

SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT (the “Agreement”) is made and entered into as of the date of the last signature on this Agreement between the Arizona Commerce Authority (“ACA”), through its State Broadband Office (“Office”), and [] (“Subgrantee”) (collectively, the “Parties”) to complete the Project.

DEFINITIONS

“**ACA**” means the Arizona Commerce Authority, an agency of the State of Arizona.

“**Alternative Technology**” means any broadband access technology that terminates at the end user’s location or premises and does not qualify as Reliable Broadband Service, but meets the BEAD Program’s minimum technical requirements of speeds of not less than 100 Mbps for downloads and 20 Mbps for uploads and latency less than or equal to 100 milliseconds. This definition may include, but is not limited to, unlicensed fixed wireless (ULFW) and low Earth orbit (LEO) satellite service.

“**Application**” means Subgrantee’s approved Arizona BEAD Program application, attached hereto as Attachment 2 and incorporated by reference to this Agreement.

“**Assistant Secretary**” means the Assistant Secretary of Commerce for Communications and Information and National Telecommunications and Information Administration (“NTIA”) Administrator.

“**Arizona BEAD Program**” means the State of Arizona’s BEAD Program as administered by the Office.

“**Award Funds**” means Grant Funds and Matching Funds (*i.e.*, all of the funds associated with this Agreement).

“**BEAD Program**” means the Broadband Equity, Access, and Deployment Program, authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law No. 117-58, 135 Stat. 429 (Nov. 15, 2021).

“**BEAD NOFO**” means the NTIA BEAD Program Notice of Funding Opportunity (May 13, 2022) (Funding Opportunity Number NTIA-BEAD-2022) available at <https://www.ntia.gov/funding-programs/internet-all/broadband-equity-access-and-deployment-bead-program/program-documentation/notice-funding-opportunity-broadband-equity-access-and-deployment-program>.

“**Broadband Service**” has the meaning given the term “broadband internet access service” in Section 8.1(b) of title 47, Code of Federal Regulations (“C.F.R.”), or any successor regulation.

“**CAI**” means a Community Anchor Institution within the State of Arizona as identified by the Office.

“**Closeout Date**” is the date when the Office determines Subgrantee has satisfied all state and federal reporting requirements related to the Project and completes close out of this award pursuant to 2 C.F.R. § 200.344.

“**DOC**” means the United States Department of Commerce.

“**DOC GT&Cs**” means the Department of Commerce Financial Assistance General Terms and Conditions (Oct. 1, 2024).

“**Effective Date**” is the date of the last signature when all Parties have fully signed this Agreement.

“**End User**” means a Broadband Serviceable Location included within the scope of Subgrantee’s Application.

“**Federal Grant Officer**” means the National Institute of Standards and Technology (“NIST”) grant officer identified on the Arizona’s BEAD Program CD-450.

“**Federal Interest Period**” is the period during which Subgrantee will hold in trust for the beneficiaries of the BEAD Program all real property and equipment acquired or improved in connection with this Agreement. The Federal interest in all real property and equipment acquired or improved as part of this Agreement will start upon acquisition or improvement thereof, and continue for ten (10) years after the year of the Closeout Date. For example, if this award is closed out in 2027, regardless of the month, the Federal Interest Period will last until December 31, 2037.

“Grant Funds” means the Arizona BEAD Program funding awarded for this Project as identified in Attachment 1 (the Total Amount of the Federal Award committed to Subgrantee by the Office).

“GT&Cs for the BEAD Program” means the General Terms and Conditions for the NTIA Broadband Equity, Access & Deployment Program (BEAD) Program Funds (Apr. 2024)

“Initial Proposal” means the Arizona BEAD Program Initial Proposal (Volumes I and II), as approved by NTIA on Aug. 5, 2024, and as it may subsequently be amended or finalized, available at <https://www.azcommerce.com/broadband/initiatives/bead>.

“LCBSO” means the Low-Cost Broadband Service Option as defined in the Initial Proposal.

“Matching Funds” means funds or in-kind contributions provided by Subgrantee or the ACA to meet the BEAD Program’s non-federal match requirement.

“NIST” is the National Institute of Standards and Technology, the entity within the United States Department of Commerce that administers BEAD Program grants.

“NTIA” is the National Telecommunications and Information Administration, the entity within the United States Department of Commerce responsible for implementing the BEAD Program.

“Office” is the State Broadband Office within the ACA.

“Priority Broadband Project” means a project that will provision service via end-to-end fiber-optic facilities to each end-user premises.

“Project” means the planned and actual installation of broadband facilities and the provision of Qualifying Broadband Service as described in Subgrantee’s Application, which is incorporated herein by reference and attached as Attachment 2.

“Project Completion Criteria” are the minimum criteria for Project completion set forth in Attachment 3 and the Application (and any changes approved by the Office, if applicable).

“Project Property” means real property or equipment acquired or improved using Award Funds.

“Project Schedule” means the schedule for performance and completion of the Project by Subgrantee and approved in writing by the Office.

“Qualifying Broadband Service” to a location that is not a CAI is Reliable Broadband Service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds. “Qualifying Broadband Service” to a CAI is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.

“Reliable Broadband Service” (RBS) means broadband service that the Broadband DATA Maps show is accessible to a location via: (i) fiber-optic technology; (ii) Cable Modem/Hybrid fiber-coaxial (HFC) technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

“Schedule of Values” is the schedule of costs for performance and completion of the Project by Subgrantee and approved in writing by the Office.

“UGPN” is the NTIA Uniform Guidance Policy Notice (Dec. 26, 2023), titled “Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.”

“Underserved Location” means a broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.

“Unserved Location” means a broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with — (i) a speed of not less than 25 Mbps for downloads; (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.

Capitalized terms not otherwise defined herein shall have the same meaning ascribed thereto in the BEAD NOFO.

RECITALS

WHEREAS, the ACA is authorized to make Grant Funds available to qualified subgrantees under the Arizona BEAD Program, and governed in accordance with the Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58, and the BEAD NOFO, including any additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator may provide;

WHEREAS, the granting of Arizona BEAD Program funds through this Agreement from the Office to Subgrantee for the benefit of End Users has been approved by the ACA; and

WHEREAS, the granting of funds from ACA to Subgrantee will enable the development of valuable broadband facilities for End Users for the delivery of valuable services, particularly the increased availability of telemedicine services, distance learning, and telework;

WHEREAS, ACA and Subgrantee agree that this award is being provided by the State of Arizona to Subgrantee for Subgrantee to carry out part of the Federal BEAD award received by Arizona. Specifically, Subgrantee will use award funds for the deployment of a broadband network and the provision of Qualifying Broadband Service to End Users to bridge the digital divide; and

WHEREAS, ACA and Subgrantee agree that the major purpose of this award is a broadband infrastructure project; and

WHEREAS, it is the intent of the Parties that this Agreement in all other respects is a “subaward” as that term is defined in 2 C.F.R. § 200.1 and that Subgrantee is a “subrecipient” as that term is defined in 2 C.F.R. § 200.1 and as evaluated under 2 C.F.R. § 200.331; and

WHEREAS, this award is a “fixed amount subaward” as defined in 2 C.F.R. § 200.1 where the major purpose of the subaward is a broadband infrastructure project, and will be administered by the Office pursuant to the UGPN.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and incorporating by this reference the above Definitions and Recitals, the Parties hereby agree as follows:

I. Federal Award Identification

Information identifying this Federal subaward is set forth in Attachment 1 to this Agreement.

II. General Compliance Requirements, Order of Precedence, and Terminology

Subgrantee must perform its obligations under this Agreement in a manner that complies, and enables the ACA to comply, with all requirements contained in the following:

1. 47 U.S.C. § 1702;
2. Specific Award Conditions applicable to Arizona's BEAD award;
3. GT&Cs for the BEAD Program;
4. BEAD NOFO;
5. DOC GT&Cs;
6. Arizona BEAD Program Initial Proposal;
7. This Agreement;
8. ACA Uniform Terms and Conditions (May 11, 2018);
9. ACA Special Terms and Conditions - Insurance Requirements for Vendors (May 8, 2018); and
10. Subgrantee's Application as accepted by ACA.

The foregoing BEAD Program requirements are incorporated by reference as if fully set forth herein and are deemed to be Agreement obligations of the Subgrantee, which clarify and provide guidance as to the applicable regulatory provisions relating to internal controls, subgrantee monitoring and management, and audit requirements that apply to the ACA and thereby to Subgrantee or lower-tier subgrantees or subcontractors receiving such funds through this Agreement. These requirements are therefore considered legally binding and

enforceable under this Agreement.

In the event of any inconsistency or conflict between or among the terms of this Agreement and the authorities identified in the preceding sentence the authorities identified in the preceding sentence shall control.

In any case where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner that emphasizes consistency and harmonization across all relevant authorities. Where harmonization is not reasonably possible, the Parties agree to prioritize following the language contained in these authorities in the enumerated order or precedence (1. – 10.), from highest to lowest priority.

III. Nature of Award

Subgrantee shall deploy Qualifying Broadband Service or Alternative Technology to End Users and CAIs as described in Subgrantee's Application or otherwise with the prior approval of ACA. This Project must provide Qualifying Broadband Service to all broadband serviceable locations and CAIs identified in the Application and at the speeds and latency standards articulated therein.

Subgrantee shall perform a standard installation of Qualifying Broadband Service, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted by an End User.

The Subgrantee shall, without additional expense to ACA, be responsible for obtaining any necessary licenses and permits, and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the Project work. The Subgrantee shall also be responsible for all damages to persons or property that occur as a result of the Subgrantee's fault or negligence. The Subgrantee shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Project.

It is understood and agreed by the parties that, because the Arizona BEAD Program is new, and because the funding of the program is dependent on federal regulations and state policies, certain requirements, such as reporting obligations, may change over time. Subgrantee shall remain obligated to comply with the current and future obligations of the Arizona BEAD Program through the Closeout Date, except for those obligations that survive closeout and remain in

force during the Federal Interest Period as described in section X. below, which will continue.

IV. Period of Performance and Closeout

A. Period of Performance

The Period of Performance for this award is four (4) years. The Period of Performance begins on the Effective Date.

B. Project Schedule.

Subgrantee shall develop and submit to the Office for written approval, with Subgrantee's Application or such other time as the Office shall require, a Project Schedule in such form and detail, including agreed milestone dates, as required by the Office. Once approved in writing by ACA the Project Schedule shall not be changed without the prior written approval of ACA.

C. Extension of the Period of Performance

ACA may, in its sole discretion, extend the Period of Performance by up to one (1) year if Subgrantee demonstrates to the Office that: (a) Subgrantee has a specific plan for use of the Grant Funds, with Project completion expected by a specific date not more than five (5) years after the Effective Date; (b) construction on the Project is underway; or (c) extenuating circumstances require an extension of time to allow the Project to be completed.

D. Closeout

Closeout will be conducted on the timelines and in the manner set forth in 2 C.F.R. § 200.344.

Closeout does not affect (a) any of the rights, requirements and obligations set forth in 2 C.F.R. § 200.345, or (b) any of Subgrantee's obligations that survive closeout and remain in force during the Federal Interest Period as described in section X. below.

V. Subgrantee's Responsibilities to Deploy Broadband Infrastructure and Provide Broadband Service

A. Scope of Work

All work on the Project shall materially conform to the plans set forth in the Application submitted by Subgrantee, unless the Office approves a change to the Project, in which case the work shall conform to the Application plans and the change, as applicable. Any changes to the Project must be approved in advance by the ACA.

B. Subgrantee Responsibilities

Subgrantee explicitly acknowledges the following obligations:

1. Standard of Work

Subgrantee shall ensure that all work associated with the Project is performed in a workman like fashion and in keeping with prevailing industry standards.

2. Subgrantee Responsibilities of Work

Notwithstanding any other provision of this Agreement, the Parties agree that Subgrantee is solely responsible for:

- Ensuring that Subgrantee meets all deadlines in approved plans and specifications;
- Monitoring the progress of the Project and all grant funded activities; however, the Office shall have the right to advise Subgrantee of any specific areas of concern and may impose specific award conditions or other corrective action as a result of monitoring findings, including but not limited to information from Subgrantee or subcontractors related to budgets, expenses, receipts, and financial reports;
- Inspecting the Project and all grant funded activities; however, the Office shall have a right at any time to inspect work-in-progress, or test and analyze all work purchased or constructed in whole or in part using funds provided by the Office, including inspections by a professional engineer, to determine whether in the Office's opinion the work is being performed in

accordance with the provision of this Agreement;

- Reporting progress;
- Providing for required construction permits and adequate construction inspection;
- Promptly paying costs incurred for the Project, including but not limited to all grant funded activities;
- Monitoring the Subgrantee's and lower-tier subgrantee or subcontractor compliance with federal, state, and local requirements;
- Monitoring the Subgrantee's compliance with the approved Low-Cost Service Plan within the ACA BEAD Program Initial Proposal;
- Monitoring the Subgrantee's compliance with BEAD Program collective bargaining policies; and,
- Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.

3. Build America, Buy America

Congress passed the Build America, Buy America Act (BABA) on November 15, 2021 as part of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 70901-70927. BABA established domestic content procurement preference requirements for federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act.

Subgrantee shall comply with BABA consistent with applicable legal authorities, such as the Infrastructure Act, Executive Order 14005, 2 C.F.R. Part 184, Office of Management and Budget ("OMB") Memo M-24-02, and any applicable waivers issued by the DOC or NTIA, to include the NTIA Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program (effective Feb. 22, 2024). All waivers applicable to BEAD

will be posted on the Build America, Buy America page maintained by the DOC Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>

4. *Environmental and Historic Preservation (EHP) Review*

Subgrantee must comply with the requirements of all applicable federal, state, and local environmental statutes, laws, and standards, including as set forth in Attachment 5 to this Agreement.

5. *Other Federal Construction Requirements.*

Subgrantee shall perform its obligations under this Agreement in accordance with the federal construction requirements set forth in Attachment 6.

6. *Other State and Local Requirements*

Subgrantee shall perform its obligations under this Agreement in accordance with the following State of Arizona requirements:

a. *No Israel Boycott.* Subgrantee certifies that it is not currently engaged in and agrees for the duration of the Agreement not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

b. *No Uyghur Forced Labor.* In accordance with A.R.S. § 35-394, Subgrantee certifies and agrees that Subgrantee does not currently and shall not for the duration of this Agreement use (1) the forced labor of ethnic Uyghurs in the People's Republic of China, (2) any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and/or (3) any suppliers, subgrantees or sub-subgrantees that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Subgrantee becomes aware during the term of this Agreement that Subgrantee is not in compliance with this section, then Subgrantee shall notify the Office within five (5) business days after becoming aware of such noncompliance. If Subgrantee does not provide the Office with written certification that Subgrantee has remedied such noncompliance within one hundred eighty (180) days after notifying the Office of such noncompliance, this Agreement shall be subject to termination, except that if the Agreement termination date occurs before the end of such one hundred eighty (180) day remedy period, this Agreement shall terminate on such Agreement termination

date.

c. *Compliance with Immigration Laws and Regulations.* Pursuant to the provisions of A.R.S. § 41-4401, the Subgrantee warrants to the Office that the Subgrantee and all its subgrantees (at any tier) are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. § 23-214(A). Subgrantee acknowledges that a breach of this warranty by the Subgrantee or any of its subgrantees is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subagreement. The Office retains the legal right to inspect the papers of any employee of the Subgrantee or any lower-tier subgrantees or subcontractors who work on this Projects or under this Agreement to ensure compliance with this warranty. The Office may conduct random verification of the employment records of the Subgrantee and any of its subgrantees to ensure compliance with this warranty. The Office will not consider the Subgrantee or any of its subgrantees in material breach of the foregoing warranty if Subgrantee and its lower tier subgrantees timely establish that they have complied with the employment verification provisions prescribed by 8 U.S.C. § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by A.R.S. § 23-214(A). The provisions of this section must be included in any agreement the Subgrantee enters into with any and all of its lower tier subgrantees who provide services under this Agreement or any sub-agreement or contract. As used in this section “services” are defined as furnishing labor, time, or effort in the State of Arizona by a contractors or subcontractor. Services include construction or maintenance of any structure, building, or transportation facility or improvement to real property.

d. *Cancellation.* Pursuant to the provisions of A.R.S. § 38-511, the ACA may cancel any agreement or subagreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on behalf of the ACA is, at any time while the agreement or any extension thereof is in effect, an employee of any other party to the agreement in any capacity or a consultant to any other party to the agreement with respect the subject matter of this Agreement.

e. *Financial obligations.* All financial obligations of Subgrantee under this Agreement (including without limitation letters of credit, bonds, and insurance) shall be provided by institutions licensed and/or authorized to provide such under Arizona law and shall be collectable by the ACA in Maricopa County,

Arizona.

f. *Licensing.* Subgrantee will only utilize properly Arizona licensed and certified professionals performing under this Agreement (including without limitation lower tier subgrantees, subgrantee design professionals) as required under Arizona law.

g. *Other Arizona Laws.* Subgrantee shall perform all of its obligations in conformance with applicable Arizona state, county and municipal laws codes, rules and regulations.

C. Notice of Completion and Final Inspection

When (a) all construction has been completed, Subgrantee's architect/engineer has conducted its own final inspection, and any deficiencies have been corrected and approved in writing by the ACA, and (b) all Project Completion Criteria have been met, Subgrantee shall submit written certification ("Subgrantee Completion Certification") to the Office that the Project was placed into service, as defined in 47 U.S.C. § 1702(h)(4)(C) for last-mile broadband deployment projects, by the end of the Period of Performance and request that the Office certify completion of the Project and initiate closeout per section IV.D., above.

Upon receipt of Subgrantee's certification, the Office shall within ten (10) business days request Subgrantee to produce any data the Office requires to confirm the completion of the Project. Within five (5) business days of receipt of any requested information, the Office will schedule a final inspection to be attended by representatives of the Office, Subgrantee's architect/engineer, and Subgrantee and any lower tier subgrantee(s). The Office will provide NTIA reasonable advance notice of the final inspection so that a representative of NTIA may participate.

D. Acceptance or Rejection of Project.

Subgrantee's failure to meet any of the Project Completion Criteria or failure to meet any material obligation under this agreement shall be cause for rejection of the Project by the Office. A Project shall be considered accepted unless, within the ten (10) business days of the final inspection, the Office notifies Subgrantee in writing (a) that the Project is rejected, (b) specifies the items that, if modified or added, will cause the Project to be accepted, and (c) a timeline

for resubmission of the notice of completion under section V.C. Subgrantee shall promptly remedy any defect which prevents the work performed on the Project from satisfying the Project Completion Criteria or meeting any material obligation under this Agreement.

E. Resubmitting Project.

A rejected Project shall be resubmitted within the time period specified in writing by the Office. Subgrantee shall provide an updated Subgrantee Completion Certification to the Office when Subgrantee resubmits the Project for acceptance. The Office shall review the resubmitted Project within five (5) business days of receipt of the written notification. A resubmitted Project shall be considered accepted unless, within this period, the Office notifies Subgrantee in writing that the resubmitted Project is rejected and specifies the items that, if modified or added, will cause the resubmitted Project to be accepted. The Parties shall repeat this process until the resubmitted Project is accepted, or the Office determines that Subgrantee has triggered the non-performance section of this Agreement.

F. Certification of Completion.

The Office will provide to Subgrantee written certification of Project completion within ten (10) business days of final written acceptance of the Project.

VI. Disbursement of Grant Funds

A. Maximum Amount

Disbursements to Subgrantee are limited to the unpaid, obligated balance of the Grant Funds. The ACA shall have no obligation to pay Subgrantee any amount under this Agreement that exceeds the Grant Funds available to and received by the ACA. Subgrantee acknowledges and agrees that the ACA is only obligated to pay to Subgrantee in the amount of Grant Funds actually received by the ACA and approved for payment for the Project work and that the sole source of funding for payments to Subgrantee under this Agreement is payment to the ACA of the Grant Funds allocated to the Project. Payment to the ACA of the Grant Funds allocated to the Project is a condition precedent to the ACA's obligation to pay Subgrantee. Unless other sources of funding are disclosed herein, Subgrantee represents that, as of the Effective Date, it has no knowledge

of any other federal, state, or local funding commitments for the Project or service area, and that it has not applied for – or, if applied for, will immediately withdraw – funding from any other federal, state, or local government body for the Project or service area.

B. Condition Precedent to Disbursement

The ACA shall not disburse any Grant Funds to Subgrantee until an officer of Subgrantee has made the attestations regarding cybersecurity and supply chain risk management specified in Attachment 7.

C. Schedule of Values

Subgrantee shall develop and submit to the Office for written approval, with Subgrantee's Application or such other time as the Office shall require, a Schedule of Values for the cost of performance through completion of the Project, in such form and detail including categories of cost as required by the Office. Once approved in writing by the Office, the Schedule of Values may not be changed without the prior written approval of the Office.

D. Work Schedule

Subgrantee shall develop and submit to the Office for written approval, with Subgrantee's Application or such other time as the Office shall require, work schedules, with benchmarks, historical and other cost or pricing data, milestone dates, and deployment deadlines, consistent with Attachment 4, for the purposes of managing the construction, installation, overall deployment, and any related report reporting.

E. Disbursement Milestones

Grant Funds shall be disbursed in the amounts based upon the approved Schedule of Values and upon the Office's determination that Subgrantee has achieved the Milestones Dates and other conditions set forth in Attachment 4 to this Agreement.

The final milestone payment shall not be paid without an approved Project Completion Report. Subgrantee's request for final payment shall be submitted within ninety (90) days of the date the Office issues written certification of

Project completion.

F. Disbursement Requests

Subgrantee must submit with each request for disbursement:

1. Certification that qualifying broadband is available at the relevant percentage of locations;
2. A report showing the amount of Matching Funds expended in connection with the provision of qualifying broadband to the locations addressed by the request for disbursement; and
3. One of the following:
 - a. A report showing Project expenses using Generally Accepted Accounting Principles or other standard accounting practices; or
 - b. A report showing the relative proportion of costs across the following key spending areas:
 - professional services (*e.g.*, engineering, environmental and historic preservation permitting, legal expenses, *etc.*);
 - construction services (*e.g.*, digging trenches, erecting towers, blowing fiber, constructing and improving buildings, *etc.*);
 - outside plant, towers, and poles (*e.g.*, fiber plan, conduit, towers, poles, emergency power generational equipment, *etc.*);
 - network and access equipment (*e.g.*, broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, *etc.*);
 - operating equipment (*e.g.*, office furniture and

- fixtures, work equipment and vehicles, *etc.*);
 - customer premise equipment;
 - contingency funds; and
 - all other expenses; or
- c. A report demonstrating that the Project’s projected cost per location reached is consistent with the Project budget.

G. Disbursement Procedures

Grant Funds shall be disbursed to the Subgrantee via ACH transfer or check, provided that Subgrantee has submitted to ACA a completed vendor substitute W-9 form and, in the case of ACH transfer, an ACH authorization form.

The acceptance of an invoice by the Office shall not constitute acceptance of any work performed or deliverables provided under this Agreement. Subgrantee agrees that, while reimbursement by the ACA will occur as milestones are achieved and work is properly invoiced pursuant and subject to the other terms of this Agreement, ultimate acceptance by the Office of all work will need to be verified pursuant to the process detailed in section V. of this Agreement

The ACA will use reasonable best efforts to issue the Grant Funds due to Subgrantee within thirty (30) days of approval of the documentation submitted by Subgrantee. Subject to section VIII.A., eligible expenditures may not be incurred prior to the Effective Date or subsequent to the termination date of the grant. Payments are further subject to the availability of funds.

H. Invoice Retention and Auditing

All invoices are subject to audit for five (5) years from date of the Office’s approval of Subgrantee’s Project Completion Report.

VII. Matching Funds

Subgrantee shall provide Matching Funds in the amount of [____ amount ____], as specified in Attachment 2 to this Agreement. Subgrantee shall prioritize the use of Matching Funds over Grant Funds in performance of its obligations under this

Agreement. The Office may at any time verify Matching Funds, including but not limited to comparing facility in-kind matches with current mortgage statements or rental rates, or time keeping for services spent on BEAD Program work.

Subgrantee shall retain records detailing the source, amount, quantity, time, and delivery of each match service through the life of the Subgrant and closeout. Each match submission shall include a legally binding attestation.

VIII. Permissible Costs; Use of Award Funds.

A. Permissible Uses of Funds

The ACA will reimburse the Subgrantee's allowable actual costs, as further detailed in this Agreement, not exceeding the Grant Funds. The ACA will reimburse Subgrantee for the federal share of properly documented allowable costs after review and approval thereof. However, any costs incurred by Subgrantee prior to the Effective Date shall not be reimbursed absent specific written allowance from the ACA of pre-award costs. The Subgrantee's costs for work performed after the Period of Performance, or after any performance period end date for a respective milestone, shall not be reimbursable. The ACA will only reimburse allowable costs described in this Agreement if those costs are actually incurred in performance of the work, and (a.) permitted to be reimbursed under the terms of this Agreement; (b.) reasonable and necessary to accomplish the work and for the goods and services provided; and (c.) equal to the actual net cost to Subgrantee (*i.e.*, the price paid minus any items of value received by Subgrantee that reduce the cost actually incurred).

As authorized by NTIA, and pursuant to exceptions of 2 C.F.R. §§ 200.333 and 200.201(b) approved by OMB, the Office has elected to make this award as a fixed amount subaward and additionally, as allowed by NTIA, to require the Subgrantee to submit evidence of costs. The Subgrantee must periodically report its expenses and Matching Funds using Generally Accepted Accounting Principles or other standard accounting practices and monitor the relative proportion of costs across key spending area. See section VI.F. and the GT&Cs for the BEAD Program 40, 51.

Award Funds shall be used solely for reimbursable costs incurred for implementation and operation of the Project and for no other purpose. Reimbursable costs may include (a) operating and maintenance costs incurred by

Subgrantee in connection with providing broadband services to End Users, and (b) to maintain Project facilities in good working order so as to be able to offer broadband service to End Users.

The use of Award Funds will adhere to the terms of this Agreement, the authorities identified in section II. of this Agreement, and the restrictions on pre-implementation activities set forth in section IV. of Attachment 5 (Environmental and Historic Preservation Review) to this Agreement. The Parties understand and agree that the ACA may not reimburse Subgrantee for costs that the Federal Grant Officer determines are not eligible for reimbursement pursuant to Arizona's BEAD Program award. The Parties agree to work in good faith to ensure that awards determined by the Office to be reimbursable under this Agreement are found reimbursable by the Federal Grant Officer.

Subgrantee acknowledges that for a cost to be reimbursable under this agreement, it must "be reasonable, necessary, allocable, and allowable for the proposed Project or other eligible activity and conform to generally accepted accounting principles." (BEAD NOFO at 81, § V.H.1) Subgrantee further acknowledges that while the federal cost principles do not govern fixed amount subawards, the Office will look to those principles as a guide when reviewing disbursement requests.

Subgrantee shall be responsible for all Project costs that exceed the amount of the Award Funds. In the event the available Award Funds are insufficient to satisfy all Project costs, Subgrantee shall nevertheless be responsible for fulfilling all of its obligations under this Agreement.

Subgrantee is responsible for reimbursing the ACA for any Grant Funds that are determined by the Office to be ineligible, misused, misappropriated, or inadequately documented under this Agreement. If the Office determines that any provision of this Agreement has been breached by Subgrantee, in addition to any other remedies available under this Agreement, the ACA may require and be entitled to reimbursement of any or all such Grant Funds. Any reimbursement required by the Office, with or without termination of this Agreement, shall be due within thirty (30) days after giving written notice to the Subgrantee. The ACA also reserves the right to recover such Grant Funds by any other legal means, including litigation and drawing the funds in any letter of credit, performance or payment bond. The Subgrantee must indemnify and hold harmless the ACA for

all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurred in recovering such funds, irrespective of whether the funds are recovered.

B. Prohibited Uses of Award Funds

In addition to any other use of Award Funds prohibited or made ineligible by state or federal law, regulation, or policy, the following are prohibited as uses or Award Funds (whether by Subgrantee or Subgrantee's lower tier subgrantees or subcontractors), and are not reimbursable as an allowable cost under this Agreement:

1. Prohibition Against Payment of Bonus or Commissions

Payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement.

2. Political Activity

Any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

3. Prohibited Equipment and Services

Purchase or support of (a) any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)), and (b) fiber optic cable and optical transmission equipment manufactured in the People's Republic of China.

4. Incremental Profits and Fees

A profit, fee, or other incremental charge above actual cost. The Parties expressly acknowledge that this prohibition does not extend to program income, which Subgrantee may retain without restriction, including retaining program income for profit.

5. Collective Bargaining

Direct or indirect support of or opposition to collective bargaining.

IX. Service Obligations

A. Broadband Service Obligations

Subgrantee agrees in connection with the provision of any Broadband Service over the Project network:

1. Subgrantee shall not impose data usage caps on any Broadband Service plans offered over the Project or impose unjust or unreasonable network management practices.

2. Subgrantee shall provide access to Broadband Service to each customer served by the Project that desires broadband service on terms and conditions that are reasonable and non-discriminatory.

3. Subgrantee shall offer the proposed advertised minimum download and minimum upload speeds set forth in Attachment 2, and in no event less than 100 Mbps download and 20 Mbps upload with latency of less than or equal to 100ms, measured as specified in the BEAD NOFO.

4. Pricing

a. If Subgrantee has offered Broadband Service to at least one thousand consumers for a period of at least five (5) consecutive years, Subgrantee shall offer Broadband Service at prices consistent with offers to consumers in other areas of the State of Arizona.

b. If Subgrantee has not offered Broadband Service to at least one thousand consumers for a period of at least five (5) consecutive years, Subgrantee shall ensure that the Broadband Service is priced to consumers at no more than the cost rate identified in Attachment 2 for the duration of the five-year service agreement.

c. In calculating cost for the purposes of this section IX.A.4, Subgrantee may adjust annually consistent with the annual percentage increase in the Consumer Price Index in the preceding year.

B. Other Obligations

1. *Middle Mile Interconnection [If applicable, based on subgrantee*

selection.]

To the extent Subgrantee is receiving Award Funds to deploy Middle Mile Infrastructure, Subgrantee shall permit other broadband service providers to interconnect with its funded Middle Mile Infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. Subgrantee shall allow such interconnection at any technically feasible point on the Middle Mile Infrastructure network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of Subgrantee's Middle Mile Infrastructure to a requesting party's facilities for the exchange of traffic. In addition, Subgrantee shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory. Subgrantee shall negotiate in good faith with any requesting party (including public, Tribal, private, non-profit, or other parties) making a bona fide request for interconnection.

2. *Public Awareness Campaign*

Subgrantee shall, during the Period of Performance, carry out public awareness campaigns in the areas served by the Project designed to highlight the value and benefits of Broadband Service in order to increase the adoption of broadband service by consumers.

Subgrantee's awareness campaign must, at a minimum:

- a. Include information about low-cost service plans and any federal subsidies for low-income households such as the Lifeline Program, the Affordable Connectivity Program (if available), and any successor programs.
- b. Be conducted in an equitable and nondiscriminatory manner.
- c. Utilize a variety of communications media (*e.g.*, online, print, radio) and provide information in languages other than English when warranted based on the demographics of the community.

Subgrantee shall propose an awareness campaign to the Office within three (3) months of the Effective Date hereof, and implement the campaign upon the

Office's approval, which will not be unreasonably withheld.

3. *Civil Rights and Nondiscrimination Law Compliance*

Subgrantee agrees to abide by the non-discrimination requirements set forth in Attachment 8, to the extent applicable, and acknowledges that failure to do so may result in cancellation or termination of this Agreement and/or recoupment of funds already disbursed.

4. *Cybersecurity and Supply Chain Risk Management*

Subgrantee shall, to the extent it relies in whole or in part on network facilities owned or operated by a third party (*e.g.*, purchases wholesale carriage on such facilities), obtain from that third party network provider the attestations regarding cybersecurity and supply chain risk management practices substantially in the form set forth in Attachment 7.

5. *Other Federal Obligations*

Subgrantee shall fulfill the other federal obligations set forth in Attachment 9. Further, the DOC GT&Cs are incorporated into every NTIA grant award, including this Agreement. Subgrantee thus shall comply, without limitation, with the provisions regarding Section F. (CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS) and Section G. (NATIONAL POLICY REQUIREMENTS) thereof, unless otherwise specified in an authority with priority as specified in section II. above.

X. Subgrantee Obligations during the Federal Interest Period

Subgrantee explicitly acknowledges that the obligations described in this section X. survive beyond the Period of Performance and the closeout of this award, and remain in effect during the entirety of the Federal Interest Period.

A. Property Standards

For the purposes of this Agreement, the useful life of Project Property shall coincide with the Federal Interest Period. Title to Project Property vests in Subgrantee upon acquisition, subject to the exception and clarifications set

forth in Attachment 10, which themselves remain in effect for the duration of the Federal Interest Period.

B. Service Availability

Subgrantee shall be capable of performing a standard installation of Qualifying Broadband Service to an End User, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted.

C. Affordable Connectivity Plan

Subgrantee must allow eligible subscribers in the Project service area to utilize the Affordable Connectivity Program, if available, or any successor program.

D. Low-Cost Broadband Service Option

Subgrantee must offer the LCBSO to eligible subscribers.

E. Consumer Protections

Subgrantee must not impose data usage caps on any plans offered over a Funded Network or impose unjust or unreasonable network management practices. Subgrantee may apply otherwise-applicable acceptable use policies to the Project. Subgrantees shall certify through the semiannual reporting requirements that the plans offered over Funded Networks do not contain data usage caps for subscribers.

F. Conduit Access Points.

Any work that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities. Subgrantee shall deploy a reasonable amount of excess conduit capacity and establish a conduit access point interval as part of the Project design.

G. Reporting

Subgrantee shall submit a final Form SF-425 and a final Performance (Technical) Report to the Office within ninety (90) calendar days after the expiration of the Period of Performance.

Subgrantee shall submit Real Property and Tangible Personal Property Reports and Requests for Disposition as specified in DOC GT&C § A.01.

H. Wholesale Obligation on Default

The Parties agree that if Subgrantee at any time during the Federal Interest Period is no longer able to provide Broadband Service to the End Users at any time on a retail basis, remedial action will be taken to ensure continuity of service. Subgrantee shall, after consultation with and as approved in writing by the ACA and NTIA, either (a) sell Project network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or (b) sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program. The ACA may require Subgrantee to take either remedial action so long as such action results in continued retail service to End Users in the grant area.

I. Letter of Credit, Performance and Payment Bond, and Certificate of Deposit Requirements

Prior to entering into this Agreement, upon request by the Office the Subgrantee shall obtain an irrevocable standby letter of credit, a performance and/or payment bond(s), or certificates of deposit using the model(s) provided by the Office, equal to or exceeding then (10) percent of the total award amount. The Subgrantee must retain the letter of credit or bond(s) until the final milestone in the disbursement is achieved and confirmed complete by the Office.

XI. Reporting

Subgrantee will adhere to the conditions and regulations for reporting, as outlined in this Agreement.

Subgrantee shall file reports with the Office, NIST, and/or NTIA as specified in Attachment 11. Subgrantee acknowledges that the reporting requirements set forth in this Agreement (including Attachment 11) may be updated from time to time, and Subgrantee shall comply with any other reasonable reporting requirements determined by the Office to meet the reporting requirements established by the Assistant Secretary and certify that the information in the

report is accurate. Subgrantee further acknowledges that the Office must make all Subgrantee reports available to NTIA upon request.

Subgrantee shall maintain sufficient records to substantiate all information submitted in reports under this Agreement.

The Office will conduct an implementation meeting with a grant recipient within thirty (30) days of Effective Date and will make reporting templates and instructions available at or shortly after the implementation meeting. The Office and Subgrantee agree to work in good faith to identify and implement any changes to reporting requirements and protocols in a reasonable and timely manner.

XII. Recordkeeping and Audits

The Office and Subgrantee shall support BEAD Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the DOC and external program evaluators.

A. Recordkeeping

Subgrantee agrees to keep financial records, including budgets, expenses, receipts, financial reports, supporting documents, statistical records, and all other records pertinent to Award Funds, the Project, and this Agreement and make them available to the ACA upon request and for not less than a period of five (5) years after the Closeout Date.

Subgrantee acknowledges that NTIA, NIST, Inspectors General, the Comptroller General of the United States, and the ACA, or any of their authorized representatives, shall have the right of access to any documents, papers, or other records which are pertinent to Award Funds, the Project, and this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to Subgrantee's personnel for the purpose of interview and discussion related to such documents.

B. Audits

Subgrantees must maintain adequate financial systems and financial records to

accurately account for awarded funds. The ACA, NTIA, the DOC Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time.

1. Non-Federal Entities

If Subgrantee is subject to the provisions of Subpart F of 2 C.F.R. Part 200 and expends \$750,000 or more in a year in federal awards during its fiscal year, Subgrantee must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200, including but not limited to the provisions of 2 C.F.R. § 200.501, “Audit Requirements” and Arizona BEAD Program specific requirements.

Within the earlier of thirty (30) calendar days after receipt of the auditor’s report(s), or nine (9) months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC’s Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>).

In accordance with 2 C.F.R. § 200.425 (Audit services), Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Federal Grant Officer.

2. Other Entities, including For-Profit Entities

If Subgrantee is not subject to the provisions of Subpart F of 2 C.F.R. Part 200, it must submit to the Grants Officer either:

(i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS);
or

(ii) a Project specific audit in accordance with the requirements contained in 2 C.F.R. § 200.507.

Audits are to be performed annually. Within the earlier of thirty (30) calendar days after receipt of the auditor’s report(s), or nine (9) months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer.

In accordance with 2 C.F.R. § 200.425, Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

Subgrantee shall perform all necessary efforts to assist the Office in verifying for the benefit of the Office and federal auditors that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in Subgrantee's Application, beginning on the Effective Date. Subgrantee shall prepare appropriate financial statements, including the schedule of expenditures of Federal Awards in accordance with 2 C.F.R. § 200.510 and provide the Office with access to personnel, accounts, books, records, supporting documentation, and other information as needed. If Subgrantee fails to spend or fails to document the expenditure of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project, within that timeframe, Subgrantee agrees to immediately return to the ACA any Grant Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to the ACA, upon request, within ten (10) business days.

C. Protected and Proprietary Information

Notwithstanding any other provision of this Agreement, Subgrantee and the ACA agree that all records related to the Arizona BEAD program are public records as provided by the Arizona Public Records Law, A.R.S. § 39-121 *et seq.*, subject to exceptions to production related thereto including without limitation trade secret and proprietary information; provided, however, that the Subgrantee provide an adequate restrictive legend on each page and for all information that it deems protected and proprietary.

In accordance with 2 C.F.R. § 200.303(e), the Office and Subgrantee will take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with this Agreement. The Office shall give Subgrantee reasonable written notice of any request for production of public records that may seek production of such materials to allow Subgrantee to seek such appropriate court protection from production as Subgrantee deems appropriate.

XIII. Representations and Warranties

Subgrantee represents and warrants:

- i. it is authorized to do business in the State of Arizona;
- ii. the making and performance of this Agreement and each and every other document required to be delivered hereunder are within Subgrantee's powers, have been duly authorized by all necessary corporate action, have received all necessary approvals, and do not contravene any law, regulation or decree or any contractual restriction;
- iii. this Agreement and each and every other document required to be delivered hereunder, when duly executed and delivered, will be the legal and binding obligations of Subgrantee enforceable in accordance with their respective terms; and
- iv. to the best of Subgrantee's knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect the financial condition or operation of Subgrantee.
- v. Subgrantee warrants that the Project developed hereunder shall be free from defects in design and implementation, and shall continue to meet the specifications agreed to in this Agreement until the Closeout Date. Until the Closeout Date, Subgrantee shall, without additional charge to the ACA, correct any such defects and make such additions, modifications, or adjustments to the Project as may be necessary to keep the Project operating as specified in its Application.
- vi. Subgrantee warrants the specific operating performance characteristics of the services developed and/or installed hereunder as stated in its Application and any approved material changes to the Project, if applicable.
- vii. Subgrantee warrants to the best of its knowledge and belief, except to the extent already disclosed to the Office, there are no facts or circumstances that could give rise to a personal or organizational conflict of interest and further that the Subgrantee and agents or representatives have no interest and will not acquire any direct or indirect interest that would conflict in any manner or

degree with the Project work. The Subgrantee agrees that, if after signing this Agreement, the Subgrantee discovers or is made aware of a conflict of interest or potential conflict of interest, the Subgrantee will immediately and fully disclose such interest in writing to the Office. The Office reserves the right to make a final determination regarding the existence of conflicts of interest, and the Subgrantee agrees to abide by Office's decision.

XIV. Non-Performance, Termination, and Other Remedies

Non-performance, termination, and other remedies for non-performance will be handled consistent with the authorities set forth in section II. of this Agreement, to include without limitation 2 C.F.R. § 200.339 and A.R.S. § 38-511. When a determination or decision regarding non-performance is to be made, the Office will make such determination or decision by exercising good faith and reasonable discretion.

A. Non-Performance

Non-performance occurs when a subgrantee fails to comply with any requirements under the U.S. Constitution, applicable federal statutes (to include 47 U.S.C. § 1702) and regulations, Specific Award Conditions applicable to Arizona's BEAD Program award, GT&Cs for the BEAD Program,, BEAD NOFO, DOC GT&Cs, Arizona BEAD Program Initial Proposal, ACA Uniform Terms and Conditions (May 11, 2018), ACA Special Terms and Conditions - Insurance Requirements for Vendors (May 8, 2018), this Agreement, and Subgrantee's Application as accepted by the Office.

Specific examples of non-performance include, but are not limited to:

1. Failure to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act,
2. Failure to meet other Federal or Arizona statutory obligations,
3. Wasteful, fraudulent, or abusive expenditure of Award Funds,
4. Failure to provide Broadband Service at the minimum advertised connection speed and cost at the advertised rate as set forth in Attachment 2, and

5. Failure to provide financial and performance information and data as required by section XIV of this Agreement.

B. Non-Performance Administrative Sanctions, Damages, Penalties

1. General Authority

The Office and NTIA may enforce applicable rules and laws by imposing administrative measures or damages for nonperformance, or penalties for failure to meet statutory obligations, BEAD Program collective bargaining policies, or for wasteful, fraudulent, or abusive expenditure of Award Funds. Such administrative sanctions, damages, or penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation and clawback of funds, and suspension and debarment of organizations or personnel.

2. Additional Conditions

Administrative sanctions or damages for non-performance by Subgrantee may include the imposition of additional conditions, as described in 2 C.F.R. § 200.208.

3. Remedies when Additional Conditions are Insufficient

If the Office or NTIA determines that non-performance cannot be remedied by imposing additional conditions, the ACA or NTIA may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by Subgrantee or more severe enforcement action by the ACA or NTIA.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate this Agreement.
- (d) In the case where the funded network fails meet a required speed or latency network standards the

Subgrantee will be required to improve the network until the minimum performance standards are met or up to the entire award will be forfeited.

- (e) Recommend the initiation of suspension or debarment proceedings by the DOC as authorized under 2 C.F.R. part 180 and implementing regulations.
- (f) Withhold further Arizona BEAD Program awards.
- (g) Submit a claim on any applicable bonds and/or collect from any letters of credits or certificates of deposits.
- (h) Take other remedies that may be legally available.

4. *Clawback*

If the Office or NTIA determine that Subgrantee has failed to comply with any material requirement under applicable law or this Agreement and Subgrantee cannot or will not remedy such failure, the Office may require Subgrantee to return up to the entire amount of the Grant Funds to the Office, at the discretion of the Office. If the Subgrantee fails to timely return all Grant Funds, the Office will initiate collection efforts which include, but are not limited to, withdrawing funds from the letter of credit or performance bond.

If Subgrantee fails to provide the minimum advertised connection speed and cost at the advertised rate described in Attachment 2 to this Agreement, Subgrantee shall forfeit any Grant Funds, up to the entire amount received through the Arizona BEAD Program. The Office will use its discretion to determine the amount forfeited. If Subgrantee is required to forfeit Grant Funds under this provision, Subgrantee is liable for up to the amount disbursed plus interest. The number of subscribers that subscribe to Broadband Service offered by Subgrantee in the Project area shall not be a measure of performance under this Agreement for the purposes of this provision.

The Parties acknowledge that NTIA may pursue clawback of funds directly from the ACA if the ACA fails to ensure Subgrantee accountability to the fullest extent of the law. To the extent NTIA successfully pursues clawback from the ACA on these grounds, Subgrantee shall reimburse the ACA in an amount equal to the

clawback.

5. *Reversion*

Subject to the exception set forth in section XV.E., below, if Subgrantee fails to perform and fails to return the full forfeited amount required pursuant to this section, the ownership and use of the broadband infrastructure funded by the Arizona BEAD Program shall revert to the ACA.

6. *Make Whole*

Notwithstanding any other provision of this Agreement, if Subgrantee fails to complete the Project in any respect, Subgrantee, at the discretion of the Office, may be required to reimburse the ACA the actual cost to finish the Project. The actual cost to finish the Project shall be determined by the Office. If the Office determines that Subgrantee has made a good faith effort to complete the Project, the Office, in its sole discretion, will not require Subgrantee to reimburse the ACA an amount greater than the remaining Arizona BEAD Program cost per End User as set forth in Attachment 2 to this Agreement.

7. *Indemnification*

The Subgrantee assumes all liability for any and all injuries, damages, or claims in any way associated with this Agreement or the Project. Subgrantee must indemnify and hold harmless the ACA and all its officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by related to the Project, including reasonable attorneys' fees and costs for enforcement. Subgrantee must indemnify and hold harmless the ACA and all its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between itself and lower tier subgrantees, subcontractors, suppliers, vendors, materialmen, and Subgrantee personnel to perform services or otherwise supply products or services.

The Subgrantee must also hold the ACA harmless for any audit disallowance irrespective of whether the audit is ordered by federal or state agencies or by the courts. If an audit is required by federal law and if the Subgrantee is also the recipient of funds by or through the Office under the same or a separate grant or

contract program, then the Office-funded programs must also be included in the scope of the federally required audit.

C. Termination for Convenience

The ACA may terminate this Agreement, in whole or in part, at any time it determines that such termination is in the best interest of the ACA or the State of Arizona. If the ACA wishes to terminate this Agreement under this section, it shall deliver a termination notice to the Subgrantee stating that the Agreement will terminate on the date specified which must be a minimum of thirty (30) days after the date the Subgrantee receives such termination notice. This Agreement will terminate on the date specified in the termination notice. Within ninety (90) days after such termination for convenience, the Subgrantee may submit a termination settlement proposal to the ACA for reasonable and documented allowable costs for which the Subgrantee has not been previously reimbursed. The cost principles and cost reimbursement procedures under 2 C.F.R. part 200 shall apply to any such termination for convenience

XV. Other Provisions.

A. Assignment or Transfer

Subgrantee's rights and obligations under this Agreement may not be transferred or assigned without the prior, written consent of the ACA. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subgrantee's rights and obligations approved by the ACA shall be subject to the provisions of this Agreement. For purposes of this Agreement, a direct or indirect change of control of the Subgrantee or any subcontracting arrangement that relates to this Agreement shall be deemed an assignment.

The Parties acknowledge that any assignment or transfer of this Agreement is subject to the requirement to obtain prior written approval from NTIA. The Subgrantee must provide no less than thirty (30) calendar days advance notice to the Office of any assignment. The Office may request reasonably supporting information in for granting consent and obtaining NTIA approval. Any agreement to assign or subcontract any portion of the Project work must mandate compliance with all covenants, obligations, and agreements by the Subgrantee hereunder, and the Subgrantee shall continue to be bound by such covenants,

obligations, and agreements. The Subgrantee must also provide no less than thirty (30) calendar days advance notice to the Office prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of the Subgrantee.

B. Amendments and Modifications

This Agreement may only be amended or modified through a written instrument signed by the ACA and Subgrantee.

C. Conflicts of Interest

No officer or employee of Subgrantee or Office, will have any personal pecuniary gain or interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project that is the subject matter of this Agreement. The Subgrantee will promptly notify the Office should it become aware of any violation or attempt at circumventing the requirements of this section.

D. Governing Law

This Agreement shall be governed under the laws of the State of Arizona. Any dispute arising between the Parties shall only be brought pursuant to Attachment 12, "Disputes." Nothing in this Agreement is intended to waive, nor shall it act as a waiver of, the sovereign immunity of the State of Arizona. To the extent there is no applicable state law, the substantive law of federal procurement and non-procurement actions shall apply.

E. Force Majeure

Neither the ACA nor Subgrantee shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out unforeseeable causes beyond the Parties' reasonable control. Such causes may include Acts of God or of a public enemy, fires, floods, epidemics, pandemics, and quarantine restrictions. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement. Typical weather patterns are foreseeable and shall not constitute cause pursuant to this paragraph. The Office shall determine whether a delay or failure results from an Act of God or force majeure based on its review of all facts and circumstances.

F. Notice

All communications and notices provided for hereunder shall be in writing and mailed, emailed, or delivered to the Parties hereto at their business addresses set forth below or, as to each party, at such other address as shall be designated by such party in a written notice to the other Parties.

If to the ACA/Office, then to:

Arizona Commerce Authority
Attention: State Broadband Director
100 N. 7th Ave., Suite 400
Phoenix, AZ 85007
Phone: [Phone]
E-mail: E-mail]

With a copy to:

Arizona Commerce Authority
Attention: General Counsel
100 N. 7th Ave., Suite 400
Phoenix, AZ 85007
Phone: [Phone]
E-mail: E-mail]

If to Subgrantee, then to:

[Name]
Attention:
[Address 1]
[Address 2]
Phone: [Phone]
E-mail: [E-mail]

Communications may be exchanged by e-mail upon the written agreement of the Parties, but e-mail communications are not binding upon the ACA and cannot change the terms of the Agreement, the scope of work, exhibit, schedule or any other Agreement document, nor effectuate any change that requires a written amendment, approval, or change. The use of e-mails is for information only. A separate written formal notice, amendment, or document, in complete and

appropriate form, may be attached to an e-mail. By typing its name or inserting an electronic signature on this Agreement or any formal notice, amendment, or document and sending same to the ACA or Office electronically, the Subgrantee is signing electronically. The Subgrantee agrees its electronic signature (“E-Signature”) is the legal and binding equivalent of its manual or handwritten signature and that no certification authority or other third party verification is necessary to validate its E-Signature.

G. Severability

If any provision under this Agreement or its application to any person or circumstances is held invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement which can be given effect without the invalid provision.

H. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the ACA and Subgrantee and their successors and assigns.

I. Waivers

No conditions or provisions of this Agreement may be waived unless approved by the ACA and Subgrantee, in writing.

J. Terms and Conditions

Subject to the terms of section II. of this Agreement, in the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in any document relating to the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date of the last signature below.

**ARIZONA COMMERCE
AUTHORITY**

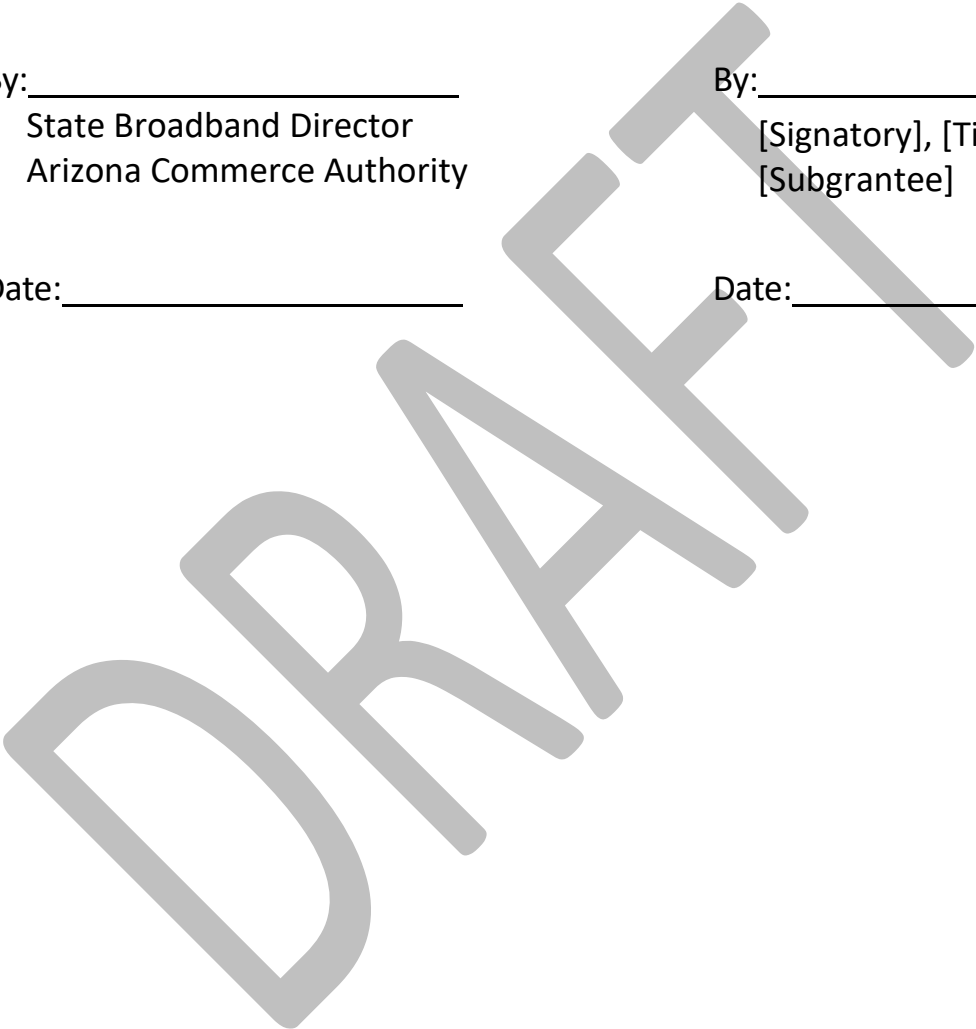
[SUBGRANTEE]

By: _____
State Broadband Director
Arizona Commerce Authority

By: _____
[Signatory], [Title]
[Subgrantee]

Date: _____

Date: _____



Attachment 1 – Project Description

Item	Requirement	Data
1	Subrecipient/Subgrantee name ¹	[]
2	Subrecipient's/Subgrantee's unique entity identifier	[]
3	Federal Award Identification Number (FAIN);	[INSERT NUMBER]
4	Federal Award Date ²	[INSERT DATE]
5	Subaward Period of Performance Start and End Date	[]
6	Subaward Budget Period Start and End Date	[]
7	Amount of Federal Grant Funds Obligated by this action by the pass-through entity to the Subrecipient/Subgrantee	[]
8	Total Amount of Federal Grant Funds Obligated to the Subrecipient/ Subgrantee by the pass-through entity including the current financial obligation	[]
9	Total Amount of the Federal Award committed to the Subrecipient/ Subgrantee by the pass-through entity	[]
10	Federal Award Project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	BEAD for Arizona
11	Name of Federal awarding agency	U.S. Department of Commerce
	Name of pass-through entity	Arizona Commerce Authority
	Contact information for awarding official of the Pass-through entity	State Broadband Director Arizona Commerce Authority 100 N. 7th Ave., Suite 400 Phoenix, AZ 85007
12	Assistance Listings number and Title ³	11.035 - Broadband Equity, Access, and Deployment Program
13	Identification of whether the award is R&D	Award is not R&D
14	Indirect cost rate for the Federal Award (including if the de minimis rate is charged) per 2 C.F.R. § 200.414.	[]

¹ Must match the name associated with its unique entity identifier.

² The date when the Federal Award to Arizona was signed by the authorized official of the Federal awarding agency (see 2 C.F.R. § 200.201).

³ If other federal awards are implicated, Arizona Commerce Authority must identify the dollar amount made available under each Federal award and

the Assistance Listings Number at time of disbursement.

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Attachment 2 - Approved Application

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Attachment 3 - Project Completion Criteria

1. A "Project Completion Report" signed by an officer of Subgrantee including:
 - a. An attestation by an officer of Subgrantee that the Project as described in Attachment 2 has been completed in all material respects, to include, but not limited to:
 - (1) Subgrantee has deployed a network capable of providing Qualifying Broadband Service to all End Users at the speed and latency standards specified in the Application and the BEAD NOFO;
 - (2) Subgrantee is capable of performing a standard installation of Qualifying Broadband Service at all End Users, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted;
 - (3) Subgrantee is capable of providing Qualifying Broadband Service to all CAIs included in the Project at the speed and latency standards specified in the Application and the BEAD NOFO; and
 - (4) Subgrantee has completed all CRN-SPA commitments identified in the Application.
 - (5) Subgrantee has provided all Matching Funds identified in Subgrantee's Application, this Agreement, or otherwise.
 - b. A technical report sufficient to demonstrate, in the Office's sole discretion, that the Project is capable of delivering broadband internet access service to all End Users and CAIs at the speed and latency standards specified in the Application and the BEAD NOFO.
2. Proof sufficient for the Office to determine, in its sole discretion, whether Subgrantee has provided public notice, online and through other means, of the fact that the Project has been completed and Broadband Service is available to individuals residing in the locations to which Broadband Service has been provided.

3. To the extent it relies in whole or in part on network facilities owned or operated by a third party (*e.g.*, purchases wholesale carriage on such facilities), attestations regarding cybersecurity and supply chain risk management practices substantially in the form set forth in Attachment 7.

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Attachment 4 - Disbursement Milestones

Milestone	Disbursement (percent of award)	Maximum Cumulative Disbursement (percent of award)
Office approval of detailed Project budget and critical path or similar cost loaded CPM or similar schedule as an addendum to the executed subgrant agreement(s)	10%	10%
Proof that necessary permits have been requested filed with the Office	10%	20%
Proof of binding agreement to acquire BABA-compliant equipment	10%	30%
Provider certification and Office completion of a technical and compliance audit that the provider has reached:		
10% of Project BSLs	10%	40%
35% of Project BSLs	15%	55%
60% of Project BSLs	15%	70%
85% of Project BSLs	15%	85%
100% of Project BSLs and the Office's approval of Subgrantee's Project Completion Report	15%	100%

For the purposes of this Agreement, and consistent with the Federal Communications Commission's Broadband Data Collection, and based upon the approved Schedule of Values, Subgrantee may certify that it has "reached" a location when it is capable of performing a standard installation of Qualifying Broadband Service, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted. See 47 U.S.C. §§ 642(b)(2)(A)(i)(I)-(II); 47 C.F.R. § 1.7001(a)(19).

Attachment 5 - Environmental and Historic Preservation Review

I. General Environmental and Historic Preservation Review Requirements

Subgrantee shall not initiate or allow any grant funded implementation activities—except for the limited permissible activities identified in the “Uses Prior to Implementation” subsection below—prior to the following:

- The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, *et seq.*) (NEPA), and issuance, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470, *et seq.*) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes;
- The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. § 1531, *et seq.*), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. § 1251, *et seq.*), as applicable; and
- Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.

II. NEPA Compliance

To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, the Office shall:

- Serve as a “joint lead agency” in its capacity as the State (or Territory) agency administering the BEAD program in accordance with 42 U.S.C. § 4336a(a)(1)(B) and carry out the duties described in 42 U.S.C. § 4336a(a)(2);
- Complete an evaluation of the sufficiency, applicability and accuracy of the analysis in First Responder Network Authority (FirstNet) Regional Programmatic Environmental Impact Statement (PEIS) chapter as it applies to anticipated implementation activities for Arizona;
- The Parties agree that:
 - Subgrantee will not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified below;
 - Subgrantee must timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. § 4336g(a); and
 - Subgrantee must provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

The Office will certify the sufficiency of all Subgrantee decision documents either by:

- preparing such documents; or
- by supervising Subgrantees' preparation of draft documents, independently reviewing those drafts, and verifying that decision documents meet the requirements of NEPA prior to transmittal to NTIA;

Subgrantee shall, as directed by the Office:

- Submit all decision documents—including any supporting environmental documentation required or requested by NTIA for review.

III. NHPA Compliance

To ensure the timely completion of historic preservation review for all BEAD-funded activities, Subgrantee shall provide all such information as the Office requires to:

- At the earliest possible time, provide the NTIA-assigned Environmental Program Officer sufficient information to initiate Tribal notification via the FCC's Tower Construction Notification System (TCNS) when required for grant funded activities;
- Provide notified Tribes with information regarding grant funded activities via their preferred communication means, as identified in TCNS;
- Apply the Advisory on Historic Preservation (AHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities or any other applicable program comment or program alternative developed to address the Section 106 review of communications facilities;
- Notify NTIA of any Tribal request for government-to-government consultation or any identification that a grant funded activity may impact a historic property of religious or cultural significance to a Tribe; and
- Provide all consulting parties with the statutorily required time to respond to its determination of a grant funded activity's effect on historic properties.

IV. Further Environmental and Historic Preservation Review Guidance

The Parties acknowledge that NTIA will issue further implementation guidance regarding the Office's and Subgrantee's responsibilities under this condition. That guidance will include instructions on the following topics, among others:

- How the ACA should evaluate the sufficiency, applicability and accuracy of the relevant FirstNet PEIS sections;
- How the ACA and/or Subgrantee should evaluate what level of environmental review is appropriate and determine what type of decision document is required for a grant funded activity to proceed;
- NTIA's criteria for determining whether each type of decision document meets the requirements of NEPA;
- How the ACA and/or Subgrantee should format decision documents;
- How the ACA should submit decision documents and any other required

environmental documentation to NTIA;

- How the ACA will work with cooperating agencies;
- How to develop an appropriate milestone schedule and NEPA timeline for meeting NEPA's timing requirements; and
- NTIA's process for notifying the ACA that a decision document meets the requirements of NEPA.

Subgrantee shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of the above activities. Subgrantee must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—*e.g.*, best management practices or other measures necessary to reduce environmental impacts. Subgrantee shall provide any related information requested by the Office or by NTIA (directly or through the Office) to ensure both initial and ongoing compliance with all requirements described above.

V. Uses of Award Funds Prior to Implementation

Subject to section VIII.A. of the Agreement, the allowable use of Award Funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;
- Pre-award application costs incurred solely by the Subgrantee that receives this Subgrant award.
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
- Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts or agreements to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements).

Grant funded activities with significant impacts to environmental or historic resources may face deobligation of funding if impacts cannot be avoided, minimized, or mitigated. Subgrantee shall notify the Office within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.

The Parties acknowledge that any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable requirements.

VI. Archaeological Resources

Burial sites, human remains, and funerary objects are subject to the requirements of all applicable federal, tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantee must notify the Office of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subgrantees should have an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, Subgrantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify the Office, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of the ACA and NTIA.

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Attachment 6 – Other Federal Construction Obligations

1. Energy Efficiency

Subgrantee shall apply, where feasible, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction of the Project.

2. Signage and Public Acknowledgements

Subgrantee is required to post signage and to include public acknowledgements in published and other collateral materials (*e.g.* press releases, marketing materials, webpages, plaques) satisfactory to the Office, NTIA and NIST that identifies grant funded activities and indicates that those activities are “funded by the Infrastructure Investment and Jobs Act.” Subgrantee is required to use the Official Investing in America emblem in accordance with the guidelines and design specifications found in the Building A Better America Brand Guide found here: <https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>. Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Subgrantee burden. Subgrantee should use best efforts to use recycled or recovered materials when procuring signs.

Attachment 7 – Cybersecurity and Supply Chain Risk Management Attestation

[Signatory], [Title], [Entity] hereby attests that:

1. [Entity] has a cybersecurity risk management plan (“CRM Plan”) in place that is:

Operational, if [Entity] is providing service prior to the award of the grant; or

Ready to be operationalized upon providing service, if [Entity] is not yet providing service prior to the grant award;

2. The CRM Plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;

3. The CRM Plan will be reevaluated and updated on a periodic basis and as events warrant;

4. If [Entity] makes any substantive changes to the CRM Plan, a new version will be submitted to the Office within thirty (30) days. [Entity] acknowledges that the Office must provide [Entity]’s CRM Plan to NTIA upon NTIA’s request.

Signatory further attests:

1. Subgrantee has a supply chain risk management plan (“SCRM Plan”) in place that is either:

Operational, if [Entity] is already providing service at the time of the grant; or

Ready to be operationalized, if [Entity] is not yet providing service at the time of grant award;

2. The SCRM Plan is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;

3. The SCRM Plan will be reevaluated and updated on a periodic basis and as events warrant;

4. If [Entity] makes any substantive changes to the SCRM Plan, a new version will be submitted to the Office within thirty (30) days. [Entity] acknowledges that the Office must provide [Entity]’s SCRM Plan to NTIA upon NTIA’s request.

[Entity]

By: _____

[Signatory], [Title]

[Entity]

Date: _____

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Attachment 8 – Civil Rights and Nondiscrimination Law Compliance

No person in the United States may, on the ground of actual or perceived race, color, national origin, sex, gender identity, sexual orientation, age, disability, or handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving federal financial assistance.

Subgrantee hereby agrees to abide by the non-discrimination requirements set forth in the following legal authorities, to the extent applicable, and acknowledges that failure to do so may result in cancellation of this Agreement and/or recoupment of funds already disbursed:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and the DOC implementing regulations, published at 15 C.F.R. part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by Eligible Entity and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
5. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
6. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, which provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e- 1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and
7. Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

Attachment 9 – Other Federal Obligations

1. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

Pursuant to 2 C.F.R. § 200.321, Subgrantee must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the DOC Minority Business Development Agency; and
- f. Requiring subgrantees to take the affirmative steps listed above as it relates to contracts, subcontracts, or subagreements.

2. Prevention of Waste, Fraud and Abuse

a. Training

Consistent with the principles in 2 C.F.R. part 200, at any time(s) during the Period of Performance, the Office or NTIA may direct a member or members of Subgrantee’s key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing Subgrantee’s finances and overseeing any contractors, subcontractors or lower tier subgrantees (for financial matters and/or general oversight related to the grant).

NTIA or the Office will provide instructions on when and how to take such training(s), and costs incurred by Subgrantee relative to the training (*e.g.*, staff time) are eligible for reimbursement pursuant to this Agreement.

b. Monitoring

Subgrantee must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;
- product substitution;
- mismarking or mislabeling on products and materials; and

- time and materials overcharging.

Should Subgrantee detect any fraud schemes or any other suspicious activity, Subgrantee must contact (a) the Office point of contact designated in this Agreement, and (b) the assigned NTIA Federal Program Officer and the DOC Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

c. **Mandatory Disclosures**

Additionally, Subgrantee must make disclosures in accordance with 2 C.F.R. § 200.113, in a timely manner, in writing to the Office. Subgrantee is required to report credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.339. (See also 2 C.F.R. Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.) The Subgrantee may use the ACA Fraud Reporting Form available at <https://www.azcommerce.com/about-us/aca-policies/>.

3. Protection of Whistleblowers

The DOC Financial Assistance General Terms and Conditions are incorporated into every NTIA grant award, including this Agreement. Section F.05 of the DOC GT&Cs states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a Grantee, Subgrantee, contractor, subcontractor or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a federal award, subgrant, or a contract under a federal award or subgrant, a gross waste of federal funds, an abuse of authority relating to a federal award or subgrant or contract under a federal award or subgrant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal award, subgrant, or contract under a federal award or subgrant.

Grantees, Subgrantees, and subcontractors under federal awards and subgrants must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the DOC Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Hotline.aspx>, or the U.S. Office of Special Counsel, toll free at 1-800- 872-9855.

4. Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal Financial Assistance regarding transactions with other persons, including subrecipients and subcontractors.

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Attachment 10 – Property Standards

1. Subgrantee is not required to comply with the Procurement Standards set forth in 2 C.F.R. §§ 200.318-320 and 200.324-326. All other Procurement Standards, *i.e.*, 2 C.F.R. §§ 200.317, 200.321-200.323, and 200.327, remain as requirements.

2. Subgrantee must follow its existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 C.F.R. § 200.313(d), pursuant to an exception from OMB.

If Subgrantee does not have existing commercial practices for managing equipment in the normal course of business, it must comply with 2 C.F.R. § 200.313(d).

3. Subgrantee must comply with the use and equipment disposition requirements of 2 C.F.R. §§ 200.313(c)(4) and 313(e) as follows:

a. If Subgrantee acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), Subgrantee may treat the equipment to be replaced as “trade-in” even if Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports (as specified in the DOC GT&Cs § A.01) to the DOC to ensure adequate tracking of the federal percentage of participation in the cost of the grant funded activities. Subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.

b. Subgrantee may sell, lease, or transfer Project Property only after (i) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (ii) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving Project Property in subsequent guidance.

c. Subgrantee must notify the Office and NTIA upon the filing of a petition under the United States Bankruptcy Code, whether voluntary or involuntary, with respect to Subgrantee or any affiliate that would impact Subgrantee’s ability to perform in accordance with its subgrant.

4. Subgrantees must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Grant Officer, to indicate that Project Property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. Specific requirements are set forth in Attachment 10.a to this Agreement.

5. Subgrantee may encumber Project Property only after provision of notice to NTIA and to the Federal Grant Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the Project Property such that, if the Project Property were foreclosed upon and liquidated, the DOC would be entitled to receive, on a *pari-passu* basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC’s percentage of contribution to the project costs. For example, if the DOC had contributed 50% of the project costs, the DOC would receive, on a *pari-passu* basis, 50% of the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

6. Pursuant to exceptions approved by OMB as described in the UGPN, the property standards set forth in 2 C.F.R. § 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.
7. Subgrantee must comply with 2 C.F.R. § 200.316. Pursuant to this section and in recognition that the BEAD Program is being executed for the benefit of the public being served by the broadband infrastructure projects, for the duration of the Federal Interest Period, Subgrantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.
8. Subgrantee must comply with the insurance requirements of 2 C.F.R. § 200.310.
9. Subgrantee must comply with 2 C.F.R. § 200.312 to the extent any Federally-owned real property or equipment is used by Subgrantee.

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Attachment 10.a – Specific Requirements to Document the Federal Interest in Project Property

I. Covenant of Purpose, Use and Ownership

To document the Federal interest in BEAD-funded real property, Subgrantee must prepare and properly record a “Covenant of Purpose, Use and Ownership” (Covenant). The Covenant differs from a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest to NTIA or the ACA. Rather, pursuant to the Covenant, Subgrantee acknowledges that it holds title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and agrees, among other commitments, that it will repay the Federal interest if it disposes of or alienates an interest in the BEAD-funded property, or uses it in a manner inconsistent with the public purposes of the BEAD award, during the useful life of the BEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the BEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the BEAD-funded property during the Federal Interest Period.

NTIA will provide a suggested sample form to use for the Covenant to record notice of the Federal interest in real property.

II. UCC-1 Filing and Attorney’s Certification

Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this award, Subgrantee shall properly file a UCC-1 with the appropriate State office where the equipment will be located in accordance with the State’s Uniform Commercial Code (UCC). This security interest shall be executed in advance of any sale or lease and not later than closeout of the grant or subgrant, as applicable. The UCC filing(s) must include the below or substantively similar language providing public notice of the Federal interest in the equipment acquired with BEAD funding. Also, a clear and accurate inventory of the subject equipment must be attached to and filed with the UCC-1.

The UCC filing must include the below or substantively similar language:

The Equipment set forth at Attachment A hereto was acquired with funding under a financial assistance award (22-20-B061) issued by the National Institute of Standards and Technology, U.S. Department of Commerce. As such, the U.S. Department of Commerce retains an undivided equitable reversionary interest (Federal interest) in the Equipment for ten years after the end of the year in which the award is closed out in accordance with 2 C.F.R. § 200.344.

In addition, within fifteen (15) calendar days following the required UCC filing(s), Subgrantee shall provide the Office and the Federal Grant Officer with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with Award Funds including all subgrants, along with a certification from legal counsel, licensed by the State within which the filings were made (Attorney’s Certification), that the UCC filing was properly executed and filed in accordance with applicable state law. The Attorney’s Certification must include the below or substantively similar language:

NIST Award Number: 22-20-B061

Pursuant to 28 U.S.C § 1746, I hereby certify as follows:

I am legal counsel at _____.

I am licensed to practice law in the State of _____ having been a license holder of said state and in good standing since _____.

Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the _____ on _____, 202x, bearing the following filing information [insert filing data, e.g., instrument number, etc.] and consists of ___ recorded pages as certified by the Secretary of State of ____.

I certify that this UCC-1 form(s) has/have been validly executed and properly recorded as noted above. I certify under the penalty of perjury that the foregoing is true and correct.

Executed on this ___ day of _____.

(Attorney name and title)

(Address and phone number)

In addition, during the estimated useful life of the Project Property, Subgrantee shall timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific award condition. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to the Office and the Federal Grant Officer within fifteen (15) calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to the Office, NTIA, and the Federal Grant Officer.

Attachment 11 – Reporting

Monthly Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the Office a “Monthly Progress Report” for the Project on a monthly basis for the period ending the last calendar day of each month, due no later than seven (7) calendar days following the end of each reporting period. The report shall include, at a minimum:

1. Miles of Project network constructed; and
2. End Users that obtained access to broadband service during the reporting period;
3. Award Funds expended, reported in a manner consistent with the requirements of section VI.F. of this Agreement; and
4. All instances of known damage to existing underground utilities that occur during the construction or installation of broadband infrastructure funded by the Arizona BEAD Program, in a manner and form specified by the Office.

Semiannual Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the Office a “Semiannual Progress Report” for the Project on a semi-annual basis for the periods beginning on January 1 and ending June 30 and beginning on July 1 and ending on December 31 (or any portion thereof) no later than fifteen (15) calendar days following the end of each reporting period. The Semiannual Progress Report shall contain the following information:

1. A list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. § 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
2. New Project locations served within the relevant reporting period and, for each such service and whether service taken (if applicable);
3. Whether each address or location identified in item 2 is residential, commercial, or a community anchor institution;
4. A description of the types of facilities that have been constructed and installed;
5. A description of the peak and off-peak actual speeds of the broadband service being offered;
6. A description of the maximum advertised speed of the broadband service being offered;
7. A description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
8. List all middle mile interconnection agreements made to Subgrantee during the reporting period, and their current status;
9. The number and amount of contracts and subcontracts awarded by Subgrantee, disaggregated by recipients of each such contract or subcontracts that are MBEs or WBEs;
10. Any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor

regulation, for broadband infrastructure projects;

11. A SF-425, Federal Financial Report that meets the requirements described in the DOC GT&Cs, Section A.01 for Financial Reports;
12. A SF-429, Real Property Status Report Federal Financial Report that meets the requirements described in the DOC GT&Cs, Section A.01 for Real Property Status Reports;
13. A SF-428, Tangible Personal Property Status Report that meets the requirements described in the DOC GT&Cs, Section A.01 for Tangible Personal Property Status Reports;
14. For projects over \$5,000,000 (based on expected total cost):
 - a. *Wage information.* Subgrantee may provide:
 - i. Certification that all laborers and mechanics employed by contractors and subcontractors in the performance of the Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of Arizona in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”); *or*
 - ii. A project employment and local impact report detailing:
 - (A) The number of contractors and subcontractors working on the Project;
 - (B) The number of workers on the Project hired directly and hired through a third party;
 - (C) The wages and benefits of workers on the Project by classification; and
 - (D) Whether those wages are at rates less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of Arizona in which the work is to be performed.
 - b. *Project Workforce Information.* Subgrantee may provide:
 - i. Certification that the Project either:
 - (A) will use a unionized project workforce; or
 - (B) includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. § 158(f)); or
 - ii. A project workforce continuity plan detailing:

- (A) Steps taken and to be taken by Subgrantee to ensure the Project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the Project (as required in Section IV.C.1.e of the BEAD NOFO), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community-based groups;
 - (B) Steps taken and to be taken by Subgrantee to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project;
 - (C) Steps taken and to be taken by Subgrantee to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (*e.g.*, OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;
 - (D) The name of any subcontracted entity performing work on the Project, and the total number of workers employed by each such entity, disaggregated by job title; and
 - (E) Steps taken and to be taken by Subgrantee to ensure that workers on the Project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.
15. Certification by an officer of Subgrantee that:
- a. Broadband Service plans offered over the Project do not contain data usage caps for subscribers.
 - b. That Subgrantee has informed its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712 in the predominant native language of the workforce, and required its subcontractors and subgrantees to do the same.
 - c. The information in the Semiannual Progress Report is accurate.
 - d. Subgrantee complies with the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3702 and 3704, as supplemented by 29 C.F.R. part 5
 - e. Subgrantee complies with Federal Fair Labor Standards Act, as amended (29 U.S.C. §§ 201-219), as supplemented by 29 C.F.R. part 516), including provisions thereof related to collective bargaining.
 - f. If Subgrantee is a governmental entity and uses these funds for the construction of facilities over which it will maintain a proprietary interest (*e.g.*, governmental ownership of the network), it has been encouraged to require labor peace agreements, unless

prohibited by state or local law.

- g. If Subgrantee is a non-governmental entity and uses these funds to construct broadband facilities over which no governmental entity maintains a proprietary interest, it has been encouraged to require labor peace agreements, unless prohibited by state or local law.

Annual Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the Office an “Annual Progress Report” for the Project on an annual basis for the period ending December 31 of each year (or any portion thereof) no later than thirty (30) calendar days following the end of each reporting period. The Annual Progress Report shall include, at a minimum:

1. A summary of the items contained in the Subgrant Agreement.
2. The number of residential and commercial locations that have access to Qualifying Broadband Service as a result of the Project.
3. The percentage of End Users in the project area who have access to Qualifying Broadband Service and the percentage of End Users with access who actually subscribe to the Qualifying Broadband Service.
4. The average number of subscriptions for residential and commercial Qualifying Broadband Service in the Project area.
5. Any right-of-way fees, permit fees, or franchise fees paid to a local government, state government, railroad, private entity, or person in connection with the Project during the term of this Agreement.
6. Any delays encountered when obtaining a right-of-way permission.
7. Evidence consistent with the Federal Communications Commission attestation that the Subgrant recipient is making available the proposed advertised speed, or a faster speed, as set forth in Attachment 2.
8. Unless Subgrantee meets one of the exceptions set forth in 2 C.F.R. § 170.110, Subgrantee shall provide executive compensation information to the Office in accordance with 2 C.F.R. Part 170 and pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). See DOC GT&C G.05.0.

Reporting Requirements on Expiration of the Period of Performance

Subgrantee shall submit a final Form SF-425 and a final Performance (Technical) Report to the Office within ninety (90) calendar days after the expiration of the Period of Performance.

Attachment 12 – Disputes

1.0 Informal Dispute Resolution. The Parties to this Agreement agree that time is of the essence in relation to performance of the Agreement and completion of the Project, therefore any and all disputes in relation to the Agreement will initially be referred to the designated Project manager and/or the Subgrantee representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution process set forth below, which is intended to be an expedited process.

2.0 Dispute Resolution Representative Process

2.1 The Parties under the Agreement agree that all claims and disputes in relation to the Project that are not resolved in the ordinary course of the Project (“Claim” or “Claims”) shall, as a prerequisite to any mediation, or litigation of the Claim(s), first be submitted for resolution between the designated Dispute Resolution Representative (“DRR”) for each Party as set forth herein (the “DRR Process”).

2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

(a) The DRR Process shall be initiated by the party asserting the Claim(s) serving written Notice on the other party’s designated DRR setting forth in detail the basis for the Claim(s), including (i) the basis for entitlement and amount of its Claim(s), with specific reference(s) to the provisions in the Agreement and any related Project documents that apply, including the Project Schedule; (ii) identifying any other party or parties involved in the Claim(s), and how they are involved; (iii) the specific relief requested, the amount or time requested, and how such relief was determined, together with supporting, cost, pricing data, and scheduling data; and (iv) efforts made to date to resolve any issues.

(b) The DRR Notice shall be delivered and e-mailed to the other party’s or parties’ designated DRR(s).

2.3 The responding party shall respond in writing (“DRR Response”) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items in the DRR Notice that are not disputed, or disputed, and/or are which require further information. The DRR Response shall be delivered and e-mailed (with read receipt) to the other party or parties designated DRR.

2.4 The DRR for the respective parties to the Claim(s) shall then meet as soon as reasonably possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to any specific pending Claim(s).

2.7 Unless otherwise designated in a written notice to the other parties, the Office's Project Manager and the Subgrantee designated Representative shall act as the respective DRRs.

2.8 The resolution of any Claim(s) shall be set forth in writing and shall be signed by the respective designated DRRs. If the resolution involves modification to this Agreement, the parties shall sign an appropriate written modification or other document pursuant to the terms of this Agreement.

3.0 Litigation

3.1 Unless extended by written agreement of the parties involved in a dispute, any Claim(s) not resolved through the DRR Process set forth above within five (5) calendar days after the meeting required under section 2.4, above, or after the DRR is terminated pursuant to section 2.5, above, whichever is earlier, the Claim(s) shall be resolved through litigation brought in the Superior Court of Arizona in Maricopa County.

3.2 No party in any dispute resolution or court proceeding under this Agreement shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred, except as required by law.

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