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## State of Minnesota Office of Broadband Development (OBD)

### BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD)

#### Cover Page

Grantee SWIFT Information	Grant Contract Agreement Information	Grant Program Name and Number
<b>Name of OBD Grantee</b> (as it appears in SWIFT) <b>and Project name:</b> Enter Grantee's Name	<b>SWIFT Contract &amp; Procure It &amp; Swift PO Numbers:</b> Enter Grant Contract Agreement Number* and Procure it number (from contract after procured)	<b>BEAD Contract Grant</b> #Enter OBD grant number
<b>Grantee SWIFT Vendor Number:</b> Enter SWIFT Vendor ID	<b>Effective Date:</b> Select date, date all signatures are collected and the Grant Contract Agreement is fully executed. <b>Expiration Date:</b> RFP Posting Date	<b>Total Federal Grant Funds:</b> \$0.00 <b>Total Match Funds:</b> <u>\$0.00</u> <b>Total Project Cost:</b> \$0.00 <b>Total Match %:</b> <span style="border: 1px solid black; padding: 0 5px;">XX%</span>
<b>Grantee <u>Unique Entity Identifier</u> (UEI)</b> Name and Number	<b>UEI Name:</b> The name listed here must match registered name at SAM.gov. <b>UEI Number:.</b>	
<b>Agreement Purpose</b>	The purpose of this Agreement is to facilitate timely completion by Grantee of the broadband infrastructure Project described in Exhibit A while complying with all requirements found in the laws, regulations, and official guidance implementing the broadband awards made from the Broadband Equity, Access, and Deployment (BEAD) program. This grant Agreement is issued as a Fixed Amount Subaward per 2 C.F.R. § 200.201 subject to additional State rules, regulations, and requirements.	
<b>Primary Contacts</b>	For the State  Name Office of Broadband Development 180 E 5 <sup>th</sup> St 12 <sup>th</sup> Floor St. Paul, MN 55101-1678 Email	For Grantee  Name Organization Name Address Address Email

#### ***Davis-Bacon and Prevailing Wage***

- ☐ (If Checked) This contract does not have a Middle-Mile component so all references to Davis-Bacon and Prevailing Wage do not apply.

#### ***Contracting and Bidding Requirements (4.3)***

- ☐ (If Checked) Section 4.3 in the Grant Agreement is waived and does not apply to this contract as vendors included in response to the competitive grant request for proposal process were approved and incorporated as an approved work plan for the grant and/or it is determined there is only one legitimate or practical source for such materials or services and the grantee has established a fair and reasonable price.

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*Notice to Grantee about Federal Funds*

You have received a sub-award of federal financial assistance from the State. Information about the sub-award is being shared with you per [2 CFR § 200.332](#). Please keep a copy of this cover sheet with the grant Contract Agreement.

Name of Federal Awarding Agency	U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA)
<a href="#">Assistance Listing Name and Number</a> (formerly Catalog of Federal Domestic Assistance, “CFDA”)	<b>Assistance Listing Name:</b> Broadband Equity, Access, and Deployment Program <b>Assistance Listing Number:</b> 11.035
Federal Award Identification Number (FAIN)/ Grantor’s Pass-through Number	
Federal Award Date (Date OBD received federal grant)	
Total Amount of Federal Award Received by OBD	\$651,839,368.20
Amount of funding from this federal award OBD is issuing to Grantee	\$0.00

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## STATE OF MINNESOTA

### **DRAFT** GRANT CONTRACT AGREEMENT

This grant contract agreement is between the State of Minnesota, acting through the Department of Employment and Economic Development, Office of Broadband Development, (“State”) ("State") and [Give the full name of the grantee including its address] ("Grantee").

#### Recitals

1. Under [Minn. Stat. §§ 116J.395 - 116J.396](#) and [Laws of Minnesota 2021, 1st Spec. Sess. chapter 10, article 1, section 7](#) the State is empowered to administer the BEAD Grant Program and enter into this grant contract agreement to provide funds to assist broadband providers with eligible broadband deployment activities.
2. The State is in need of partnerships to promote the expansion of access to broadband service to all areas of the state and to incentivize deployment of broadband infrastructure to all unserved and underserved areas of the state.
3. If administrative costs are eligible under this grant, then pursuant to [Minn. Stat. §16B.98](#), Subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant contract agreement.
4. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract agreement to the satisfaction of the State.
5. Exhibit A – The Terms and Conditions Applicable to BEAD awards of this Agreement shall survive the Performance Period and shall continue in full force and effect until Grantee has completed and is in compliance with all the requirements of this Agreement.
6. This Agreement in all other respects is a “subaward” as that term is defined in 2 CFR § 200.201 and that Grantee is a “subrecipient” as that term is defined in 2 CFR § 200.201 and as evaluated under 2 CFR § 200.331.
7. This award is a “fixed amount subaward” as defined in 2 CFR § 200.201 where the major purpose of the subaward is a broadband infrastructure project and will be administered by the State pursuant to the Uniform Guidance Policy Notice published by NTIA on December 26, 2023, titled “Policy Notice: Tailoring the Application of Uniform Guidance to the BEAD Program”.

#### Grant Contract Agreement

### 1 Term of Grant Contract Agreement

#### **1.1 Effective date:**

The date the State obtains all required signatures under [Minn. Stat. §16B.98](#), Subd. 5. Limited allowable uses of Award Funds prior to the execution of this grant contract agreement, are identified in EXHIBIT C - Environmental and Historic Preservation Review; General NEPA Compliance, Section 4, however no eligible expense incurred prior to the posting date of the Call for BEAD Applications will be reimbursed. In the event this grant contract agreement is not fully executed and encumbered, no expenditures will be reimbursed. Per [Minn.Stat. § 16B.98](#), Subd. 7, no payments will be made to the Grantee until this grant contract agreement is fully executed.

#### **1.2 Expiration date:**

**A:** [Spell out full date (e.g., June 30, 2025)], Four years from the date of execution (Period of Performance) or until all obligations have been satisfactorily fulfilled, whichever occurs first.

#### **1.3 Survival of Terms.**

The following clauses survive the expiration or cancellation of this grant contract agreement: 9. Liability; 10. State Audits; 11. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

### 2 Grantee’s Duties

#### **2.1 Duties, Deliverables, and Completion Dates**

The Grantee, who is not a state employee, will:

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Comply with required grants management policies and procedures set forth through [Minn.Stat. §16B.97](#),

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Subd. 4 (a) (1) and will perform the duties outlined in EXHIBIT F - Grantee's Duties, which are attached and incorporated into this grant contract agreement.

The following exhibits are attached and incorporated into this grant contract agreement:

EXHIBIT A – Terms and Conditions Applicable to BEAD Grant Awards

EXHIBIT B – BEAD Network Deployment, Performance and Service Requirements' Related remedies and penalties; Reporting Requirements

EXHIBIT C – Environmental and Historic Preservation Review; General NEPA Compliance

EXHIBIT D – Project Property - Specific Requirements and Documentation of the Federal Interest

EXHIBIT E – Grant Application

EXHIBIT F – Grantee's Duties *No terms or conditions of the Pre-qualification or Grant*

*Application will be construed to modify, diminish, or derogate the terms and conditions of this Contract.*

EXHIBIT G – Project Budget

EXHIBIT H – Project Timetable/Milestones

EXHIBIT I – Letter of Credit or Performance Bond

EXHIBIT J – Place Holder Proceed to Work Order(s) (multiple if in phases)

EXHIBIT K – Place Holder Waivers: *List waivers granted or indicate none.*

EXHIBIT L – Conflict of Interest Form

EXHIBIT M – Prevailing Wage Form

## ***2.2 Provisions for Contracts and Sub-grants***

### ***(a) Contract Provisions***

The Grantee must include in any contract and sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-Grantees including lower-tier subcontractors or Subgrantees, to comply with applicable federal, state and local laws and regulations, and all applicable terms and conditions of this award.

### ***(b) Ineligible Use of Grant Funds***

The dollars awarded under this grant contract agreement are grant funds and shall only be used by Grantee or awarded by Grantee to third parties as grant funds and cannot take the form of a loan under any circumstance. Grantee shall not use, treat, or convert the grant funds into an interest-bearing loan, a non-interest-bearing loan, a deferred loan, a forgivable deferred loan or any other type of loan. Further, Grantee shall include in any contract or sub-grant awarding the grant funds to a third party all the provisions and requirements of this grant contract agreement, including the requirement that these dollars are grant funds only and cannot be used, treated or converted into any type of loan.

### ***(c) Job Listing Agreements***

Minn. Stat. [§ 116L.66](#), Subd. 1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with MinnesotaWorks.net at [www.minnesotaworks.net](http://www.minnesotaworks.net) as soon as it occurs.

### ***(d) Payment of Contractors and Subcontractors***

The Grantee must ensure that all contractors and subcontractors performing work covered by this grant are paid for their work that is satisfactorily completed.

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### **3 Time**

The Grantee must comply with all the time requirements described in this grant contract agreement. In the performance of this grant contract agreement, time is of the essence.

## **4 Consideration and Payment**

### **4.1 Consideration.**

This award is a “fixed amount subaward” as defined in 2 CFR § 200.201 where the major purpose of the subaward is a broadband infrastructure project, and will be administered by the State pursuant to the Uniform Guidance Policy Notice published by NTIA on December 26, 2023, titled “Policy Notice: Tailoring the Application of Uniform Guidance to the BEAD Program”. Thus, the State will pay for all services performed by the Grantee under this grant contract agreement as follows:

#### **(a) Compensation**

The Grantee will be paid for services performed in EXHIBIT F up to the agreed-upon match percentage XX%, which equates to \$0,000.00 for a total eligible Total compensation not to exceed \$0,000.00.

#### **(b) Travel Expenses**

Reimbursement for the reasonable travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this Grant Contract Agreement will not exceed the amounts allowed as components of the activities in EXHIBIT F. The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State’s prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

#### **(c) Total Obligation.**

The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract agreement will not exceed \$[**This must be the total of 4.1(a) AND 4.1(b) above**].

### **4.2 Payment**

#### **(a) Invoices**

The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the schedule and terms in Exhibit A:

#### **(b) Federal funds.**

Payments under this grant contract will be made from federal funds obtained by the State through the Broadband Equity, Access, and Deployment Program (BEAD), Assistance Listing Number 11.035 of the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act) also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, *et seq.* The Grantee is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Grantee’s failure to comply with federal requirements.

#### **(c) Unexpended Funds**

The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

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#### **4.3 Contracting and Bidding Requirements**

- (a) For purposes of Section 4.3, services/and or materials means all contracted labor, goods or services the Grantee requires to complete their obligations under this grant contract agreement.
- (b) Any services and/or materials that are expected to cost \$100,000 or more must undergo a formal notice and bidding process.
- (c) Services and/or materials that are expected to cost between \$25,000 and \$99,999 must be competitively awarded based on a minimum of three (3) verbal quotes or bids.
- (d) Services and/or materials that are expected to cost between \$10,000 and \$24,999 must be competitively awarded based on a minimum of two (2) verbal quotes or bids or awarded to a targeted vendor.
- (e) The Grantee must take all necessary affirmative steps to assure that targeted vendors from businesses with active certifications through these entities are used when possible:
  - 1. [State Department of Administration's Certified Targeted Group, Economically Disadvantaged and Veteran-Owned Vendor List](#)
  - 2. Metropolitan Council Underutilized Business Program: [MCUB: Metropolitan Council Underutilized Business Program](#)
  - 3. Small Business Certification Program through Hennepin County, Ramsey County, and City of St. Paul: [Central Certification Program](#)
- (f) The Grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- (g) The Grantee must maintain support documentation of the purchasing or bidding process used to contract services in their financial records, including support documentation justifying a single/sole source bid, if applicable.
- (h) Notwithstanding (a) - (e) above, the State may waive bidding process requirements when:
  - 1. Vendors included in response to competitive grant request for proposal process were approved and incorporated as an approved work plan for the grant.
  - 2. It is determined there is only one legitimate or practical source for such materials or services and that Grantee has established a fair and reasonable price.
- (i) Payment of Prevailing Wages to Contractors:
  - 1. Prevailing wage rates are required to be paid on an economic development project site if that project receives or will be receiving state financial assistance in the form of a grant where a single business receives \$200,000 or more of the grant proceeds, a loan or the guaranty or purchase of a loan if a single business receives \$500,000 or more of the loan proceeds, or certain tax incentives, per Minn. Stat. [§ 116J.871](#). For economic development projects subject to the prevailing wage requirements in Minn. Stat. § 116J.871, Grantee must ensure that Grantee and all contractors and subcontractors comply with applicable prevailing wage requirements including submitting all required certified payroll records, as described in the attached “Prevailing Wage Certification – Minn. Stat. § 116J.871”, to the following email address: [wagedata.deed@state.mn.us](mailto:wagedata.deed@state.mn.us).

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2. Pursuant to [Minn. Stat. § 116J.398](#), [Minn. Stat. § 116J.871](#) does not apply to a project receiving a grant under [Minn. Stat. § 116J.395](#) for the construction, installation, remodeling, and repair of last-mile infrastructure, as defined under [Minn. Stat. § 116J.394](#). The Grantee must complete the Prevailing Wage Disclosure Form (EXHIBIT M).

- (i) The Grantee must not contract with vendors who are suspended or debarred in MN by the State or Federal government <https://mn.gov/admin/osp/government/suspended-debarred/index2.jsp>

## 5 Reporting Requirements

Reporting requirements are contained in EXHIBIT B – BEAD Network Deployment, Performance and Service Requirements; Related Remedies and Penalties; Reporting Requirements, which is attached and incorporated into this Grant Contract Agreement.

## 6 Conditions of Payment

All services provided by the Grantee under this grant contract agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law. Additional details can be found in EXHIBIT A Terms and Conditions Applicable to BEAD Grant Awards.

## 7 Authorized Representative

The State's Authorized Representative is [Name, title, address, telephone number, email], or their successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is [Name, title, address, telephone number, email]. If the Grantee's Authorized Representative changes at any time during this grant contract agreement, the Grantee must immediately notify the State.

## 8 Assignment Amendments, Waiver, and Grant Contract Agreement Complete

### 8.1 Assignment

The Grantee shall neither assign nor transfer any rights or obligations under this grant contract agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant contract agreement, or their successors in office.

### 8.2 Amendments

Any amendments to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

### 8.3 Waiver

If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

### 8.4 Grant Contract Complete

This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

## 9 Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims

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or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

## **10 State Audits**

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant contract agreement or transaction are subject to examination by the Commissioner of Administration, by the State granting agency and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later

## **11 Government Data Practices and Intellectual Property Rights**

### ***11.1 Government Data Practices***

The Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

### ***11.2 Intellectual Property Rights***

The Grantee represents and warrants that Grantee's intellectual property used in the performance of this grant contract agreement does not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, the Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of Grantee's intellectual property used in the performance of this grant contract agreement infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing intellectual property as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

## **12 Workers Compensation**

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## **13 Signage and Public Acknowledgements, Publicity and Endorsement**

### ***13.1 Signage***

Grantee is encouraged 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 State,

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NTIA and NIST that identifies grant funded activities and indicates that those activities are “funded by the Infrastructure Investment and Jobs Act.”

### ***13.2 Public Acknowledgement***

Grantee is encouraged 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 Grantee burden. Grantee should use best effort to use recycled or recovered materials when procuring signs.

### ***13.3 Publicity***

Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State’s Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the Grantee’s website when practicable.

### ***13.4 Endorsement***

The Grantee must not claim that the State endorses its products or services.

## **14 Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract agreement.

Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## **15 Termination**

### ***15.1 Termination by the State***

#### ***(a) Without Cause***

The State may terminate this grant contract agreement with or without cause, upon 30 days’ written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

#### ***(b) With Cause***

The State may immediately terminate this grant contract agreement if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

### ***15.2 Termination by The Commissioner of Administration***

The Commissioner of Administration may immediately and unilaterally cancel this grant contract agreement if further performance under the agreement would not serve agency purposes or is not in the best interest of the State.

### ***15.3 Termination for Insufficient Funding***

The State may immediately terminate this grant contract agreement if:

- (a)*** Funding for Grant No. ***[Federal Grant Number]*** is withdrawn by the United States Department of Commerce National Telecommunications Information Administration.

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(b) it does not obtain funding from the Minnesota Legislature.

(c) Or, if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

## **16 Data Disclosure**

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

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**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. § 16A.15*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Contract/PO No(s). \_\_\_\_\_

**2. GRANTEE**

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**3. STATE AGENCY**

By: \_\_\_\_\_

(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:

Agency

Grantee

State's Authorized Representative

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## **EXHIBIT A – Terms and Conditions Applicable to BEAD Grant Awards**

### **1 Definitions. The following terms are given the stated meaning.**

#### **1.1 Affiliate**

means a person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person or entity. For the purposes of this definition, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

#### **1.2 Applicant**

means an individual or organization submitting an application in response to this request for grant applications.

#### **1.3 BEAD**

means Broadband Equity, Access and Deployment authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act) also known as the Bipartisan Infrastructure Law.

Broadband Service for the purpose of BEAD is service that meets the following criteria: The term “broadband” or “broadband service” has the meaning given the term “broadband internet access service” in 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation, meaning it is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.

#### **1.4 Community Anchor Institution**

An entity such as a school, library, health clinic, health center, hospital or other medical facilities, public safety entity, institution of higher education, public housing organization (including any public housing agency or Department of Housing and Urban Development (HUD)-assisted housing organization), or community support organization (CSO) that facilitates greater use of broadband service by vulnerable populations, including but not limited to low-income individuals, children, unemployed individuals, aged individuals, and incarcerated and formerly incarcerated individuals.

#### **1.5 Contract**

means, for the purpose of Federal financial assistance, a legal instrument by which a Grantee purchases property, or services needed to carry out the project or program under a Federal award. For additional information on Grantee and contractor determinations, see 2 CFR [§ 200.331](#).

#### **1.6 Contractor**

means a dealer, distributor, merchant or other seller providing goods or services that are required to implement a Federal program (see [2 CFR § 200.1](#)). These goods or services may be for an organization's own use or for the use of the beneficiaries of the Federal program.

Additional guidance on distinguishing between a Grantee and a contractor (vendor) is provided in [2 CFR § 200.331](#).

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### **1.7 Closeout Date**

means the date that the State determines the Grantee has satisfied all state and federal reporting requirements related to the Project and completes close out of this award pursuant to 2 CFR § 200.344, as signified by an official closeout letter posted to the Broadband Grantor Portal).

### **1.8 Eligible Costs**

mean those costs incurred and previously paid by Grantee for the project that are not covered by any other federal or state funding, can be audited by the State, are directly attributable to activities identified in EXHIBIT F, and are identified in EXHIBIT G-Project Budget, subject to any Amendments to this Agreement. All Eligible Costs must be reasonable, necessary, allocable, and allowable for the proposed project or other eligible activity and conform to generally accepted accounting principles. Costs may be incurred starting from **the date of the Call for BEAD Applications posting** but are limited to eligible costs and must be compliant with National Environmental Policy Act (NEPA) allowable costs. A Grantee may not incur implementation costs prior to NEPA review.

### **1.9 Execution Date**

means the date of the last signature when all parties have executed this Agreement.

Federal Interest Period means the period during which Grantee 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 or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue for ten years after the year in which that subgrant has been closed out in accordance with 2 CFR § 200.344. For example, if this award is closed out in 2028, regardless of the month, the Federal Interest Period will last until December 31, 2038.

### **1.10 Fixed Amount Subaward**

means a type of grant under which the Federal Awarding Agency or pass-through entity provides a specific level of support. (For additional information on Fixed Amount Subawards, see 2 C.F.R. § 200.201 and the U.S. Department of Commerce’s [“BEAD Policy Notice of Part 200 Exceptions”](#))

### **1.11 Grant Contract Agreement**

means the BEAD Program Broadband Deployment AGREEMENT Between the State of Minnesota, acting through the Department of Employment and Economic Development, Office of Broadband Development and [Grantee].

### **1.12 Grant Award**

means the funds awarded to Grantee for the Project identified in Attachment F – Grantee’s Duties, including any specified other terms and conditions that apply to a specific awarded Grant Application. The Grant Award supersedes any representations, commitments, conditions, or agreements made orally or in writing prior to the issuance of the Grant Award. The Grant Award may specify an award amount and other terms and conditions that are different from, or in addition to, those proposed in the Grant Application, including modifications proposed by a Grantee during a direct negotiation period.

### **1.13 Grantee, Subrecipient, Grant Recipient or Awardee**

means an entity that has entered into a Grant Contract Agreement with the State. The entity is considered a subrecipient under 2 CFR § 200.

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#### **1.14 Grantee Personnel**

means employees, agents, or any other staff or personnel acting on behalf of or at the direction of Grantee or any Grantee Contractor performing or providing the Project under this Agreement.

#### **Location or “broadband serviceable location (BSL)”**

means “a business or residential location in the United States at which mass market fixed broadband Internet access service is, or can be, installed.”

#### **1.15 Matching Funds**

means cash contributions provided by Grantee or third-party contributions to meet the BEAD program’s non-federal match requirement. All matching funds must meet the requirements of Eligible Costs.

#### **1.16 National Environmental Policy Act (NEPA)**

requires activities or decisions subject to federal control and responsibility, including federally funded actions, to be assessed for ecological, aesthetic, historic, cultural, economic, social or health effects, whether direct, indirect, or cumulative. Consequently, NTIA requires projects funded under the Broadband Equity Access and Deployment (BEAD) Program to be analyzed for potential environmental impacts before infrastructure deployment can begin.

#### **1.17 National Telecommunications and Information Administration (NTIA)**

is the entity within the United States Department of Commerce that administers the BEAD Program grant.

#### **1.18 Performance Period**

means the period of performance in the Grant Agreement.

#### **1.19 Performance Standards**

means the obligations for Grantees deploying network projects as outlined in the BEAD NOFO.

#### **1.20 Protected Personally Identifiable Information (Protected PII)**

means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed.

#### **1.21 Project**

means the project or activities described in EXHIBIT F – Grantee’s Duties.

#### **1.22 Project Unit Area**

means a group of BSLs to completed together as part of a project. The assignment of BSLs to project unit areas is determined by the State.

#### **1.23 Real Property**

means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.

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#### **1.24 Request for Payment**

means a complete request submitted, by Grantee, in the format and the timeframe specified by the State for payment of funds from a Grant Award.

#### **1.25 State**

means the State of Minnesota, acting through the Department of Employment and Economic Development, Office of Broadband Development.

#### **1.26 Total Award**

means the total dollar amount approved for the Grant Award.

#### **1.27 Underserved locations**

are locations that lack a reliable broadband service offering of speeds of 100 Mbps download and 20 Mbps upload from a wireline or fixed wireless technology and as noted in the final list of BEAD eligible locations approved by NTIA.

#### **1.28 Unserved locations**

are locations with no broadband service or that lack a reliable broadband service offering speeds below 25 Mbps download and 3 Mbps upload and as noted in the final list of BEAD eligible locations approved by NTIA.

### **2 Domestic Preference for Procurements (Build America, Buy America)**

#### **2.1 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. 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.

#### **2.2 BABA Waivers and Compliance**

Grantee shall comply with BABA consistent with applicable legal authorities, such as the Infrastructure Act, Executive Order 14005, 2 CFR Part 184, OMB Memo M-24-02, and any applicable waivers issued by the Department of Commerce or NTIA, to include the [National Telecommunications and Information Administration 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 February 22, 2024. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

### **3 Reimbursement**

This grant award is a “fixed amount subaward” as defined in 2 CFR § 200.201 where the major purpose of the subaward is a broadband infrastructure project and will be administered by the State pursuant to the Uniform Guidance Policy Notice published by NTIA on December 26, 2023, titled “Policy Notice: Tailoring the Application of Uniform Guidance to the BEAD Program”. Grantees will be required to both submit evidence of actual costs and meet specific performance milestones as outlined in the Disbursements Milestone Table below in Section 4.2. All payments to Grantees are made on a reimbursement basis

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### ***3.1 Documentation of Evidence of Costs***

- (a)** Eligible costs can be incurred as early as the date the call for applications is posted, through the end of the performance period.
- (b)** No Grant Award funds will be disbursed without completion of (or in the absence of completion, proof of significant progress toward) a milestone, and evidence of actual costs that equal or exceed the disbursement amount.
- (c)** No Grant funds will be disbursed for any implementation activities prior to all necessary environmental and historic review approvals related to NEPA Compliance (EXHIBIT C).
- (d)** The Grant Award is exclusive funding and will be used only for the Project indicated in the project scope. The Grantee must not apply funds authorized by the Grant Agreement to activities authorized under other grant awards.
- (e)** The Grantee must prepare and submit to the State evidence of costs using the State's Broadband Grantor Portal or other means as directed by the State.
- (f)** Each submission submitted through the State's Broadband Grantor Portal will contain an attestation certifying the evidence is accurate and in compliance with federal and state law.
- (g)** Upon satisfaction by State of the requirements this grant agreement, the State will disburse funds to Grantee for Eligible Costs in a total amount not to exceed the Total Award.
- (h)** Only Eligible Costs as determined by the State may be reimbursed.

### ***3.2 Documentation of Actual Costs Paid***

The Grantee must submit evidence of costs that document actual costs paid.

- (a)** The invoice or other written support, specified by the State, will document the actual purchase price of the Eligible Cost item. Reimbursement will only be granted up to and including the actual paid purchase price of the item. An evidence of costs must be accompanied by written support of Eligible Costs, including internal accounting records or contracts, as appropriate or when requested by the State. A Request for Payment must provide an independent and auditable basis for the actual purchase price of each Eligible Cost item.
- (b)** For Eligible Cost items that do not have a transaction invoice, such as employee labor expenses, the Grantee must provide documentation showing the total hours contributed by employee class (e.g., engineer, construction worker) that worked on the project, the date(s) that the work was done, and the total labor expense reported. Labor expense is limited to actual payroll and fringe benefit costs. Upon the request of the State, Grantee must also provide a list of actual hours worked and the specific wage for each employee that worked on a Project, and any payroll documentation or other similar evidence that the State might request.
- (c)** For Eligible Cost items that do not have a transaction invoice or record and do not fall under the labor expenses addressed in Section 3.2.b above, Grantee must, with prior authorization from the State, submit a narrative description of the Eligible Cost along with any relevant documentation in lieu of an invoice.

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- (d) For Eligible Cost items incurred by Grantee Contractors, an executed contract that includes pricing and scope of work must be provided to the State upon request. The State may refuse payment for contractual costs incurred without an executed contract.
- (e) The State may delay payment until sufficient documentation of costs and achievement of the project milestone, project status reporting, geospatial data, or other project information as determined by the State is provided by Grantee.
- (f) The Grantee must submit all required documentation to the State within 90 days of completion of performance period unless granted an extension in writing by the State.

### ***3.3 Ineligible Costs***

Ineligible costs include those costs that are unallowable under the applicable federal guidance. The following costs are specifically identified as prohibited under the BEAD Program:

- (a) Prohibition On Use of Grant Funds for Covered Communications Equipment or Services under the Secure and Trusted Communications Networks Act of 2019. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R. § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities.)
- (b) A profit, fee, or other incremental charge above actual cost incurred by a Grantee is not an allowable cost under this Program. This prohibition does not extend to program income, which Grantee may retain without restriction, including retaining program income for profit.
- (c) Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining. The Grantee may not use grant funds, whether directly or indirectly, to support or oppose collective bargaining.

### ***3.4 Grantee Responsibilities Recovery of Grant Award funds***

The Grantee is responsible for reimbursement to the State for any disbursed Grant Award funds that are determined by the State to be ineligible, misused, misappropriated, and/or inadequately documented.

- (a) If the State determines that any provision of the Grant Agreement has been breached by Grantee, the State may require and be entitled to reimbursement of any or all funds under the Grant Award. Any reimbursement of funds that is required by the State, with or without termination of this Agreement, will be due within 30 days after giving written notice to the Grantee. The State also reserves the right to recover such funds by any other legal means, including litigation and drawing the funds in the letter of credit of facilities in the performance bond.
- (b) The Grantee must promptly refer to the State any credible evidence that a Grantee Contractor or Grantee Personnel or other person has either: 1) submitted a false claim for grant funds as that term is used under any false claims act or other similar law, whether state or federal; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds.

## **4 Disbursement Milestones**

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***4.1 The Disbursement milestones may be modified by amending this Grant Agreement.***

***4.2 Disbursement Milestones Table DRAFT***

Milestone	Disbursement (percent of award)	Maximum Cumulative Disbursement (percent of award)
Grantee and State enter into a fully executed Grant Agreement which includes approval of scope of work, project budget, network design and any timelines AND Grantee provides evidence of actual costs that equal or exceed 10% of the total award.	10%	10%
Grantee provides proof that all required permits have been applied for, that substantial and timely progress has been made towards NEPA review and approval AND Grantee provides evidence of actual costs that equal or exceed 20% of the total award.	10%	20%
Grantee has received NEPA approval and is authorized to begin implementation and documents that implementation has begun AND Grantee provides evidence of actual costs that equal or exceed 30% of the total award.	10%	30%
20% of the total number of BSLs have completed construction with these customers able to subscribe and connect to broadband service AND Grantee provides evidence of actual costs that equal or exceed 40% of the total award AND Grantee provides documentation of 25% of required matching funds.	10%	40%
50% of the total number of BSLs have completed construction with these customers able to subscribe and connect to broadband service AND Grantee provides evidence of actual costs that equal or exceed 55% of the total award AND Grantee provides documentation of 50% of required matching funds.	15%	55%
75% of the total number of BSLs have completed construction with these customers able to subscribe and connect to broadband service AND Grantee provides evidence of actual costs that equal or exceed 70% of the total award.	15%	70%
90% of the total number of BSLs have completed construction with these customers able to subscribe and connect to broadband service AND Grantee provides evidence of actual costs that equal or exceed 85% of the total award AND Grantee provides documentation of 75% of required matching funds.	15%	85%

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100% of the scope of work is completed and all required BSLs have complete construction with all customers able to subscribe and connect to broadband service AND Grantee provides evidence of actual costs that equal or exceed 100% of the total award AND Grantee provides documentation of 100% of required matching funds AND all grant close out reports have been submitted and any required inspections and networks performance testing are complete and approved.	15%	100%
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## 5 Letter of Credit / Performance Bond Requirement

Per the BEAD Notice of Funding Opportunity (NOFO) Section IVD.2.a.ii page 72 and consistent with the NTIA Notice of Programmatic Waiver issued on October, 23, 2023 titled “BEAD Letter of Credit Waiver” the State shall require all Grantees prior to entering into the grant agreement to obtain an irrevocable standby letter of credit using a model provided by the State or a performance bond and in compliance with BEAD NOFO and waiver that is equal to or exceeding 10 percent of the total award amount in the grant agreement. The Grantee must retain the letter of credit or performance bond until the final milestone in the Disbursement Milestone Table is achieved and confirmed complete by the State.

## 6 Audit Requirement

### 6.1 Non-federal entities

All governmental and non-profit Grantee (non-federal entities) that are required to comply with the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, must ensure that funds awarded by the State are included in the audit report. A non-federal Grantee that reaches or exceeds the single audit threshold amount as defined by 2 CFR § 200.501 (currently \$750,000 or more in expenditures) during the non-federal Grantee’s fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions 2 CFR parts 200.500 through 200.521. A non-federal Grantee must submit audit reports to the State following the same timeline outlined in 2 CFR § 200.512(a)(1), unless waived by the State.

### 6.2 All other entities

All other Grantee (including commercial entities) shall submit an audit of the Grant Award upon request from the State.

### 6.3 Methods to ensure compliance

Federal awards made to Grantees may include pre-award audits, risk assessments, monitoring during the agreement, post- award audits, and any other methods deemed necessary by the State.

(a) The Grantee must submit an agreed upon procedures audit upon request from the State. This audit will consist of procedures and questions requested.

## 7 Recordkeeping, Examination of Records, Inventory and Facilities.

7.1 The State will have access to and the right at any time during normal business hours to examine, audit, excerpt, transcribe, and copy any records and files of Grantee involving activities relating to a Grant Award, including any agreements or memoranda of understanding with any partners or Grantee Contractors related to the project or fiscal management of the award. The State or a contractor of the State will have access at any time to examine, audit, test and analyze any and all items purchased or constructed in whole or in part using funds provided by the State as part of a Grant Award, including

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inspection by a professional engineer.

- (a) If any of the above records and files are held in an automated format, the Grantee must provide copies of these records and files in the automated format, or such computer file as may be requested by the State.
- (b) Grantee must retain such records and files for the duration of the federal interest period in the project.
- (c) Grantee is responsible for any charges for copies provided by Grantee to the State of books, documents, papers, records, computer files or computer printouts.

### ***7.2 The minimum acceptable financial records for a Grant Award consist of:***

- (a) Documentation of employee time and compensation;
- (b) Documentation of all equipment, materials, contracted labor, supplies and travel expenses, including purchasing records and procedures;
- (c) Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope, as may be amended;
- (d) Rationale supporting allocation of space charges;
- (e) Documentation of agreement services and materials; and
- (f) Any other records that support charges to a Grant Award.

### ***7.3 Segregation of Project Accounting***

The Grantee must maintain reasonably prudent, as determined by the State, segregation of Project accounting records from accounting records relating to other projects or programs.

### ***7.4 Final Inspection***

The State will schedule a final inspection for each broadband infrastructure project and other construction activities when all construction has been completed, the architect/engineer has conducted its own final inspection, and any deficiencies have been corrected. Representatives of the State, the architect/engineer, and the Grantee and/or contractor(s) will attend the State's final inspection for each project. The State is required to give NTIA reasonable advance notice of each final inspection so that a representative of NTIA may participate.

## **8 Compliance with Law, Guidance, Rules, and Regulations**

### ***8.1 Compliance with Law, Guidance, Rules, and Regulations***

The Grantee and its agents and representatives, including all Grantee Contractors and Grantee Personnel, must at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that in any manner affect or apply to the Project, including, without limitation, applicable NTIA guidance, all rules and regulations promulgated to implement BEAD, and any other federal or state laws applicable to this Agreement. The Grantee shall provide such compliance provisions with other parties in any agreements it enters into relating to the Terms and Conditions of this Agreement. Grantee must maintain oversight to ensure that its Grantee Contractors perform in accordance with the

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terms, conditions, and specifications of their subcontract agreement and all applicable Grant Agreements, state law, and federal law requirements.

## **8.2 Skilled and credentialed Contractors**

A Grantee utilizing Grantee contractors to develop or enhance a broadband network must certify that the Grantee Contractor is: Technically qualified to complete and operate the project, and capable of carrying out the funded activities in a competent manner, including that it will use an appropriately skilled and credentialed workforce; by making a commitment to adopt the following criteria around safety and workforce development:

- (a) Contractors and sub-contractors of sub-grantee applicants must participate in a training program from an industry association, state or federally recognized registered apprenticeship program, or a joint union/contractor training center. "Registered apprenticeship program" means an apprenticeship program registered with the Department of Labor and Industry under chapter 178 or with the United States Department of Labor Office of Apprenticeship or a recognized state apprenticeship agency under Code of Federal Regulations, title 29, parts 29 and 30.
- (b) Operators of equipment who are in the workforce installing broadband networks around existing utilities will have passed a certified drug test.

## **8.3 Grantee Contractor Certification**

Grantee shall require any Grantee Contractor and Grantee Personnel used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following requirements listed below.

- (a) Within 15 working days after the Execution Date, Grantee must submit an attestation to the State, attesting compliance with Sections 8.1 and 8.2 of Exhibit A of the Agreement, in the format specified by the State.

## **9 BEAD Requirements**

BEAD requirements are incorporated by reference as if fully set forth herein and are deemed to be contractual obligations of the Grantee. The Commerce NOFO, Grant Award Terms & Conditions, Guidance including any subsequent guidance issued by Department of Commerce or NTIA and related Frequently Asked Questions, BEAD Obligations for Grantee Deploying Network Guidance, Department of Commerce Financial Assistance Standard Terms & Conditions, BEAD Final Proposal Guidance and Templates clarify and provide guidance as to the applicable C.F.R. provisions relating to internal controls, Grantee monitoring and management, and audit requirements that apply to the State and thereby Grantees or contractors receiving such funds through this Agreement. These requirements are therefore considered legally binding and enforceable under this Agreement. Grantee's obligations in regard to BEAD requirements include but are not necessarily limited to:

**9.1 [Infrastructure Investment Act of 2021](#) also known as the Bipartisan Infrastructure Law.**

**9.2 [General BEAD guidance](#), including any updates or changes thereto ("BEAD Guidance").**

**9.3 [BEAD Notice of Funding Opportunity](#).**

**9.4 [BEAD Award Terms and Conditions](#).**

**9.5 The BEAD Frequently Asked Questions, including any updates or changes thereto (["BEAD](#)**

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[FAQ](#)”).

## **9.6 Department of Commerce Financial Assistance [Standard Terms and Conditions](#) .**

### **10 Assignment and Delegation.**

The Grantee shall not assign its rights hereunder without prior written consent of the State and NTIA. Notwithstanding the foregoing, Grantee may assign its rights hereunder to any entity that is an Affiliate without prior consent of the State provided that such Affiliate shall assume all obligations of Grantee hereunder in writing in a manner reasonably acceptable to the State. Grantee will give the State at least 45 business days prior written notice of any such permitted assignment hereunder. No such assignment shall release Grantee from its liability hereunder unless Grantee shall provide evidence to the reasonable satisfaction of the State of the Affiliate’s ability to satisfy the obligations of Grantee hereunder.

### **11 Amendments to the Agreement**

This agreement may be amended at any time by written mutual consent of the State and Grantee. Amendments must be documented in writing, dated, and will be fully executed when the State had secured all required signatures.

#### ***11.1 Changes in Scope***

Grantees must notify the State of any proposed changes to the scope, budget, technology, approved design, locations, network performance, the marketing plans, labor plans, as soon as practicable and may only make such changes if the State signs an amendment authorizing and memorializing a change. A change in scope may require additional NEPA compliance and review.

*(a)* Any change in the list of expense types as described in the budget.

*(b)* Any change in the project activities, design, technology, scope or performance.

*(c)* Any transfer of funds among cost categories that exceeds or is expected to exceed 10 percent of the approved Award Budget.

*(d)* Any signification changes to the disbursement milestones or timeline.

*(e)* Any request to extend the Performance period.

### **12 Change in Funding/Right to Review and Amend.**

Grantee must notify the State within 10 days of any change in project funding from local, state, tribal, or federal sources that would overlap with the approved project scope, duplicate, or supplement the cost of construction of any project locations, modify the financing structure, or materially change the scope of the project. The State reserves the right to review, amend, or terminate the Agreement should any change in funding occur.

### **13 Suspension and Debarment.**

**13.1** In executing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federally funded contracts. The Grantee is subject to the debarment and requirements in 2 CFR Part 180, which implements Executive Orders 12549 and 12689, “Debarment and Suspension”. These regulations restrict awards, sub-awards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs and activities.

**13.2** In the event that Grantee becomes aware that a contractor or subcontractor has been debarred, the

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Grantee shall immediately notify the State and cease all work with the subcontractor. The State retains the right to withhold payments or claw back funds if the Contractor knowingly contracts with a subcontractor that has been debarred.

***13.3 The Grantee asserts that it is not contracting or assigning work subject to this Agreement to any subcontractor that:***

- (a)** Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or local department or agency, Has not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for State of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction under a public transaction; violation of Federal or State antitrust statutes or State of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- (b)** Is not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with State of any of the offenses enumerated in Section 22.3; and has not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default. In the event that the Grantee becomes aware that a subcontractor or any Grantee personnel has been debarred or violates any of the provisions listed above, the Grantee shall immediately notify the State and cease all work with the subcontractor. The State retains the right to withhold reimbursements or claw back funds if the Grantee contracts with a subcontractor that has been debarred or otherwise violates the provisions listed above. The State bears no responsibility for subcontractor compliance, performance, or dispute resolution hereunder.

**14 Grant Agreement Information and Notices.**

**14.1** Grantee agrees to periodically review and update contact information in the State's Broadband Grantor Portal for this award. Grantee consents to the authorized organization representative as the entity held solely responsible for receipt of, and response to, State communications regarding the award.

**15 Energy Efficiency.**

Grantee 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.

**16 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

**16.1** Pursuant to 2 C.F.R. § 200.321, Grantee 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

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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 Minority Business Development Agency of the United States Department of Commerce; and
- (f) Requiring Grantees to take the affirmative steps listed above as it relates to its subcontractors.

## **17 Prevention of Waste, Fraud and Abuse.**

- 17.1** Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, the State or NTIA may direct a member or members of Grantee's key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing Grantee's finances and overseeing any contractors, sub-contractors or Grantees (for financial matters and/or general oversight related to the grant). NTIA or the State will provide instructions on when and how to take such training(s), and costs incurred by Grantee relative to the training (e.g., staff time) are eligible for reimbursement pursuant to this Agreement.
- 17.2** The Grantee 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 Grantee detect any fraud schemes or any other suspicious activity, Grantee must contact (a) the State point of contact designated this Agreement and (b) the assigned NTIA Federal Program Officer and the Department of Commerce, Office of Inspector General Hotline, as indicated at, as soon as possible.
- 17.3** Additionally, in accordance with 2 CFR § 200.113, Grantee must disclose, in a timely manner, in writing to the State all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Grantee is required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.339. (See also 2 CFR Part 180, 31 USC § 3321, and 41 USC § 2313.)

## **18 Additional Federal Requirements.**

- 18.1** Pursuant to the Department of Commerce Financial Assistance Standard Terms and Conditions. Section F.05 states that each award is subject to the whistleblower protections afforded by 41 USC 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).
  - (a) Grantees and contractors under Federal awards and subgrants must inform their employees in writing of the rights and remedies provided under 41 USC 4712, in the predominant native language of the workforce.
  - (b) A person that believes they have been the subject of retaliation for protected whistleblowing can contact the Department of Commerce, 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.

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***18.2 Reporting Subaward and Executive Compensation Information. 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.***

***18.3 Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.331.***

***18.4 New Restrictions on Lobbying, 31 C.F.R. Part 21.***

***18.5 Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997)***

Contractor should encourage its contractors to adopt and enforce on-the- job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

***18.6 Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009)***

Contractor should encourage its employees, Grantees, and contractors to adopt and enforce policies that ban text messaging while driving, and Contractor should establish workplace safety policies to decrease accidents caused by distracted drivers.

## **19 Civil Rights and Non-Discrimination Law Compliance and Affirmative Action Requirements.**

**19.1** 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. Grantee 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:

- (a)** Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and the Department of Commerce’s 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;
- (b)** 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;
- (c)** 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 Grantee and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- (d)** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce 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;
- (e)** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination

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on the basis of age in programs or activities receiving federal financial assistance;

- (f)** 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
- (g)** 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.

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## **EXHIBIT B – BEAD Network Deployment, Performance and Service Requirements; Related Remedies and Penalties; Reporting Requirements**

### **1 Network Capabilities and Access.**

Broadband infrastructure and networks deployed or improved with this grant award must meet the following technical requirement, including performance measurements and resilience against network outages.

- 1.1** Per section IV.C.2.a.i page 64 of the BEAD NOFO Grantees Funded Networks must deliver speeds of not less than 100 Mbps for downloads and 20 Mbps for uploads for broadband serviceable locations; speeds of not less than one Gigabit symmetrical for CAIs; and 95 percent of latency measurements during testing windows to fall at or below 100 milliseconds round trip time.
- 1.2** Per section IV.C.2.a.ii – page 65 of the BEAD NOFO Grantees must have protocols in place to ensure each Funded Network’s outages do not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence.
- 1.3** Upon State request Grantees may be required to provide plans related to regular preventative maintenance of funded network and document their rapid response protocol for recovery from service disruptions.
- 1.4** Per Section IV.C.2.c.v of the BEAD NOFO Grantees must ensure that their Middle Mile Infrastructure networks funded by BEAD are designed to allow interconnection with other service providers at just, reasonable, and nondiscriminatory rates. Upon State request the terms, condition and rates for any interconnection or wholesale access agreements will be required to be submitted to the State for review.

### **2 Deployment Requirements.**

Broadband infrastructure deployed or improved with this grant award must meet the following procedural and operational standards for broadband deployment:

- 2.1** Per Section IV.C.2.b.i of the BEAD NOFO Grantees must deploy Funded Networks and start service to each customer that desires it no later than four years after receiving the subgrant, meeting interim buildout milestones established by the State to ensure progress.
- 2.2** Per Section IV.C.2.b.ii of the BEAD NOFO Underground network deployments must include excess conduit capacity and regular conduit access points for interconnection by others.

### **3 Service and Marketing Obligations.**

Broadband infrastructure deployed or improved with this grant award must meet the following commitments to affordability, consumer protection and service accessibility:

- 3.1** Per Section IV.C.2.c.ii of the BEAD NOFO Grantees are prohibited from imposing data usage caps on any BEAD-funded networks or imposing unjust or unreasonable network management practices.

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**3.2** Per Section IV.C.2.c.ii of the BEAD NOFO Grantees are required to provide consumers of BEAD-funded networks with reasonable and non-discriminatory terms and conditions.

**3.3** Section IV.C.2.c.iv of the BEAD NOFO Grantees are required to conduct public awareness campaigns aimed at increasing broadband adoption in the area where BEAD funded networks are deployed. Campaigns must include details on the low-cost service option, federal subsidies for low-income households, and be conducted in an equitable and non-discriminatory manner. Grantees must 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.

**3.4** Any additional commitments made by the applicant related to cost of service, expansion of BEAD low-cost service offering, speed to deployment and their labor plans will be required and detailed in the scope of work.

#### **4 BEAD Affordability and Low-Cost Service Offer.**

**4.1** Per Section IV.C.2.c.i – page 66 of the BEAD NOFO and Minnesota’s approved initial proposal Volume 2, the Grantee must offer a low-cost plan to all locations reached by the BEAD funded network for the entire Federal Interest Period of the network asset, 10 years. The low-cost plan must meet all of the following criteria, based largely on the model provided in the BEAD NOFO:

- (a)* Costs \$46.98 on non-tribal lands/\$30 on Tribal lands per month (\$46.98/\$30) or less, inclusive of all fees and charges that accrue to the provider with no additional nonrecurring costs or fees to the consumer
- (b)* Allows the end user to apply the Affordable Connectivity Benefit subsidy to the service price.
- (c)* Provides typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps, or the fastest speeds the infrastructure is capable of if less than 100/20 Mbps and provides typical latency measurements of no more than 100 milliseconds.
- (d)* Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating Grantee must adhere.
- (e)* In the event the Grantee later offers a low-cost plan with higher speeds downstream and/or upstream, permits eligible subscribers that are subscribed to the low-cost broadband service option to upgrade to the new low-cost offering at no cost.
- (f)* Is advertised and included in marketing and outreach material distributed to current and potential customers as demonstrated through print and online materials. The low-cost plan must be visible in places (website and forms) where customers subscribe to service.

#### **4.2 Low-cost Modification**

Applicants and subgrantees may request a modification to their low-cost service option target

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effective rate subject to the process outlined on pages 64-66 of Minnesota's NTIA approved Initial Proposal Vol 2

## **5 Cybersecurity and Supply Chain Risk Management**

**5.1** Per Section IV.C.2.c.vi – page 70 of the BEAD NOFO Grantees must attest to having cybersecurity and supply chain risk management plans in place, that reflect the National Institute of Standards and Technology (NIST) cybersecurity and supply chain risk management framework.

**5.2** Upon request by the State, copies of the Cybersecurity and/or the Supply Chain Risk Management plan will be required to be submitted to the State for review.

## **6 BEAD Reporting Requirements *Additional reporting requirements will be forthcoming***

### **6.1 Project Progress Reports.**

Grantee must submit semi-annual Project Progress Reports, to the State for the duration of the project.

*(a)* All semi-annual progress reports must be submitted to the State via the State's Broadband Grantor Portal or as instructed by the State, using the schedule provide by the State.

*(b)* Failure to file timely reports may result in required held payment requests, curing, termination of the award and claw back of funds up to the Total Award amount.

### **6.2 Performance Milestone Documentation.**

### **6.3 Final Project Closeout Report..**

## **7 Remedies and Penalties**

### ***BEAD Penalties for Non-Performance / Non-Compliance***

The State may enforce applicable rules and the terms of this agreement by imposing penalties for: nonperformance, noncompliance, failure to meet Grant Agreement requirements, non-responsiveness, or delays in reporting, wasteful, fraudulent, or abusive expenditure of award as determined by the State.

**7.1** Penalties can include but are not limited to additional award or reporting requirements, required curing, reduction in award amount, suspension of payments, de-obligation or claw back of funds, and debarment from future State awards by the entity.

**7.2** Penalties for Non-performance may extend through the federal interest period in the BEAD project, 10 years after the close of the project.

**7.3** Grant performance includes meeting all the terms and conditions in the grant agreement including but not limited to providing qualifying, reliable broadband service to every BSLs in the scope of work, maintaining service quality and reliability of the network, sufficiently marketing the service and the BEAD low-cost service offering, adhering to all permitting and NEPA requirements, if applicable, reaching speed to deployment milestones.

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**7.4** In the case where a Grantee fails to provide service to a required BSL in their scope of work, fails to meet a required speed to deployment milestone or failed to meet a required speed or latency network standards; the state may assess and reduce the award. **Additional guidance will be forthcoming**

**7.5** Penalties may be waived, altered or increased based on the specific circumstances of the performance or compliance issue.

## **8 Claw back**

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

## **9 Force Majeure**

Grantee is not required to forfeit the amount of a grant received if the Grantee fails to perform due to natural disaster, an act of God, a force majeure, a pandemic, the failure to obtain access to private or public property or such other occurrence over which the Grantee has no control. The State has the discretion and final authority to determine whether or not a Grantee's failure to perform is due to an occurrence over which the Grantee has no control.

## **EXHIBIT C – Environmental and Historic Preservation Review; General NEPA Compliance**

### **1 General NEPA Compliance**

Grantee will not commence implementation and implementation funds will not be disbursed until any and all necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified in Section 4 below. The following activities must be complete and approved prior to implementation:

- 1.1** 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;
- 1.2** 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;
- 1.3** 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
- 1.4** Upon request, demonstration of compliance with all other applicable federal, state, county and local environmental laws and regulations.
- 1.5** Grantee 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
- 1.6** Grantee must provide a milestone schedule identifying specific deadlines and describing how Grantee 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).
- 1.7** Submit all documents that are requested by the State for Environmental Impacts and Document Screening—including any supporting environmental documentation required or requested by NTIA—to the State for review.

### **2 National Historic Preservation Act Compliance**

To ensure the timely completion of historic preservation review for all BEAD-funded activities, Grantee shall provide the following information to the State:

#### ***2.1 A detailed project description containing sufficient information.***

The project description should include the following:

- (a)** What is being constructed.

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- (b)* A description of where the project is proposed (i.e., address, Township, Range, Section, Latitude/Longitude), and a physical description of the site/route and surrounding area (developed land vs. open space, adjacent natural resources, such as rivers, wetlands, or forests; and any protected lands).
- (c)* A detailed description of how the project will be implemented, which includes necessary ground disturbance, connected actions, pre-construction preparations, and follow-up activities following the completion of construction.
- (d)* Project metrics (dimensions, areas, distances, depths, thicknesses, etc.) as applicable.
- (e)* Any mitigation actions the Grantee knows will need to occur to accomplish the project.
- (f)* Any known permits the Grantee will need to acquire prior to beginning project implementation.
- (g)* If applicable, a decommissioning or maintenance plan regarding the construction project.
- (h)* A project map showing project boundaries, sites, routes, and activities highlighted and clearly marked per the specifications required by the State.
- (i)* Ground-level photos summarizing the site or route of implementation, key areas of interest, and the topography of the project area.

### **3 Further Environmental and Historic Preservation Review Guidance**

The Parties acknowledge that NTIA will issue further implementation guidance regarding the State's and Grantee's responsibilities under this condition. Grantee 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. Grantee must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—e.g., best management practices, additional surveys, or other measures necessary to reduce environmental impacts. Grantee shall provide any related information requested by the State or by NTIA (directly or through the State) to ensure both initial and ongoing compliance with all requirements described above.

### **4 Uses of Award Funds Prior to Implementation**

- 4.1** The allowable use of Award Funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:
- (a)* Pre-construction planning, including collecting information necessary to complete environmental reviews;
  - (b)* Applications for environmental permits;
  - (c)* Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
  - (d)* Administrative costs;
  - (e)* Pre-award application costs;
  - (f)* Activities supporting consultations required under the NHPA, the Endangered Species Act, and the

Clean Water Act; and/or

- (g) Limited, preliminary procurement, including the purchase or lease of equipment (including fiber), or entering into binding contracts 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).

**4.2** Grant funded activities with significant impacts to environmental or historic resources may face de-obligation of funding if impacts cannot be avoided, minimized, or mitigated.

**4.3** Grantee shall notify the State 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.

**4.4** 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.

## **5 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. Grantee must notify the State of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. If any potential archeological resources or buried human remains are discovered during construction, Grantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify the State, and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of the NTIA.

## **EXHIBIT D – Project Property - Specific Requirements and Documentation of the Federal Interest**

### **1 Project Property – Specific Requirements and Documentation of the Federal Interest**

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

**1.2** Grantee 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 CFR § 200.313(d), pursuant to an exception from OMB.

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

**1.3** Grantee must comply with the use and equipment disposition requirements of 2 CFR §§ 200.313(c)(4) and 313(e) as follows:

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

**(b)** Grantee may sell, lease, or transfer Project Property only after

- 1) 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
- 2) 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)** Grantee must notify the State and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to Grantee or any affiliate that would impact Grantee’s ability to perform in accordance with its subgrant.

**1.4** Grantees 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.

**1.5** Grantee 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 percent of the project costs, the DOC would receive, on a pari-passu basis, 50 percent of the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

- 1.6 Pursuant to exceptions approved by the United States Office of Management and Budget as described in the UGPN, the property standards set forth in 2 CFR §§ 200.314 and 315 for supplies and intangible property, respectively, shall not apply to this Agreement.
- 1.7 Grantee must comply with 2 CFR § 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, Grantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.
- 1.8 Grantee must comply with the insurance requirements of 2 CFR § 200.310.
- 1.9 Grantee must comply with 2 CFR § 200.312 to the extent any Federally owned real property or equipment is used by Grantee.

***1.10 Covenant of Purpose, Use and Ownership***

To document the Federal interest in BEAD-funded real property, Grantee 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 State. Rather, pursuant to the Covenant, Grantee 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.

***1.11 UCC-1 Filing & Attorney's Certification***

Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this award, Grantee 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.

In addition, within 15 calendar days following the required UCC filing(s), Grantee shall provide the State 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.

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NIST Award Number: XX-XX-XXXX

Pursuant to 28 USC 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, Grantee shall timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth by NTIA or the State. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to the State within 10 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 State, NTIA, and the Federal Grant Officer.

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### **EXHIBIT E – Grant Application**

This grant contract agreement incorporates the grantee’s grant application as a part of this grant contract agreement by reference. The complete grant application is on file at the Office of Broadband Development, MN Department of Employment and Economic Development, and is also on file with the grantee.

If there is a conflict between the grant contract agreement terms and the grantee’s application, the grant contract agreement terms have priority over the application.

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## **EXHIBIT F – Grantee’s Duties**

### **Scope of Work**

Includes commitments made in grant application and includes project units, BSLs, technology, network design, service pricing, middle class pricing and low-cost service offering commitments, speed to deployment, labor plans including direct hires and local hiring plan.

If there is a conflict between the grant contract agreement terms and the Grantee’s pre-qualification or application, the grant contract agreement terms have priority over the application.

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## **EXHIBIT G – Project Budget (Budget Table)**

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**EXHIBIT H – Project Timetable/Milestones**

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**EXHIBIT I – Letter of Credit or Performance Bond**

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**EXHIBIT J – Proceed to Work order(s) (multiple if in phases)**

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**EXHIBIT K – Waivers if necessary**

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### **EXHIBIT L – Conflict of Interest Disclosure Form (REQUIRED)**

This form gives Grantees an opportunity to disclose any actual or potential conflicts of interest that may exist when receiving a grant. It is the Grantee’s obligation to be familiar with the Office of Grants Management (OGM) Policy 08-01 Conflict of Interest Policy for State Grant-Making and to disclose any conflicts of interest accordingly.

All grant applicants must complete and sign a conflict-of-interest disclosure form.

- ☐ Neither my grant organization nor I have an ACTUAL or POTENTIAL conflict of interest.

If at any time after submission of this form, I or my grant organization discover any conflict of interest(s), I or my grant organization will disclose that conflict immediately to the appropriate agency or grant program personnel.

- ☐ My grant organization or I have an ACTUAL or POTENTIAL conflict of interest. (*Please describe below*):

If at any time after submission of this form, I or my grant organization discover any additional conflict of interest(s), I or my grant organization will disclose that conflict immediately to the appropriate agency or grant program personnel.

\_\_\_\_\_  
Printed name:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Organization:

\_\_\_\_\_  
Date:

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### EXHIBIT M – Prevailing Wage Disclosure (REQUIRED)

#### *Payment of Prevailing Wages to Contractors.*

All Grantees **must** complete and sign this prevailing wage disclosure form:

- ☐ The project receiving a grant under Minn. Stat. § 116J.395 is **not** for the construction, installation, remodeling, and repair of last-mile infrastructure, as defined under Minn. Stat. § 116J.394.

Or, alternatively:

- ☐ The project receiving a grant under Minn. Stat. § 116J.395 is for the construction, installation, remodeling, and repair of last-mile infrastructure, as defined under Minn. Stat. § 116J.394.

Any Grantee that checks the first box must complete the following Prevailing Wage Certification Form – Minn. Stat. §116J.871

\_\_\_\_\_  
Printed name:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Organization:

\_\_\_\_\_  
Date:

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To: Minnesota Department of Labor and Industry  
Prevailing Wage Compliance Unit  
443 Lafayette Road N.  
St. Paul, MN 55155

***Re: Prevailing Wage Certification – Minn. Stat. § 116J.871***

Name of Recipient \_\_\_\_\_ State Agency  
\_\_\_\_\_ is a recipient of financial assistance from the

for the Project identified below.

As required by Minn. Stat. § 116J.871, subd. 2(a), Name of Recipient, at Business Address,  
Telephone Number, Email Address hereby certifies to the Commissioner of Labor

and Industry, that laborers and mechanics at the project site during construction, installation, remodeling or repairs for which the financial assistance will be provided, in whole or part, will be paid the prevailing wage rate as defined in Minn. Stat. § 177.42, subd. 6. Prevailing wages paid to laborers and mechanics at the project site shall comply with the prevailing wage rates determined for Name of County County, Minnesota.

Recipient understands that failure to pay prevailing wage is a misdemeanor and that each day of violation is a separate offense under Minn. Stat. § 116J.871, subd. 3.

Project Name: \_\_\_\_\_

Project Start Date: \_\_\_\_\_

Project Site: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name of Authorized Representative

Signature: \_\_\_\_\_  
Signature of Authorized Representative

Its: \_\_\_\_\_  
Authorized Representative's Title

Date: \_\_\_\_\_  
Date Signed and Certified

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443 Lafayette Road N., St. Paul, MN 55155 • 651-284-5091 • dli.mn.gov

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### **INFORMATION FOR RECIPIENTS**

Recipients must ensure all laborers and mechanics at the project site during construction, installation, remodeling or repairs for which the financial assistance from a state agency will be provided is performed under contracts that specifically include the prevailing wage rate requirements of the Minnesota Prevailing Wage Act, Minnesota Statutes sections 177.41-.44 and Minnesota Rules, sections 5200.1000-.1120 (hereinafter “MPWA”).

Recipients also must ensure that contractors and their subcontractors will comply with the requirements of the MPWA, including recordkeeping, completion and submission of certified payroll reports, posting and contract requirements and the requirement that laborers and mechanics at the project site during construction, installation, remodeling or repairs for which the financial assistance will be provided are paid the applicable prevailing wage rate(s) for each classification of work they perform. These requirements and enforcement provisions are set forth at Minn. Stat. § 116J.871, subd. 2(a).

In accordance with the MPWA and because the Commissioner, pursuant to Minn. Stat. § 177.30(a)(7), has deemed certain payroll information necessary and appropriate, recipients must also ensure that each employer performing work at the project site during construction, installation, remodeling or repairs for which financial assistance from a state agency is provided will prepare, maintain as required, and provide to the Department of Labor and Industry upon request, certified payroll reports with respect to the wages and benefits paid to employees specifying for each employee: the employee’s name; prevailing wage job classifications; hours worked each day; total hours; rates of pay; gross amount earned; each deduction for taxes; total deductions; net pay for week; dollars contributed per hour for each benefit, including name and address of administrator; benefit account number; and telephone number for health and welfare, vacation or holiday, apprenticeship training, pension, and other benefit programs.

These same certified payroll records must be submitted to the contracting authority no more than 14 days after the end of each pay period and retained by the employer for a minimum of three years after the final payment is made on the project. Minn. Stat. §§ 177.30, subd.(a)(7), .43, subd. 3. A sample certified payroll form is available at [http://www.dli.mn.gov/sites/default/files/pdf/pw\\_certified\\_payroll\\_form.pdf](http://www.dli.mn.gov/sites/default/files/pdf/pw_certified_payroll_form.pdf). The state agency awarding the financial assistance is considered the contracting authority. Minn. Stat. § 116J.871, subd. 2(b).

Recipients of financial assistance from a state agency should contact the Department of Labor and Industry for applicable prevailing wage rates and guidance on how to comply with prevailing wage requirements in Minnesota Statutes, section 116J.871 and the MPWA:

Division of Labor Standards  
Karen Bugar, State Program Administrative Director 443 Lafayette Road N,  
St. Paul, MN 55155  
651-284-5091 or [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

Email completed copy to [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us) or mail to the Department of Labor and Industry at the address on page 1 of this form. A copy should also be submitted to the state agency awarding the financial assistance.

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Rev 9/13/23