updated throughout the term of the grant.
- m. Any publications produced with funds from this award must display the following language: 'This project [is being] [was] supported, whole or in part, by federal award number CPFFN0193 awarded to the State of Indiana by the U.S. Department of the Treasury.
- n. Compliance with CPF required programmatic data requirements and performance indicators
- o. Administrative Expenses
- Program administrative costs over the period of performance may not exceed 5% of the amount listed in Section II. Total Amount of Funds obligated to sub-state agency a higher limit is approved by SBA and the Treasury.
 - OCRA shall create accounting chart fields to track administrative expenses separate from other program expenses.
- p. Match requirements: None.
- q. Indirect costs: None

III. Term

The MOU shall be in effect from September 12, 2022, through January 31, 2027.

When the Director of SBA makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this MOU, the MOU shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

IV. Obligation of the Parties

The parties agree to the following obligations under this MOU:

- a. SBA agrees to provide OCRA from the ARPA Act an amount not to exceed the amount listed in Section II(f), which may be amended from time to time. OCRA agrees to return to SBA any unused funds.
- b. OCRA will follow federal expenditure procedures as outlined in the State Board of Accounts manual.
- c. OCRA acknowledges that it is a Sub-State Agency as the term is used in the State Board of Accounts manual.
- d. OCRA will administer the Program in accordance with federal laws and guidance of the CPF ARPA Act, U.S. Treasury guidance and policies, OMB and SBA policies and procedures, State Board of Accounts guidance on administration and tracking of federal COVID funds, and any policies or procedure implemented by OCRA for administration of the program. OCRA's responsibilities to administer the Program include:
 - Provide communications and quarterly reports to the Director of the OMB and the Director of SBA regarding the status of the Program, including a detailed breakdown of the expenditures reimbursed under the Program and an explanation of why those expenditures were necessary to respond to the COVID-19 public health emergency
 - SBA will assist OCRA as necessary with the administration of the Program.

V. ARPA Reporting Requirement

- a. OCRA agrees to provide SBA with timely information that allows SBA to comply with reporting requirements of the CPF ARPA Act. This includes:
 - Project and Expenditure Reports: Data regarding Projects, expenditures Project status, subawards, civil rights compliance, equity indicators, community engagement efforts, programmatic data such as geospatial data for Broadband Infrastructure Projects, and other measures as determined by Treasury. Workforce plans and practices related to the Capital Projects Fund Projects, as well as information about subcontracted entities.
 - Performance Reports: Performance reports are submitted on an annual basis and demonstrating the outcomes of the Capital Projects Fund-finance grant programs. Reports must include data related to Program and Program outputs and outcomes against the stated objectives of the State's Grant Plan.
- b. OCRA agrees to provide information by deadlines established by SBA.
- c. OCRA agrees to collect data from sub-awards and contracts as required by SBA and the CRF ARPA Act.

VI. Records Retention

Agency agrees to maintain records to support compliance with the CPF ARPA Act. This may include, but is not limited to, copies of the following:

- a. General ledger and subsidiary ledgers used to account for: (a) the receipt of CPF ARPA Act payments and (b) the disbursements from such payments to meet the eligible expenses related to the public health emergency due to COVID-19;
- b. Budget records; payroll, time records, and human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
- c. Receipts of purchases made related to addressing the public health emergency due to COVID-19;
- d. Contracts and subcontracts entered into using ARPA Act payments and all documents related to such contracts;
- e. Grant agreement and grant subaward agreements entered into using ARPA Act payments and all documents related to such awards;
- f. All documentation of reports, audits, and other monitoring of contractors, including subcontractors, grant recipients, and subrecipients;
- g. All documentation supporting the performance outcomes of contracts, subcontracts, grant awards and grant recipient subawards;
- h. All internal and external email/electronic communications related to use of ARPA Act payments; and
- i. All investigative files and inquiry reports involving CPF ARPA Act payments

OCRA will maintain records for a period of five (5) years after final payment is made using CPF ARPA Act monies. These record retention requirements are applicable to all prime recipients and their grantees, subgrant recipients, contractors, and other levels of government that received transfers of CPF ARPA Act payments from prime recipients.

OCRA agrees to provide SBA, SBA's contractors, and State Board of Accounts full access to the OCRA's records and financial statements, as necessary to determine compliance with the Federal award for audit purposes.

VII. SEFA Reporting

OCRA will identify Emergency Act expenditures separately on its Schedule of Expenditure of Federal Awards (SEFA).

VIII. Modifications

The parties may modify this MOU by a written, mutual, signed amendment.

IX. Transfer of Funds to Another State Agency

OCRA is prohibited from transferring CSFRF funds to another state agency without prior approval of the State Budget Agency.

X. Notices

Any notice required or permitted to be given under this MOU shall be sent to the following:

State Budget Agency
Attn: Lisa Acobert
State House Room 212
200 W. Washington Street
Indianapolis, IN 46204
LiAcobert@sba.IN.gov

Office of Community and Rural Affairs
Attn: Dennis W. Spinner
Indiana Office of Community and Rural Affairs

1 North Capitol, Suite 600
 Indianapolis, IN 46204
dspinner@ocra.in.gov

XI. Termination or Suspension

This MOU may be terminated or suspended by either party if the other party has failed to comply with the terms of this MOU, or for any reason if such termination is in the best interest of the terminating agency, upon thirty (30) days written notice. The notice of termination or suspension shall state the reasons for termination or suspension. Regardless of the reason for termination or suspension, the parties will be compensated for services properly rendered prior to termination or suspension of this MOU.

XII. Entire Agreement

This MOU constitutes the entire agreement of the parties and may only be amended by the written mutual consent of the parties.

XIII. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the agreeing party, or that he/she is the representative, agent, member or officer of the agreeing party, that he/she has not, nor has any other member, employee, representative, agent or officer of the division, firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this MOU other than that which appears on the face of this MOU.

In Witness Whereof, the SBA and OCRA have, through their duly authorized representatives, entered into this MOU. The parties, having read and understood the foregoing terms of this MOU, do by their respective signatures dated below agree to the terms.

Office of Community and Rural Affairs

By: 

D30046C2D31C44D...

Indiana State Budget Agency

By: 

C08285FB886741A...

Title: Executive Director

Title: State Budget Director

Date: 9/28/2022 | 07:48 EDT

Date: 9/28/2022 | 09:21 EDT

Electronically Approved by: State Budget Agency By: Zachary Q. Jackson, Director (for)	

Attachment A

Program Description: Indiana's Next Level Connections Broadband Grant Program (NLC) is a competitive grant program designed to provide funding to extend broadband infrastructure and service to areas and locations currently lacking access to at least 25/3 Mbps. Indiana developed NLC to incentivize the provision of service to school buildings, rural health clinics, and households with students.

- The program is designed to provide internet service with speeds of 100/100 Mbps symmetrical to households and businesses upon project completion.
- Each of the internet service providers funded by the program will participate in the FCC's Affordable Connectivity Program (ACP) – a \$30 per month subsidy for low-income families.

Administrative Expenses: Will not exceed \$2.8 million.

MEMORANDUM OF UNDERSTANDING

Amendment #1

Contract # 000000000000000000066868

This is the First Amendment to the Memorandum of Understanding 66868 (the "MOU") entered into by and between the Indiana State Budget Agency ("SBA") and the Lieutenant Governor's Office of Community and Rural Affairs ("OCRA").

In consideration of the mutual undertakings and covenants hereinafter set for, the parties agree as follows:

1. Pursuant to Section VIII Modifications of the MOU:
 - a. Section II (f) Total Amount of Funds obligated to Sub-state agency is amended to increase the amount from \$187,000,000 to \$201,032,429.

Non-Collusion and Acceptance


The undersigned attests, subject to the penalties for perjury, that he/she is the agreeing party, or that he/she is the representative, agent, member or officer of the agreeing party, that he/she has not, nor has any other member, employee, representative, agent or officer of the division, firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this MOU other than that which appears on the face of this MOU.

All matters set forth in the original Contract and not affected by this Amendment shall remain in full force and effect.

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In Witness Whereof, the SBA and OCRA have, through their duly authorized representatives, enters into this MOU. The parties, having read and understood the foregoing terms of this MOU, do by their respective signatures dated below agree to the terms thereof.

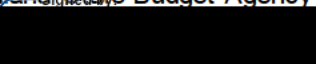
Office of Community and Rural Affairs

By: 
4AA8251E0AA84C3...

Title: Executive Director

Date: 10/28/2024 | 15:32 EDT

Indiana State Budget Agency

By: 
1A64765AE394CD...

Title: Acting Budget Director

Date: 10/30/2024 | 14:53 EDT

Electronically Approved by: State Budget Agency By: (for) Joseph M. Habig, Acting State Budget Director	