Attachment 11.b. – Disputes – Tribal Subgrantee
[If applicable, based on subgrantee selection.]

1.0 **Notice/Negotiation**. If either the party believes the other has failed to comply with the requirements set forth in this Agreement, or if a dispute arises as to the proper interpretation of those requirements, then either party may serve a written notice on the other identifying the specific provision or provisions of this Agreement in dispute and specifying in detail the factual bases for any alleged non-compliance and the interpretation of the provision or provisions of the Agreement or proposed by the party providing notice, it being understood that nothing in this Attachment 11.b limits any enforcement, remedy, or clawback authority available under the BEAD GT&Cs or applicable federal law, including 2 C.F.R. §§ 200.339 - 200.343.

1.1 Within ten (10) business days following delivery of the written notice of dispute, the designated Dispute Resolution Representative ("DRR") for each party shall meet to voluntarily resolve the compliance or interpretation dispute through negotiation. If those negotiations fail to resolve the dispute, the DRR for each party, and representatives designated by the Governor of Arizona and the President of the Navajo Nation shall meet in a further effort to voluntarily resolve the dispute through further negotiation.

2.0 **Mediation**. If the Parties are unable to resolve by negotiation any dispute regarding compliance with the requirements of this Agreement, or the proper interpretation of those requirements, within thirty (30) calendar days after delivery of the written notice of dispute, the Parties shall, upon the request of either party, endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules and Mediation Procedures, effective September 1, 2022 (unless otherwise agreed to by the Parties), and the procedures set forth below. Although the Parties shall be required to participate in the mediation process if requested, a request for mediation shall not preclude either party from pursuing any other available remedy.

2.1 Selection of mediator. If the Parties agree upon a mediator, that person shall serve as the mediator. If the Parties are unable to agree on a mediator within ten (10) business days of a request for mediation, then the mediator shall be selected by the AAA in accordance with its mediator appointment procedures.

2.2 Conduct of mediation. The mediator shall control the procedural aspects of the mediation and shall be guided by the AAA mediation procedures.

2.3 Costs of mediation. The costs of mediation shall be borne equally by the Parties, with one-half (50%) of the expenses charged to each party.

3.0 **Arbitration**. If the Parties fail to resolve a dispute regarding compliance with the requirements of this Agreement or the proper interpretation of those requirements through negotiation or mediation within thirty (30) calendar days after delivery of the written notice of dispute, upon a demand by either party, the dispute shall be settled through binding arbitration at a neutral location, mutually agreed to by the Parties. The arbitration shall be conducted in accordance with the AAA arbitration rules, as modified by the following:

3.1 Demand for arbitration. No earlier than thirty (30) calendar days after the delivery of the notice required under Section 1.0, above, either party may serve on the other a written demand for arbitration of the dispute, in accordance with AAA Rule R-4. The demand shall contain a statement setting forth the nature of the dispute and the remedy sought. The other party shall file Answers and Counterclaims, in accordance with AAA Rule R-5, within twenty (20) calendar days. Failure to respond shall not delay the arbitration. In the absence of a response, notice of defense, all claims set forth in the demand shall be deemed denied.

3.2 Arbitrators. Unless the Parties agree in writing to the appointment of a single arbitrator, the arbitration shall be conducted before a panel of three (3) arbitrators. In the absence of an agreement to a single arbitrator, within twenty (20) calendar days of the defending party's receipt of the demand, each party shall select an arbitrator. As soon as possible thereafter, but in no event more than forty (40) calendar days following delivery of the demand, the party-appointed arbitrators shall discuss and select a third arbitrator from the AAA National Roster, who shall chair the tribunal. Alternatively, if the Parties have agreed upon a list of arbitrators acceptable to both Parties, the AAA shall select the third arbitrator from that list. Unless the Parties agree otherwise, at least one (1) of the arbitrators on the tribunal shall be an attorney or retired judge knowledgeable about U.S. federally-funded grant programs and federal Indian law. If the Parties do not appoint an arbitrator with those qualifications, the AAA shall do so. Once the tribunal is impaneled, there shall be no ex parte contact with the arbitrators, except for contacts with the office of the tribunal chair regarding scheduling or other purely administrative matters that do not deal with substantive matters or the merit so of the issues.

3.3 Selection of arbitrator(s) by the AAA. If a party fails to appoint an arbitrator, or if the party-appointed arbitrators have failed to appoint a third arbitrator within the time period provided above, either party may request appointment of the arbitrator by the AAA. The request shall be made in writing and served on the other party. AAA shall fill any vacancies on the tribunal within ten (10) business days of a request in accordance with AAA Rule R-21.

3.4 Neutrality of the arbitrators. All arbitrators shall be independent and impartial. Upon selection, each arbitrator shall promptly disclose in writing to the tribunal and the Parties any circumstances that might cause doubt regarding the arbitrator's independence or impartiality. Such circumstances may include, but shall not be limited to, bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. Following such disclosure, any arbitrator may be challenged in accordance with AAA Rule R-19.

3.5 Cost of arbitration. The costs of arbitration shall be borne equally by the Parties.

3.6 Preliminary conference/hearing. The tribunal shall hold an initial pre-hearing conference no later than thirty (30) calendar days following the selection of the members of the tribunal and shall permit discovery and make other applicable decisions in accordance with AAA Rules R-22 through R-24. Unless the Parties agree otherwise, or unless the tribunal determines compelling circumstances exist which demand otherwise, the arbitration shall be completed

within one hundred and eighty (180) calendar days after the initial preliminary conference/hearing.

3.7 Discovery.

(a) Documents. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or on which the producing party may rely in support of or in opposition to any claim or defense. Except as permitted by the tribunal, all written discovery shall be completed within ninety (90) calendar days following the initial preliminary conference/hearing. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the tribunal, whose determination shall be conclusive.

(b) Depositions. Consistent with the expedited nature of arbitration and unless the Parties agree otherwise, a party, upon providing written notice to the other party, shall have the right to take the depositions of up to five (5) witnesses, each of which shall last no longer than one (1) day. Unless the Parties agree otherwise, additional depositions shall be scheduled only with the permission of the tribunal and for good cause shown. A party's need to take the deposition of a witness who is not expected to be available for an arbitration hearing shall be deemed to be good cause. Except as permitted by the tribunal, all depositions shall be concluded within one hundred and twenty (120) calendar days following the preliminary hearing/conference. All objections that might be raised to deposition testimony shall be reserved for the arbitration hearing, except for objections based on privilege, proprietary or confidential information, and objections to form or foundation that could be cured if raised at the deposition.

3.8 Injunctive relief in aid of arbitration. The NNBO (including the Navajo Nation) or the Office (including the ACA) may seek in a court of competent jurisdiction provisional or ancillary remedies, including preliminary injunctive relief, pending the outcome of an arbitration proceeding, or permanent injunctive relief to enforce an arbitration award.

3.9 Arbitration hearing. Unless the Parties agree otherwise, the tribunal shall provide the Parties with at least sixty (60) calendar days' notice of the date of the arbitration hearing. Unless the Parties agree otherwise, there shall be a stenographic record made of the hearing, with the cost to be shared equally by the Parties. The transcript shall be the official record of the proceeding.

3.10 Decision of the tribunal. The decision of the tribunal shall be in writing, setting forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the disposition of each claim. The written decision of the tribunal shall be made promptly and, unless otherwise agreed to by the Parties, no later than forty (40) calendar days from the date of the closing of the hearing or, if oral hearings have been waived, no later than forty (40) calendar days from the date the dispute is submitted to the tribunal for decision. The tribunal may take additional time to render its decision if the tribunal determines that compelling circumstances require additional time. The tribunal may issue awards in accordance with AAA Rule R-49. The decision of the majority of the arbitrators shall be final, binding, and non-

appealable, except for a challenge to a decision on the grounds set forth in 9 U.S.C. § 10. The failure to comply with a judgment upon the award of the arbitrators shall be a breach of this Agreement.

3.11 Governing law/jurisdiction. Title 9 of the United States Code (the United States Arbitration Act) and the AAA rules shall govern the interpretation and enforcement of this disputes process, but nothing in here shall be interpreted as a waiver of the State of Arizona's Tenth Amendment or Eleventh Amendment immunity or as a waiver of the Navajo Nation's sovereign immunity. The tribunal shall resolve the disputes in accordance with, and every decision of the tribunal must comply and be consistent with this Subgrant Agreement, as they may be amended or modified and as may be interpreted by courts of competent jurisdiction, and shall further be consistent with applicable BEAD Program requirements.

3.12 Judicial confirmation. Judgment upon any award rendered by the tribunal may be entered in any court having competent jurisdiction.

3.13 Injunctive Relief. The Parties acknowledge that, although negotiation followed by mediation and arbitration are the preferred methods of dispute resolution, this disputes process shall not impair any rights to seek in any court of competent jurisdiction injunctive relief or judgment upon an award rendered by an arbitration tribunal. The Navajo Nation waives its sovereign immunity for the limited purpose of enforcement of the terms of this Agreement and any resulting arbitration award, and the Parties acknowledge that this limited waiver is intended solely to permit effective enforcement of BEAD-related obligations under this Agreement and shall not be construed as a general waiver of sovereign immunity or as expanding jurisdiction beyond that necessary to enforce such obligations. In an action brought by the Office (including the ACA) against the NNBO (including the Navajo Nation) one court of competent jurisdiction is the U.S. District Court for the District of Arizona. In an action brought by the NNBO (including the Navajo Nation) against the Office (including the ACA), one court of competent jurisdiction is the Arizona Superior Court. Nothing in this Agreement is intended to prevent either party from seeking relief in another court of competent jurisdiction, or to constitute an acknowledgment that the courts of the State of Arizona have jurisdiction on over the NNBO (including the Navajo Nation) or the courts of the Navajo Nation have jurisdiction over the Office (including the ACA).

Attachment 14 – Tribal Subgrantee
[If applicable, based on subgrantee selection.]

This Attachment 14 is incorporated into and made part of the Agreement between the ACA and the Office, and the Subgrantee. This Attachment 14 applies when the Subgrantee is a federally recognized Indian Tribe, band, nation, pueblo, community, college, university, Alaska Native village, or other Tribal Government entity eligible to receive the subaward as a Native American Tribe ("Tribal Subgrantee"). The Parties intend this Attachment 14 to make limited, status-specific modifications necessary for use of the Agreement with a Tribal Subgrantee. Except as expressly modified by this Attachment 14 and Attachment 11.b. (Disputes - Tribal Subgrantees), all terms and conditions of the Agreement remain in full force and effect.

The Agreement shall be interpreted, to the maximum extent possible, so that provisions of the Agreement, including this Attachment 14, are harmonized. In the event of a conflict, this Attachment 14 shall control, but only to the extent necessary to give effect to the status of the Tribal Subgrantee and the requirements applicable to the Project on Tribal Lands or otherwise in connection with the Tribal Subgrantee as set forth for the BEAD Program, including all federal, state, or local requirements for implementation of this Project. If any provision of this Attachment 14 is determined unenforceable, the remaining provisions shall continue in effect to the maximum extent permitted by law.

SUPPLEMENTAL RECITALS

WHEREAS, the Subgrantee is a federally recognized Indian Tribe or Tribal entity duly organized and existing under applicable Tribal and federal law and is eligible to enter into this Agreement;

WHEREAS, the Parties acknowledge the sovereign governmental status of the Tribal Subgrantee;

WHEREAS, the Parties intend that this Agreement shall be interpreted and administered in a manner consistent with applicable federal law, BEAD Program requirements, and the sovereign status of the Tribal Subgrantee;

WHEREAS, the Parties acknowledge that certain provisions of the Agreement may be supplemented or modified by this Attachment 14 when the Subgrantee is a Native American Tribe; and

WHEREAS, the Parties acknowledge that Attachment 11.b. sets forth dispute provisions applicable when the Subgrantee is a Native American Tribe.

A. Construction and Preservation of Agreement

1. This Attachment 14 supplements but does not replace the Agreement.

2. Except as expressly stated otherwise, all references in the Agreement to the "Subgrantee," or "LEO Subgrantee" (if applicable), include the Tribal Subgrantee, and "local" includes Tribal statutes, codes, regulations, ordinances, consents, resolutions, or other legal requirements.

3. Except as expressly stated otherwise in this Attachment 14, all basic business, technical, performance, reporting, monitoring, federal compliance, closeout, and Federal Interest Period obligations in the Agreement remain in effect.

4. Nothing in this Attachment 14 is intended to reduce or waive any requirement imposed by applicable federal or state law, the BEAD Program, including the BEAD NOFO, the BEAD GT&Cs, the BEAD RPN, the DOC GT&Cs, or other controlling authority identified in Section II. of the Agreement.

B. Status of Tribal Subgrantee

1. The Tribal Subgrantee represents that it is duly authorized under applicable Tribal and federal law to enter into and perform the Agreement including this Attachment 14.

2. The Tribal Subgrantee shall provide evidence reasonably satisfactory to the Office of the Tribal action, authorization, resolution, consent, ordinance, or other governing approval authorizing execution of the Agreement and all related documents, including, if applicable, any Tribal resolution or other consent instrument required by ACA for BEAD-funded deployment on Tribal Lands, as amended, clarified, or waived by NTIA for the BEAD Program.

3. References in the Agreement to corporate authority, corporate action, articles of incorporation, officers, directors, or similar business-entity concepts shall be read, as applicable, to include equivalent Tribal governmental authority, Tribal organizational authority, or authorization under applicable Tribal law.

C. Sovereign Status; No Implied Waiver

1. The Parties acknowledge the sovereign status of the Tribal Subgrantee.

2. Nothing in the Agreement or this Attachment 14 shall be construed as an implied waiver of the sovereign immunity of the Tribal Subgrantee, its agencies, instrumentalities, officers, employees, or agents.

3. Waiver of sovereign immunity by the Tribal Subgrantee, if any, must be express, unmistakable, in writing, and set forth only in Attachment 11.b. or another written amendment expressly approved for that purpose by the Tribal Subgrantee and the ACA.

4. Nothing in this Attachment 14 shall be construed to waive the sovereign immunity of the State of Arizona.

D. Tribal Law; Tribal Authorizations; Tribal Lands

1. To the extent the Project involves Tribal lands, rights-of-way, easements, leases, permits, cultural resources, governmental approvals, or access rights subject to Tribal jurisdiction, the Tribal Subgrantee shall comply with applicable Tribal law and procedures in addition to applicable federal law and BEAD Program requirements.

2. The Tribal Subgrantee shall obtain and maintain all Tribal governmental approvals, resolutions, permits, licenses, land-use permissions, or similar authorizations required under applicable Tribal law for the Project, including any formal resolution or other instrument documenting the Tribal Subgrantee's consent to BEAD-funded deployment on Tribal Lands to the extent such consent is required by applicable law or the BEAD Program.

3. Nothing in the Agreement authorizes ACA to grant access to Tribal lands, Tribal trust lands, restricted lands, rights-of-way, or other property subject to Tribal jurisdiction without Tribal approval.

4. To the extent the Project includes facilities on Tribal lands, the Tribal Subgrantee shall cooperate in good faith with the Office to document access rights, land status, and other information reasonably necessary for BEAD compliance, monitoring, environmental review, historic preservation review, and documentation of the federal interest. Site visits will adhere to Tribal Subgrantee safety and cultural rules.

5. By signing this Agreement, Tribal Subgrantee certifies to ACA that it plans to be in compliance and will maintain compliance with all applicable Tribal employment, contracting, or preference provisions, to the extent consistent with applicable law and BEAD Program requirements.

E. State Law and Arizona-Specific Requirements

1. Any Arizona-specific requirement in the Agreement shall apply to the Tribal Subgrantee only to the extent such requirement is applicable as a matter of law or is expressly adopted by the Agreement notwithstanding the Tribal status of the Subgrantee.

2. If an Arizona-specific procedural, licensing, qualification, filing, venue, bonding, insurance, notice, public-records, or similar requirement is not legally applicable to the Tribal Subgrantee or cannot be applied without amendment or modification because of the Tribal Subgrantee's sovereign status, the Parties shall construe the requirement in a manner that preserves the closest practicable equivalent protection, compliance objective, or administrative function consistent with applicable law.

3. Without limiting the foregoing, references in the Agreement to Arizona licensure,

collectability in Maricopa County, Arizona recording systems, Arizona procurement forms, Arizona business authorization, or similar state-law constructs shall be read subject to this Attachment 14 and Attachment 11.b.

F. Disputes

1. All disputes involving the Tribal Subgrantee shall be governed by Attachment 11.b. to the extent stated therein.

2. If the Agreement otherwise contains governing-law, forum, venue, service-of-process, remedies, or enforcement provisions inconsistent with the Tribal Subgrantee's sovereign status, Attachment 11.b. shall control.

3. Pending resolution of a dispute, the Tribal Subgrantee shall continue performance to the extent required by the Agreement and applicable law, unless otherwise provided in Attachment 11.b. or directed by the Office in a manner consistent with the Agreement.

G. Environmental Review; Historic Preservation; Tribal Cultural Resources

1. The Tribal Subgrantee shall comply with all environmental and historic preservation requirements applicable to the Project, including Attachment 5 and all applicable federal requirements.

2. If the Project may affect properties of religious or cultural significance to a Tribe or Tribal historic resources, the Parties shall coordinate in good faith to support compliance with applicable federal review requirements, including any required communications with NTIA, SHPOs, THPOs, consulting parties, or other appropriate authorities.

3. Nothing in the Agreement limits any right of the Tribal Subgrantee, in its governmental capacity or otherwise as authorized by law, to identify concerns relating to Tribal cultural resources, sacred sites, burial sites, or historic properties.

H. Property, Recording, and Documentation of Federal Interest

1. The Parties acknowledge that the Agreement includes obligations relating to Project Property, the Federal Interest Period, and documentation of the federal interest.

2. If the Project includes real property, equipment, rights-of-way, improvements, easements, leases, or other assets located on Tribal lands or otherwise subject to Tribal or federal restrictions on alienation, encumbrance, recording, or transfer, the Parties shall cooperate in good faith to use a legally sufficient method to document the federal interest that is consistent with applicable federal law, Tribal law, land status, and NTIA requirements.

3. The Tribal Subgrantee shall not be required to make a filing, recording, encumbrance, covenant, UCC filing, mortgage-style filing, or similar recordation in a manner

that is prohibited by applicable federal law or by the legal status of the affected Tribal lands, trust lands, restricted lands, or Tribal property interests.

4. If a requirement in Attachment 9. or 9.a. cannot be applied as written because of land status or Tribal law, the Parties shall work in good faith to implement a lawful substitute documentation approach that preserves the federal interest to the maximum extent permitted by law and acceptable to NTIA and the Federal Program Officer.

I. Confidentiality; Sensitive Tribal Information

1. The Parties acknowledge that records relating to the Agreement may be subject to disclosure requirements applicable to ACA.

2. If the Tribal Subgrantee identifies information as confidential, proprietary, culturally sensitive, security-sensitive, or otherwise protected from disclosure under applicable law, the Office shall handle such information in accordance with the Protected and Proprietary Information and Public Records provisions of the Agreement and applicable law.

3. The Parties shall use reasonable efforts to avoid unnecessary disclosure of culturally sensitive information, sacred site information, burial-site information, archaeological site information, network security information, and other sensitive material relating to Tribal lands or Tribal governmental operations.

J. Insurance, Bonding, Financial Assurances, and Related Instruments

1. The Tribal Subgrantee shall comply with applicable BEAD Program requirements and Agreement provisions relating to letters of credit, bonds, insurance, and other financial assurances, except to the extent a specific requirement must be adjusted to reflect the legal status of the Tribal Subgrantee or the form of instrument available to it.

2. If any required letter of credit, bond, or similar instrument must be modified in form, issuer, governing law, venue, or enforcement language because the Subgrantee is a Native American Tribe, the Parties shall work in good faith to adopt a form acceptable to the Office and, if required, NTIA, that preserves substantially equivalent protection.

K. Subcontracts; Lower Tier Agreements; Tribal Entities

1. The Tribal Subgrantee remains responsible for ensuring compliance by all lower tier subgrantees, subcontractors, vendors, consultants, and other counterparties used in connection with the Project. Notwithstanding the Tribal status of the Tribal Subgrantee, lower tier non-Tribal subgrantees or subcontractors must comply with all applicable federal, state, and local laws and regulations, and all applicable terms and conditions of this Agreement to extent work is performed or supported outside of Tribal lands. For work performed on Tribal lands, applicable Tribal requirements will apply.

2. The Tribal Subgrantee may enter into lower tier agreements with Tribal departments, Tribal instrumentalities, Tribal enterprises, Tribal utilities, or other entities, provided that all such arrangements remain consistent with the Agreement and applicable BEAD Program requirements.

3. Nothing in this Attachment 14 relieves the Tribal Subgrantee of responsibility for performance of the Project or compliance with the Agreement.