

**THE KANSAS DEPARTMENT OF COMMERCE
SUBAWARD AGREEMENT for the
BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD) PROGRAM**

THIS SUBAWARD AGREEMENT (the “Agreement”) is made and entered into as of the date of the last signature on this Agreement between the Office of Broadband Development (“KOBD”), a division within the Kansas Department of Commerce (“Commerce”) and [[ENTITY]] (UEI: XXXX) (the “Subrecipient”, “Prospective Awardee”, and collectively with Commerce as the “Parties”) to complete a Broadband Infrastructure Project.

WHEREAS, Commerce is authorized to make Grant Funds available to qualified subrecipients under the Broadband Equity, Access, and Deployment (BEAD) Program (the “Program”), administered by KOBD, and governed in accordance with the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, the BEAD NOFO, and the BEAD Restructuring Policy Notice, including any additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator may provide;

WHEREAS, the granting of BEAD funds through this Agreement from Commerce to Subrecipient for the benefit of End Users has been approved by the Kansas Secretary of Commerce; and

WHEREAS, the Subrecipient has applied for Grant Funds to construct and/or improve a Broadband Infrastructure Project that provides Qualifying Broadband Services to unserved and underserved areas in Kansas consistent with the KOBD BEAD Program and as described in the Application (the “Project”); and

WHEREAS, Commerce and Subrecipient agree this Agreement is being provided by Commerce to Subrecipient for Subrecipient to carry out part of the federal BEAD award received by Commerce. Specifically, Subrecipient will use Grant Funds for the Project and specifically for the deployment of a broadband network and the provision of Qualifying Broadband Service to End Users to bridge the digital divide; and

WHEREAS, Commerce and Subrecipient agree the major purpose of this Agreement is a Broadband Infrastructure Project; and

WHEREAS, it is the intent of the Parties that this Agreement in all other respects is a “subaward” as that term is defined in 2 CFR § 200.201 and that [[ENTITY]] (UEI: XXXX) is a “subrecipient” as that term is defined in 2 CFR § 200.201 and as evaluated under 2 CFR § 200.331; and

WHEREAS, 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 KOBD pursuant to the Uniform Guidance Policy Notice (UGPN) and General Terms & Conditions for the NTIA BEAD Program Funds.

WHEREAS, the Secretary of Commerce determined that awarding funds to Subrecipient will benefit the State of Kansas by enhancing the state’s digital infrastructure.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

- I. CONTRACT PERFORMANCE PERIOD.** The Term of this Agreement shall commence on the date both Parties sign this Agreement (“Commencement Date”). The term of this Agreement shall be [INSERT TIMELINE COMMITTED TO IN AWARDED APPLICATION] (“Contract Performance Period Date”) from the Commencement Date, unless the Project is formally closed out prior to the end of the Contract Performance Period, or this Agreement is extended in writing. Subrecipient shall have a continuing duty beyond the end of the Term to provide services, as set forth in Section VI, provide reports, as set forth in Section IX, and retain records, as set forth in Section X.
- II. FEDERAL AWARD IDENTIFICATION.** Information identifying this Federal subaward is set forth in Attachment 1 to this Agreement.
- III. CONTRACT DOCUMENTS AND CONFLICT PRIORITIES.** Subrecipient must perform its obligations under this Agreement in a manner that complies, and enables Commerce to comply, with all requirements contained in 47 U.S.C. § 1702, the BEAD NOFO, the BEAD Restructuring Policy Notice, the U.S. Department of Commerce Standard Terms and Conditions, the General Terms and Conditions for BEAD Program, the Specific Award Conditions applicable to Kansas’ BEAD award (20-20-B172), and Kansas’ BEAD Initial and Final Proposal, which are incorporated into this Agreement by reference. In the event of any conflict between the terms of this Agreement and the authorities identified in the preceding sentence, the order of precedence among the Agreement documents shall be:
1. This Agreement, and any amendments, executed by all Parties.
The Contractual Provisions Attachment (Form DA-146a) (Attachment 1 47 U.S.C. § 1702.
 2. The Specific Award Conditions applicable to Kansas’ BEAD award (20-20-B172).
 3. The General Terms and Conditions for the BEAD Program.
 4. The BEAD Restructuring Policy Notice
 5. The BEAD NOFO
 6. The BEAD Letter of Credit (LOC) Waiver Guidance.
 7. The U.S. Department of Commerce Standard Terms and Conditions.
 8. Kansas’ BEAD Initial and Final Proposal
 9. OMB Uniform Guidance 2 CFR Part 200 and appendices
 10. BEAD Program Guidelines, which can be accessed at chrome-extension://
 11. Subrecipient’s Approved BEAD Program Application, Proposed Service Area Map, and Budget (Attachment 2)
 12. BEAD Program Reporting Template
- IV. PURPOSE.** The purpose of this Agreement is to establish a contractual relationship between Commerce and the Subrecipient to address the increased need for broadband infrastructure in Kansas whereby Subrecipient shall use the Grant Funds described in Section IV to construct the Project, as described in Attachment 2. Grant

Funds may only be used for eligible costs, as defined in Section VII and the Kansas BEAD Initial Proposal, and that are necessary to construct broadband infrastructure that provides broadband services within the service area as described in Attachment 2 in accordance with any applicable federal and state regulations, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), including, but not limited to, 2 CFR 200.216(a), (b), (d) and 2 CFR 200.471.

This Project must provide Qualifying Broadband Service to all broadband serviceable locations and CAIs identified in the Application and at the speeds and latency standards articulated therein.

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

It is understood and agreed by the Parties that, because the Program is new, and because the funding of the program is dependent upon both State and Federal regulations, certain requirements, such as reporting obligations, may change over time. Subrecipient shall remain obligated to comply with the current and future obligations of the Program through the Closeout Date, except for those obligations that survive closeout and remain in force during the Federal Interest Period as described in Section VI below.

V. GRANT FUNDS.

1. **Grant Payments.** The Subrecipient will receive a Fixed Amount Subaward in an amount not to exceed \$[ENTER AMOUNT OF AWARD] (the "Award"). The Grant Funds shall be distributed based on Disbursement Milestones, as outlined in Attachment 4, to the Subrecipient for actual, reasonable, and necessary eligible costs based upon the Subrecipient's Budget, as included in Attachment 2. A final payment of 10% of the Grant Funds will be held until (i) Subrecipient certification, and Commerce completion of a technical and compliance audit, that the provider has reached 100% of the Project's Broadband Serviceable Locations and (ii) Commerce's approval of Subrecipient's completion report (i.e., successful closeout of project).

Award Funds Table

Party	Responsibility	Total Amount
Commerce	Amount of Grant Funds	\$XXXXXX.XX
Subrecipient	Amount of Matching Funds	\$XXXXXX.XX
Total Estimated Project Cost		\$XXXXXX.XX

2. **Financial Obligation.** As a condition to receiving any Grant Funds, disbursements to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. Commerce shall have no obligation to pay Subrecipient any amount under this Agreement that exceeds the Grant Funds. **The Subrecipient shall be responsible for costs considered to be 'ineligible' as defined in Section VII, the BEAD NOFO, and the Kansas BEAD Initial and Final Proposal, and Project costs that exceed the maximum amount of Grant Funds awarded under this Agreement.**

3. **Closeout.** The final milestone payment shall not be paid without Commerce's approval of Subrecipient's Closeout Report, as outlined in Attachment 11.
4. **Matching Funds.** Subrecipient shall provide Matching Funds in the amount of \$[ENTER AMOUNT OF MATCHING FUNDS], as specified in Attachment 2. Subrecipient shall prioritize the use of Matching Funds over Grant Funds in performance of its obligations under this Agreement. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to Commerce regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extend to matching those funds which are duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient. Subrecipient represents to Commerce that the amount designated as Matching Funds has been legally appropriated for the purposes of this Agreement by its authorized representatives, is set-aside solely to be used as Matching Funds for the Project, and is not subject to conditions restrictions, or encumbrances which could prevent Subrecipient's use of the Matching Funds. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient.
5. **Reimbursement by Subrecipient.** If at Project closeout the total amount of distributed funds exceeds 90% of total eligible costs, no further distribution or Final Payment shall be made, and the Subrecipient shall reimburse Commerce such funds previously distributed in excess of 90% of the total eligible costs.
6. **Bulk Goods and Services.** The costs of Goods and services purchased in bulk and delivered during the covered period may only be considered eligible costs in a prorated amount for the portion of Goods used for the Project and during the grant period.
7. **Use of Grant Proceeds.** Commerce reserves the right, in its sole and exclusive discretion, to determine whether any cost meets the criteria of the Program and if it is eligible for reimbursement.
8. **Acceptance of Disbursement Requests.** The acceptance of an invoice by Commerce shall not constitute acceptance of any work performed or deliverables provided under this Agreement. Subrecipient agrees that, while reimbursement by Commerce will occur as work is properly invoiced pursuant and subject to the other terms of this Agreement, ultimate acceptance by Commerce of all work will need to be verified pursuant to the process detailed in Attachment 4 of this Agreement. Commerce will use reasonable best efforts to issue the Grant Funds due to Subrecipient within thirty (30) days of approval of the documentation submitted by Subrecipient. Eligible expenditures may not be incurred prior to the effective date or after the termination date of the grant. Payments are subject to the availability of funds.
9. **Extension of the Period of Performance.** The period of performance for this Award is the Contract Performance Period Date and begins for the Subrecipient on the date of the execution of this Agreement. Commerce may, in its sole discretion, extend the period of performance by up to one (1) year if Subrecipient demonstrates to Commerce that: (1) Subrecipient has a specific plan for use of the Grant Funds, with project completion expected by a specific date not more than four (4) years after the Grant Date; (2) construction on the Project is underway; or (3) extenuating circumstances require an extension of time to allow the Project to be completed.
10. **Applicable State and Federal Laws.** Subrecipient shall comply with all applicable state and federal laws.

VI. OBLIGATIONS AND COVENANTS OF THE SUBRECIPIENT. In consideration of the Award referenced in Section IV, Subrecipient explicitly acknowledges the Subrecipient shall satisfy the covenants, and the obligations set forth in this Agreement. This includes, but is not limited to, the following:

1. **Standard of Work.** Subrecipient shall ensure that all work associated with the Project is performed in a workman like fashion and in keeping with prevailing industry standards.
2. **Subrecipient Responsibilities of Work.** Notwithstanding any other provision of this Agreement, the Parties agree that Subrecipient is solely responsible for:
 - Ensuring that Subrecipient meets all deadlines in approved plans and specifications;
 - Monitoring the progress of grant funded activities;
 - Reporting progress;
 - Providing for required construction permits and adequate construction inspection;
 - Promptly paying costs incurred for grant funded activities;
 - Monitoring contractors' and/or Subrecipient's compliance with federal, state, and local requirements; and
 - Constructing and maintaining in good condition throughout the construction period a sign, or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.
3. **Broadband Service Obligations of the Project.** Subrecipient agrees in connection with the provision of any Qualifying Broadband Service over the Project Network:
 - Subrecipient shall not impose data usage caps on any broadband service plans offered over the Project or impose unjust or unreasonable network management practices.
 - Subrecipient shall provide access to broadband service to each End User served by the Project that desires broadband service on terms and conditions that are reasonable and non-discriminatory.
 - Subrecipient shall offer the proposed advertised minimum download and minimum upload speeds, as set forth in Attachment 2, and in no event less than one hundred (100) Mbps download and twenty (20) Mbps upload with latency of less than or equal to 100ms, measured as specified in the BEAD NOFO.
 - Pricing
 - If Subrecipient has offered Broadband Service to at least one thousand (1000) consumers for a period of at least five (5) consecutive years, Subrecipient shall offer broadband service at prices consistent with offers to End Users in other areas of the state.
 - If Subrecipient has not offered broadband service to at least one thousand (1000) consumers for a period of at least five (5) consecutive years, Subrecipient shall ensure that the broadband service is priced to consumers at no more than the cost rate identified in Attachment 2 for the duration of the five-year service agreement.
 - In calculating cost for the purposes of this Agreement, Subrecipient may adjust annually consistent with the annual percentage increase in the Consumer Price Index (CPI) in the preceding year.
4. **Subcontractors.** Subrecipient shall not enter into any subgrant or subcontract agreement in connection with its obligations under this Agreement without providing notice to Commerce. Commerce may reject any such subgrant or subcontract, and the Subrecipient shall terminate any subgrant or subcontract that is rejected by Commerce and shall not

allow any subgrantee or subcontractor to perform work after that subcontractor's subgrant or subcontract has been rejected by Commerce. The Subrecipient shall submit to Commerce a copy of each such subgrant or subcontract upon request by Commerce. All subgrants and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Kansas, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subgrant would also be considered a subrecipient of another award, then the subcontract or subgrant entered into by Subrecipient shall also contain provisions permitting both Subrecipient and Commerce to perform all monitoring of that subgrant or subcontract in accordance with the Uniform Guidance.

5. **Letter of Credit or Performance Bond.** Subrecipient shall furnish either a Performance Bond, or a Letter of Credit (LOC), to Commerce which meets the requirements of BEAD NOFO, BEAD LOC Waiver guidance, and Kansas BEAD Initial and Final Proposal. The expense of the Performance Bond, or LOC, shall be borne by Subrecipient and the bonds or letter shall be filed with Commerce prior to Commerce's issuance of a Notice to Proceed with construction. The initial amount of the Performance Bond must be in a value of no less than a hundred (100) percent of the Award Funds, and a LOC must be in a value of no less than twenty-five (25) percent of the Award Funds. Commerce shall allow Subrecipient to reduce the amount of the Performance Bond or the LOC upon completion of defined service milestones, as determined by Commerce.

If Subrecipient elects to furnish a LOC, Subrecipient shall furnish a LOC substantially equivalent to the model letter of credit established by the Federal Communications Commission in connection with the Rural Digital Opportunity Fund available at: <https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/>. To issue the LOC, Subrecipient may use any United States bank that is insured by the Federal Deposit Insurance Corporation and that has a Weiss Bank Rating of B- or better, or any United States credit union that is insured by the National Credit Union Administration and that has a Weiss Credit Union Rating of B- or better. If, at any time, a bank or credit union that issued a LOC required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Kansas, a LOC from another bank or credit union will be required, which Subrecipient shall furnish to Commerce within ten (10) days after receipt of notice from Commerce or after Subrecipient otherwise becomes aware of such conditions.

6. **Environmental and Historic Preservation Review.** Subrecipient must comply with the requirements of all applicable Federal, state, and local environmental and historical preservation statutes, laws, and standards, including as set forth in Attachment 5 to this Agreement. Subrecipient will provide all information necessary to facilitate Commerce's use of NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT) as required by the BEAD Restructuring Policy Notice.
7. **Other Federal Construction Requirements.** Subrecipient shall perform its obligations under this Agreement in accordance with the federal construction requirements including the Build America, Buy America (BABA) domestic content procurement preference, as set forth in Attachment 6 to this Agreement.
8. **Cybersecurity and Supply Chain Risk Management.** Subrecipient shall provide the attestations regarding cybersecurity and supply chain risk management practices substantially in the form set forth in Attachment 7.
9. **Civil Rights and Nondiscrimination Law Compliance.** Subrecipient agrees to abide by the non-discrimination requirements set forth in Attachment 8, to the extent applicable,

and acknowledges that failure to do so may result in cancellation or termination of this Agreement and/or recoupment of funds already disbursed.

10. **Other Federal Obligations.** Subrecipient shall fulfill the other Federal obligations as set forth in Attachment 9. Further, the U.S. Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award, including this Agreement. Subrecipient thus shall comply, without limitation, the provisions regarding Section F (CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS) and Section G (NATIONAL POLICY REQUIREMENTS) thereof, unless otherwise specified in an authority with priority as specified in Section II above.
11. **Middle Mile Interconnection.** Consistent with 47 U.S.C. § 1702(h)(4)(E), to the extent Subrecipient is receiving Award Funds to deploy middle mile infrastructure, Subrecipient shall permit other broadband service providers to interconnect with its funded middle mile infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. Subrecipient shall allow such interconnection at any technically feasible point on the middle mile infrastructure network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of Subrecipient's middle mile infrastructure to a requesting party's facilities for the exchange of traffic. In addition, Subrecipient shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory. Subrecipient shall negotiate in good faith with any requesting party (including public, Tribal, private, non-profit, or other parties) making a bona fide request for interconnection.
12. **Public Awareness Campaign:** Pursuant to 47 U.S.C. §1702(h)(4)(F) and (G), Subrecipient shall, during the Period of Performance:
 - i. Provide public notice, online and through other means, of that fact to the locations and areas to which broadband service has been provided and share the public notice with the eligible entity that awarded the subgrant; and
 - ii. Carry out public awareness campaigns in service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers.Subrecipient shall propose an awareness campaign to the Office within twelve (12) months of the Grant Date, and implement the campaign upon the Office's approval, which will not be unreasonably withheld.
13. **Covenants of Subrecipient:**
 - Fulfill all requirements and terms as described in the Application (Attachment 2).
 - Deliver speeds that meet 100/20 Mbps or the delivery speed as described in Application (Attachment 2), whichever speed is greater.
 - Comply with all reporting, auditing, evaluation, and site monitoring requirements as requested by Commerce and all other provisions set forth within this Agreement.
 - Have adequate funding in place to complete the Project and provide any necessary documentation if requested.
 - Provide matching contributions of \$[ENTER AMOUNT OF MATCHING FUNDS] or [ENTER PERCENTAGE OF MATCHING FUNDS TO TOTAL PROJECT COSTS] of the total eligible Project cost, as determined at the time of Project closeout.

- Adhere to the in-kind match limitation as described in the BEAD NOFO and KOBD Allowable In-Kind Match guidance.
- Provide supporting documentation of all Matching Funds and use of in accordance with the budget in Attachment 2 unless otherwise approved in advance in writing by Commerce.
- Be responsible for the day-to-day Project management and maintenance, provide services as described in Attachment 2, and complete the Project as described in Attachment 2. Any changes in scope to the Project shall be submitted in writing prior to the implementation of such modification which are subject to the approval of Commerce in its sole reasonable discretion.
- Notify Commerce of any change in company ownership, financial standing, key project personnel, or any change in Project status that will result in a delay in the Project timeline of ten (10) or more business days (such a delay, a “Significant Project Delay”).
- Construct, install and operate the Project by the end of the Contract Performance Period Date of this Agreement.
- Guarantee deployment of the planned broadband network and begin providing Qualifying Broadband Services to each End User that desires broadband service within the project area not later than four (4) years after the execution of this Agreement.
- Meet all applicable requirements as described in the Kansas’ BEAD Initial Proposal.
- Participate in meetings with Commerce, as needed or requested by Commerce.
- Attest it has read and understands the federal requirements laid out in 2 CFR 200 Part 200 and appendices.

VII. OBLIGATIONS OF THE SUBRECIPIENT DURING THE FEDERAL INTEREST PERIOD.

Subrecipient explicitly acknowledges the obligations described in this section VI survive beyond the Contract Performance Period Date and the closeout of this Award and remain in effect during the entirety of the Federal Interest Period.

1. **Property Standards.** For the purposes of this Agreement, the useful life of Project property shall coincide with the Federal Interest Period. Title to Project Property vests in Subrecipient upon acquisition, subject to the exception and clarifications set forth in Attachment 10, which themselves remain in effect for the duration of the Federal Interest Period.
2. **Service Availability.** Subrecipient shall be capable of performing a standard installation of Qualifying Broadband Service to an End User, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted.
3. **Low-Cost Broadband Service Option (LCBSO).** Subrecipient must offer at least one (1) LCBSO to End Users.
4. **Reporting.** Subrecipient shall assist with the submission of the final Form SF-425 and the Performance (Technical) Report within ninety (90) calendar days after the expiration of the Period of Performance. Subrecipient shall submit Real Property and Tangible Personal Property Reports and Requests for Disposition as specified in DOC ST&C § A.01.
5. **Wholesale Obligation on Default.** The Parties agree if Subrecipient at any time during the Federal Interest Period is no longer able to provide Qualifying Broadband Service to the End Users at any time on a retail basis, remedial action will be taken to ensure

continuity of service. Subrecipient shall, after consultation with and as approved by Commerce and NTIA, either (a) sell Project network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or (b) sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program. Commerce may require Subrecipient to take remedial action so long as such action results in continued retail service to end users in the grant area.

VIII. ELIGIBLE AND INELIGIBLE USES OF AWARD FUNDS.

1. **Permissible Uses of Funds.** Award Funds shall be used solely for reimbursable costs incurred for implementation and operation of the Project, except for those provided for under subsection 2 of this section, and for no other purpose. Reimbursable costs include (a) operating and maintenance costs incurred by Subrecipient in connection with providing broadband services to End Users, and (b) to maintain Project facilities in good working order to be able to offer Qualifying Broadband Service to End Users.

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

2. Subrecipient acknowledges for a cost to be reimbursable under this Agreement, it must “be reasonable, necessary, allocable, and allowable for the proposed project or other eligible activity and conform to generally accepted accounting principles.” (BEAD NOFO at 81, § V.H.1 and OMB Uniform Guidance 2 CFR Part 200 and appendices). Subrecipient further acknowledges while the federal cost principles set forth in the Uniform Guidance do not govern this Agreement, KOBD will look to those principles when reviewing cost showings.

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

3. **Eligible Use of Award Funds Prior to Implementation.** Award Funds shall be used for reimbursable costs incurred prior to beginning implementation which includes, but is not limited to, activities necessary for the completion of the following:
 - Pre-construction planning, including collecting information necessary to complete environmental reviews;
 - Applications for environmental permits;
 - Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
 - Administrative costs;
 - Pre-award application costs;
 - Activities supporting consultations required under the NHPA, the

- Endangered Species Act, and the Clean Water Act; and/or
 - Limited, preliminary procurement, including the purchase or lease of equipment, or entering 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. **Ineligible Uses of Award Funds.** In addition to any other use of Award Funds prohibited by state or federal law, the following are prohibited as uses of Award Funds (whether by Subrecipient or Subrecipient's contractors or subcontractors), and are not reimbursable as an allowable cost under this Agreement:
- *Prohibition Against Payment of Bonus or Commissions.* Payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement.
 - *Political Activity.* Any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.
 - *Prohibited Equipment and Services.* Purchase or support of (a) any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)) or 2 CFR 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment), and (b) fiber optic cable and optical transmission equipment manufactured in the People's Republic of China.
 - *Incremental Profits and Fees.* A profit, fee, or other incremental charge above actual cost. The Parties expressly acknowledge this prohibition does not extend to program income, which Subrecipient may retain without restriction, including retaining program income for profit.
 - *Collective Bargaining.* Direct or indirect support of or opposition to collective bargaining.
 - *Supplantation of Funds.* Consistent with 47 U.S.C. § 1702(l), Grant Funds awarded to the Subrecipient under this Agreement shall be used to supplement, and not supplant, the amounts of Federal or non-Federal funds the Subrecipient would otherwise make available for the purposes for which the Grant Funds may be used.

Per 2 CFR Part 200, ineligible uses of a Fixed Amount Subaward payments include but are not limited to the following:

- Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the Subrecipient, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;
- Gifts to employees; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;
- Expenses associated with: tangible property not logically related or necessary to the broadband infrastructure project or authorized non-deployment use; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the project area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other

- objects which possess aesthetic value;
- Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships or conferences or community events not logically related or necessary for the intended use of the subgrant; nonproduct-related corporate image advertising; and
- Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

IX. REPORTING. Subrecipient shall file reports with Commerce, NIST, and/or NTIA as specified in Attachment 11, by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the U.S. Department of Commerce and external program evaluators. Subrecipient acknowledges the reporting requirements set forth in this Agreement, including Attachment 11, may be updated from time to time, and Subrecipient shall comply with any other reasonable reporting requirements determined by Commerce to meet the reporting requirements established by the Assistant Secretary of the NTIA and certify the information in the report is accurate. Subrecipient further acknowledges Commerce must make all Subrecipient reports available to NTIA upon request.

Commerce will conduct an implementation meeting with the Subrecipient within thirty (30) days of the execution of this Agreement and will make reporting templates and instructions available after the implementation meeting. Commerce and the Subrecipient agree to work in good faith to identify and implement any changes to reporting requirements and protocols in a reasonable and timely manner.

X. PROJECT MONITORING, TRANSPARENCY, AND AUDITS.

Subrecipient shall maintain sufficient records to substantiate all information submitted in reports under this Agreement. Subrecipient shall create, maintain, and preserve sufficient records to demonstrate their compliance with the requirements of this Agreement and Subrecipient shall provide such records to Commerce promptly upon written request by Commerce. Such records, including all invoices for Disbursement Milestones and Requests as outline in Attachment 4, financial records, supporting documents, statistical records, and all other records pertinent to Award Funds, the Project, and this Agreement, shall be maintained for not less than five (5) years after the end of the Contract Performance Period Date of this Agreement.

Subrecipient acknowledges NTIA, NIST, Inspectors General, the Comptroller General of the United States, and Commerce, or any of their authorized representatives, shall have the right to audit, inspect, examine, excerpt, copy and transcribe any document, paper, or any record which are pertinent to Award Funds, the Project, and this Agreement, to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents.

1. **Prohibition Against Internal Confidentiality and Non-Disclosure Agreements.** Subrecipient shall not enter any confidentiality, nondisclosure, or similarly intended agreements with their employees, agents, or contractors as to this Agreement or the work associated with the Project if such agreement or other policy inhibits the reporting of waste or fraud.
2. **Monitoring.** Commerce will monitor Subrecipient, including Subrecipient's subcontractor(s), for the performance of its obligations under this Agreement using

procedures as determined by Commerce or as required by applicable federal or state law. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Subrecipient shall allow Commerce to perform all monitoring required by the Uniform Guidance, based on the Commerce's risk analysis of Subrecipient and this Agreement. Commerce shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the Contract Performance Period Date. Commerce shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Project.

3. **Audits.** Commerce, NTIA, the U.S. Department of Commerce Office of Inspector General, or another authorized Federal or State agency may conduct an audit of this Agreement and Award at any time.

- *Non-Federal Entities.* If Subrecipient is subject to the provisions of Subpart F of 2 C.F.R. Part 200 and expends \$750,000 or more in a year in Federal awards during its fiscal year, Subrecipient must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200, including 200.514 (Scope of Audit). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal Award do not require a financial statement audit of Commerce.

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

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

- *Other Entities, including For-Profit Entities.* If Subrecipient is not subject to the provisions of Subpart F of 2 C.F.R. Part 200 (e.g., commercial entities) that expend \$750,000 or more in Grant Funds during their fiscal year, it must submit to the Grants Officer either:
 - (i) a financial related audit of each U.S. Department of Commerce award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or
 - (ii) a Project specific audit in accordance with the requirements contained in 2 C.F.R. § 200.507.

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

In accordance with 2 C.F.R. § 200.425 (Audit services), Subrecipient may include a

line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

Subrecipient shall perform all necessary efforts to assist Commerce in verifying for the benefit of Kansas and Federal auditors that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in Attachment 2, beginning on the Grant Date. If Subrecipient fails to spend or document the expenditure of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project, within that timeframe, Subrecipient agrees to immediately return to Commerce any Grant Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to Commerce, upon request, within ten (10) business days.

XI. DEFAULT. Non-performance (“Default”), termination, and other remedies for non-performance will be handled consistent with the authorities set forth in Section II of this Agreement, to include 2 CFR § 200.339 and state law. When a determination or decision regarding Default is to be made, Commerce shall make such determination or decision by exercising good faith and reasonable discretion.

1. **Default.** Default occurs when a subrecipient fails to comply with any material requirement under the U.S. Constitution, applicable Federal statutes (to include 47 USC § 1702) and regulations, the DOC ST&Cs, the General Terms and Conditions for the BEAD Program, the Specific Award Conditions applicable to Kansas’ BEAD award (XX-XX-XXXX), and Kansas’ BEAD Initial and Final Proposal. Commerce may declare Subrecipient in Default under this Agreement upon the occurrence of any of the following, but are not limited to:

- Failure to comply with the low-cost broadband service option requirement.
- Failure to meet other federal or Kansas statutory obligations.
- Wasteful, fraudulent, or abusive expenditure of Award Funds.
- Failure to provide Qualifying Broadband Service at the minimum advertised connection speed and cost at the advertised rate as set forth in Attachment 2.
- The failure by Subrecipient to apply the Award in accordance with this Agreement and the Initial and Final Proposal without the prior written consent of Commerce. Commerce reserves the right to reject any use of the Grant Award which it reasonably determines, in its sole and exclusive discretion, does not meet the criteria of the Program.
- The misrepresentation by Subrecipient of any information in Attachment 2, in any report submitted to Commerce, subsequent information submitted to Commerce, information released to the public or other third party related to the provisions of this Agreement or the Project.
- The failure of Subrecipient to timely provide reports as required in Attachment 11 of this Agreement.
- The failure of Subrecipient to complete the Project as described in Attachment 2 by the end of the Contract Performance Period Date.
- The failure of Subrecipient to adhere to any other provision in this Agreement.

In the event of a Default under this section, Commerce shall provide Subrecipient with notice of Default and an opportunity to cure such Default. If the Default has not been

resolved within thirty (30) days of the initial notice of Default, then Commerce, at its sole discretion, may exercise any of the Penalties for Default outlined in Subsection 2 of this section.

2. **Penalties for Default.** If Subrecipient is in Default under any provision of this Agreement and fails to cure such breach, Commerce shall have all the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. Commerce may exercise any or all the remedies available to it, in its discretion, concurrently or consecutively. These remedies are in addition to, and not in lieu of, those remedies permitted in or required by Exhibit G, General Terms and Conditions for the NTIA Broadband Equity, Access & Deployment Program (BEAD) Program Funds.
- *General Authority.* Commerce and NTIA may enforce applicable rules and laws by imposing penalties for Default. Such penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, Award termination, de-obligation/ clawback of funds, and debarment of organizations and/or personnel.
 - *Additional Conditions.* Penalties for non-performance or Default by Subrecipient may include the imposition of additional conditions, as described in 2 CFR 200.208.
 - *Remedies when Additional Conditions are Insufficient.* If Commerce or NTIA determine that non-performance or Default cannot be remedied by imposing additional conditions, Commerce or NTIA may take one or more of the following actions, as appropriate in the circumstances:
 - (a) Temporarily withhold cash payments pending correction of the deficiency by Subrecipient or more severe enforcement action by Commerce or NTIA.
 - (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 - (c) Suspend or terminate this Award in whole or in part.
 - (d) Recommend the initiation of suspension or debarment proceedings by NTIA or U.S. Department of Commerce as authorized under 2 CFR part 180 and DOC regulations.
 - (e) Withhold further federal funds (i.e., new awards or continuation funding).
 - (f) Pursue other legally available remedies.
 - *Clawback.* If Commerce or NTIA determine the Subrecipient has failed to comply with any material requirement under applicable law or this Agreement and the Subrecipient cannot or will not remedy such failure, Commerce may require Subrecipient to return up to the entire amount of the Grant Funds to Commerce, at the discretion of Commerce, to clawback funds for material non-performance or Default.

If Subrecipient fails to provide the minimum advertised connection speed and cost at the advertised rate described in Attachment 2 to this Agreement, Subrecipient shall forfeit any Grant Funds, up to the entire amount received through the Agreement and the Program. Commerce shall use its discretion to determine the amount forfeited. If Subrecipient is required to forfeit Grant Funds under this provision, Subrecipient is liable for up to the amount disbursed plus interest. The

number of End Users that subscribe to Broadband Service offered by Subrecipient in the project area shall not be a measure of performance under this Agreement for the purposes of this provision.

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

- *Force Majeure*. Subrecipient is not required to forfeit Grant Funds received if the Subrecipient fails to perform due to a natural disaster, an act of God, a force majeure, a catastrophe, a pandemic, the failure to obtain access to private or public property or any government permits under reasonable terms, or such other occurrence over which the Subrecipient has no control. Commerce has the discretion and shall determine whether Subrecipient's failure to perform is due to an occurrence over which Subrecipient has no control.
- *Reversion*. Subject to the *Force Majeure* exception, if Subrecipient fails to perform and fails to return the full forfeited amount required pursuant to this Section, the ownership and use of the broadband infrastructure funded by the Program shall revert to Commerce.
- *Make Whole*. Notwithstanding any other provision of this Agreement, if Subrecipient fails to complete the Project in a material respect, Subrecipient, at the discretion of Commerce, may be required to reimburse Commerce the actual cost to finish the Project. The actual cost to finish the Project shall be determined by Commerce, in consultation with the Subrecipient. Any Project costs incurred by the Subrecipient after the end of the Contract Performance Period Date are ineligible and will be subject to repayment to Commerce. Commerce may recover any payments made in error by appropriate means of collection.

XII. INDEMNITY. Subrecipient shall indemnify, defend, and hold harmless Commerce and the State of Kansas and its departments, agencies, and affiliates, including its officers, directors, agents, and employees, from and against all claims, demands, liability, actions, losses, and expenses, including reasonable attorneys' fees, and all other liabilities, relating to or arising out of, directly or indirectly, this Agreement including any loss or damage, cost or liability, including reasonable attorney's fees, by third parties, for any and all injuries to persons or damage to property arising from intentional, willful, or negligent acts or omissions of Subrecipient, its officers, employees, agents, or subcontractors, including criminal, fraudulent, or dishonest act by Subrecipient, its officers, employees, agents, or subcontractors, any third party claim for any and all civil or criminal loss or damage arising out of the Subrecipient's intentional or unintentional failure to comply with any legal or regulatory obligations of Subrecipient, any third party claim for intellectual property infringement when related to the specifications and deliverables under this Agreement, and any loss or damage, cost or liability, including reasonable attorney's fees, by State and/or its employees, for any and all injuries to persons or damage to property, tangible or intangible, arising from negligent acts or omissions of Subrecipient, its officers, employees, agents, or subcontractors.

XIII. TRANSFERRING, ASSIGNING, OR SELLING BROADBAND

INFRASTRUCTURE. Except as otherwise permitted under this paragraph, the Subrecipient shall not transfer, assign, or sell its rights in the broadband infrastructure constructed under the Project without the written consent of Commerce, and such consent shall not be unreasonably withheld. Any attempt at assignment or transfer without such consent shall be void. The Parties acknowledge any assignment or transfer of this Agreement is subject to the requirement to obtain prior written approval from NTIA and NIST. The Subrecipient shall not remove broadband infrastructure or associated elements for salvage or any other purpose, except that nothing herein shall prohibit the removal of broadband infrastructure as part of Subrecipient's maintenance or upgrading of its network. Any transfer, assignment, or sale shall require the purchaser, assignee, or transferee to assume the Subrecipient's obligations under this Agreement.

XIV. CONTACTS AND NOTICES. All notices, demands, requests, approvals, reports, instructions, or other communications which may be required or desired to be given by either party shall be in writing and shall be made by personal delivery or sent by United States Mail, postage prepaid. Properly addressed notice shall be presumed to be delivered on the third business day subsequent to the mailing date.

Notices to Commerce and Subrecipient shall be addressed as follows:

Kansas Department of Commerce
Attn: Legal Division
1000 SW Jackson, Suite 100
Topeka, Kansas 66612-1354

[ENTITY NAME]
Attn: [POC FOR ENTITY]
[ENTITY CORPORATE ADDRESS]
[ENTITY CORPORATE ADDRESS]
[EMAIL OF POC FOR ENTITY]

For Project related communications the following individuals shall serve as the primary points of contact for each of the parties to this Agreement:

Commerce Primary Contact:

Kansas Department of Commerce
Attn: Josep Le, Office of Broadband
Development
1000 SW Jackson, Suite 100
Topeka, Kansas 66612-1354
Phone:
Email:

[ENTITY NAME]
Attn: [POC FOR ENTITY]
[ENTITY CORPORATE ADDRESS]
[ENTITY CORPORATE ADDRESS]
[EMAIL OF POC FOR ENTITY]

SUBRECIPIENT POC

XV. CONFIDENTIALITY AND OPEN RECORDS. The Parties may have access to private or confidential data maintained by Subrecipient or Commerce to the extent necessary to carry out responsibilities under this Agreement. All materials submitted in connection with the Project are subject to the Kansas Open Records Act, (K.S.A. 45-215, *et seq.*). Subrecipient authorizes Commerce to share all program-related information, including this Agreement, Subrecipient's application materials, any reports and associated data submitted by Subrecipient, validation information, any program data that is marked as confidential or proprietary and any evaluations completed by the Subrecipient, to the Kansas Department of Commerce and any consultant engaged by Commerce to assist Commerce with the Program.

In accordance with 2 CFR 200.303(e), Commerce and the Subrecipient shall take reasonable measures to safeguard protected personally identifiable information ("PII") and other confidential or sensitive personal or business information created or obtained in connection with this Agreement.

XVI. FUNDS AVAILABILITY. The Agreement is subject to the appropriation and availability of State and/or Federal funds. If the funds are not appropriated or are otherwise unavailable, Commerce reserves the right to terminate the Agreement upon written notice to Subrecipient. Said termination shall not be deemed Default by Commerce. Upon receipt of the written notice, Subrecipient shall cease all work associated with the Agreement. Should such an event occur, Subrecipient shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, Subrecipient shall have no right to recover from Commerce any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

XVII. ASSURANCES. Subrecipient certifies:

1. Subrecipient has the legal authority to apply for funding under the Program, and complies, and will remain in compliance, with all eligibility requirements and state and federal laws applicable to this Agreement;
2. The making and performance of this Agreement and each and every other document required to be delivered hereunder are within the Subrecipient's powers, have been duly authorized by all necessary corporate action, have received all necessary approvals, and do not contravene any law, regulation or decree or any contractual restriction;
3. This Agreement and each and every other document required to be delivered hereunder, when duly executed and delivered, will be the legal and binding obligations of Subrecipient enforceable in accordance with their respective terms;
4. Subrecipient's Application, including the price(s) and/or bid amount(s), was arrived at independently without, for the purposes of restricting competition, any consultation, communication, or agreement with any other applicant or competitor. This certification includes, but is not limited to: (i) the price(s) and/or bid amount(s) in the Application; (ii) the intention to submit an application; and (iii) the methods or factors used to calculate said price(s) and/or bid amount(s);

5. The price(s) and/or bid amount(s) in Subrecipient's Application have not been and will not be knowingly disclosed by Subrecipient, directly or indirectly, to any other applicant or competitor before the Program application process started or before award unless otherwise required by law; and no attempt has been made or will be made by Subrecipient to induce any other persons or entities to submit or not to submit an application or bid for the purpose of restricting competition.
6. Subrecipient is an organization in good standing under the laws of the State of Kansas, is in compliance with any other Commerce programs, and is not debarred by the State or federal government;
7. Subrecipient is not the subject of any ongoing or pending bankruptcy proceedings and does not intend to file for protection under the bankruptcy laws of the United States;
8. No action, suit, investigation, claim, or proceeding of any nature or kind whatsoever, whether civil, criminal, or administrative, by or before any governmental body or arbitrator is pending or, to the knowledge of Subrecipient, threatened against or affecting Subrecipient, and Subrecipient has not received notice of any outstanding judgment, decree, or order of any governmental body against or affecting Subrecipient, the Project, or any of the transactions that this Agreement contemplates;
9. Subrecipient does not have any pending litigation against any third party related to the Project or otherwise affecting this Agreement in any respect whatsoever;
10. The Project developed hereunder shall be free from defects in design and implementation and shall continue to meet the specifications agreed to in this Agreement until the Closeout Date. Until the Closeout Date, Subrecipient shall, without additional charge to Commerce, correct any such defects and make such additions, modifications, or adjustments to the Project as may be necessary to keep the Project operating as specified in its Application; and
11. The specific operating performance characteristics of the services developed and/or installed hereunder as stated in its Application and any approved material changes to the Project, if applicable.

XVIII. CONFLICTS OF INTEREST. Per Uniform Guidance, no officer or employee of Subrecipient or Commerce, will have any personal pecuniary gain or interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project that is the subject matter of this Agreement. The Subrecipient, as applicable, will promptly notify Commerce should it become aware of any violation or attempt at circumventing the requirements of this section by Subrecipient.

XIX. FORCE MAJEURE. Neither Commerce nor the Subrecipient shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out unforeseeable causes beyond the parties' reasonable control. Such causes may include Acts of God or of a public enemy, fires, floods, pandemics, epidemics, and quarantine restrictions. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their

respective duties under this Agreement. Typical weather patterns are foreseeable and shall not constitute cause pursuant to this paragraph. Commerce shall determine whether a delay or failure results from an Act of God or force majeure based on its review of all facts and circumstances.

- XX. SEVERABILITY.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.
- XXI. MODIFICATIONS.** Any amendment to this Agreement will not be effective without the express written agreement of all Parties. Any such amendment shall not be deemed to create new or additional obligations of Commerce beyond the terms of this Agreement without the prior written consent of Commerce.
- XXII. WAIVERS.** No condition or provisions of this Agreement may be waived unless approved by Commerce and the Subrecipient in writing.
- XXIII. GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of Kansas. Nothing in this Agreement is intended to waive, nor shall it act as a waiver of, sovereign immunity of the State of Kansas.
- XXIV. CONTRACTUAL PROVISIONS ATTACHMENT.** The provisions found in the most current version of the “Contractual Provisions Attachment (Form DA-146a),” which is attached hereto as Attachment 12, are hereby incorporated into this Agreement and made a part hereof.

Signature Page follows

IN WITNESS WHEREOF, the parties have hereunto set their hands.

[ENTITY NAME]

[ENTITY CORPORATE ADDRESS]

[ENTITY CORPORATE ADDRESS]

[EMAIL OF OFFICE OF ENTITY]

KANSAS DEPARTMENT OF COMMERCE

1000 SW Jackson, Suite 100

Topeka, Kansas 66612-1354

[OFFICER OF ENTITY, TITLE]

David C. Toland, Lt. Governor and Secretary of
Commerce

Date

Date

DRAFT

DEFINITIONS

“Agreement” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

“Application” means Subrecipient’s approved BEAD program application, attached hereto as Attachment 2 and incorporated by reference to this Agreement.

“Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator.

“Award” means an award by Commerce to the Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

“Award Funds” means the total of all of the funds contemplated by this Agreement, including Grant Funds and Matching Funds.

“BEAD” means the Broadband Equity, Access, and Deployment (BEAD) Program (Program), 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, 47 U.S.C. § 1701, et seq., and the Department of Commerce, National Telecommunications and Information Administration (NTIA) regulations implementing Section 60102 and all related policies and guidance

“BEAD NOFO” means the BEAD Program Notice of Funding Opportunity issued by NTIA on May 13, 2022 (Funding Opportunity Number NTIA-BEAD-2022) and available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

“BEAD Restructuring Policy Notice” means the updated guidance issued by NTIA on June 6, 2025, for Eligible Entities to ensure American taxpayers obtain the greatest value for their broadband investment or “Benefit of the Bargain” under the BEAD Program available at <https://www.ntia.gov/other-publication/2025/bead-restructuring-policy-notice>.

“Broadband Infrastructure Project” means and include:

- last-mile broadband deployment projects, as that term is used in Section IV.B.7.a.ii. of the BEAD NOFO, with the exception that projects for which the major purpose is training or workforce development;
- projects to deploy middle mile infrastructure, as that term is defined in Section I.A.(o) of the BEAD NOFO; and
- projects to deploy internet and Wi-Fi infrastructure within a multi-family residential building.

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

“CAI” means a community anchor institution as identified [identify final file or list].

“Closeout Date” is the date when the Commerce determines Subrecipient 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.

“Default” means the failure of the Subrecipient to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under

any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a Default.

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

“**DOC ST&Cs**” means the Department of Commerce Financial Assistance Standard Terms and Conditions (Nov. 12, 2020) *available at* https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF_0.pdf

“**End User**” means an eligible subscriber at a Broadband Serviceable Location included within the scope of Subrecipient’s Application.

“**Federal Grant Officer**” means the NIST grant officer identified for the Kansas’ BEAD Program.

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

“**Fixed Amount Subaward**” means a type of grant under which the Federal Awarding Agency or pass-through entity provides a specific level of support. Accountability is based primarily on performance and results. (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” available at: https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Note_of_Part_200_Exceptions_Related_Issues.pdf.)

As authorized by NTIA, and pursuant to exceptions of 2 CFR 200.333 and 200.201(b)(2) approved by the Office of Management and Budget (“OMB”), Commerce has elected to treat this Award as a fixed amount subaward and additionally, as allowed by NTIA, to require the Subrecipient to submit evidence of costs and limit payments to actual documented eligible costs.

“**Goods**” means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.

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

“**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement, as identified in Attachment 1 (i.e., the Total Amount of the Federal Award committed to Subrecipient by the pass-through entity).

“**Initial Proposal**” means Kansas’ BEAD Initial Proposal, as approved by NTIA on April 25, 2024, and as it may subsequently be amended, available at [\[https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/\]](https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/)

“**Matching Funds**” means funds or in-kind contributions provided by Subrecipient or by a third-party to meet the BEAD Program’s non-federal match requirement.

“**NIST**” is the National Institute of Standards and Technology, the entity within the United States Department of

Commerce that administers BEAD Program grant.

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

“PII” means personally identifiable information including, without limitation, any information maintained by Commerce about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in § 50-7a01.

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

“Project Completion Criteria” are the minimum criteria for project completion set forth in Attachment 3.

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

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

“Subcontractor” means third parties, if any, engaged by Subrecipient to aid in performance of the Project. For purposes of this Agreement, “Subcontractor” can also include any other recipient of Award funds.

“UGPN” is the Uniform Guidance Policy Notice published by NTIA on December 26, 2023, titled “Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.”

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

Attachment 1 – Project Description

Item	Requirement	Data
1	Subrecipient name ¹	
2	Subrecipient's unique entity identifier	
3	Federal Award Identification Number (FAIN);	XX-XX-XXXX
4	Federal Award Date ²	XXXXXX
5	Subaward Period of Performance Start and End Date	
6	Subaward Budget Period Start and End Date	
7	Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient	
8	Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation	
9	Total Amount of the Federal Award committed to the subrecipient by the pass-through entity	
10	Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	BEAD for Kansas
11	Name of Federal awarding agency	United States Department of Commerce
	Name of pass-through entity	Kansas Office of Broadband Development
	Contact information for awarding official of the Pass-through entity	XX-XXXX
12	Assistance Listings number and Title ³	11.035 - Broadband Equity, Access, and Deployment Program
13	Identification of whether the award is R&D	Award is not R&D
14	Indirect cost rate for the Federal award (including if the de minimis rate is charged) per 2 CFR § 200.414.	

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

² The date when the Federal award to Kansas was signed by the authorized official of the Federal awarding agency (*see* 2 CFR 200.201).

³ If other federal awards are implicated, KOBD must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement.

Attachment 2 - Approved Application

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Attachment 3 - Project Completion Criteria

1. A “project completion report” signed by an officer of Subrecipient including:

a. An attestation by an officer of Subrecipient that the Project as described in Attachment 2 has been completed in all material respects, to include, but not limited to:

- Subrecipient has deployed a network capable of providing Qualifying Broadband Service to all End Users at the speed and latency standards specified in the Application and the BEAD NOFO.
- Subrecipient is capable of performing a standard installation of Qualifying Broadband Service at all End Users, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted.
- Subrecipient is capable of providing Qualifying Broadband Service to all CAIs included in the Project at the speed and latency standards specified in the Application and the BEAD NOFO.

b. A technical report sufficient to demonstrate, in Commerce’s sole discretion, the Project is capable of delivering Qualifying Broadband Service to all End Users and CAIs at the speed and latency standards specified in the Application and the BEAD NOFO.

2. Proof sufficient for Commerce to determine, in its sole discretion, whether Subrecipient has provided public notice, online and through other means, of the fact that the Project has been completed and Qualifying Broadband Service is available to individuals residing in the locations to which Broadband Service has been provided.

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

Attachment 4 - Disbursement Milestones and Requests

Milestone	Disbursement (percent of award)	Maximum Cumulative Disbursement (percent of award)
Commerce's approval of the executed subaward agreement(s)	50%	50%
Provider certification and Commerce completion of a technical and compliance audit that the provider has reached:		
30% of Project BSLs	20%	70%
60% of Project BSLs	20%	90%
100% of Project BSLs and Commerce's approval of Subrecipient's Completion Report (i.e., successful closeout of project)	10%	100%

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

Subrecipient must submit with each request for disbursement:

- ii. Certification that Qualifying Broadband Service is available at the relevant percentage of locations;
- iii. A report showing the amount of Matching Funds expended in connection with the provision of qualifying broadband to the locations addressed by the request for disbursement; and
- iv. One of the following:
 1. A report showing project expenses using Generally Accepted Accounting Principles or other standard accounting practices; or
 2. A report showing the relative proportion of costs across the following key spending areas:
 - a. professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.);
 - b. construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.);
 - c. outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.);
 - d. network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.);
 - e. operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.);
 - f. customer premise equipment;
 - g. contingency funds; and
 - h. all other expenses; or
 3. A report demonstrating that the project's projected cost per location reached is consistent with the project budget.

Attachment 5 - Environmental and Historic Preservation Review

The Subrecipient must comply with the requirements of all applicable Federal, state, and local environmental and historic preservation laws, regulations, and standards and must ensure Subcontractors comply with all such requirements as well.

I. General Environmental and Historic Preservation Review Requirements

Subrecipient shall not initiate or allow any grant funded implementation activities—except for the limited permissible activities identified in the “Limited Permissible Pre-Implementation Activities” subsection below—prior to the following:

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

II. Compliance with National Environmental Policy Act of 1969 (NEPA)

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

- Serve as a “joint lead agency” in its capacity as the State (or Territory) agency administering the BEAD program in accordance with 42 U.S.C. 4336a(a)(1)(B) and carry out the duties described in 42 U.S.C. 4336a(a)(2);
- Complete an evaluation of the sufficiency, applicability and accuracy of the analysis in First Responder Network Authority (FirstNet) Regional Programmatic Environmental Impact Statement (PEIS) chapter as it applies to anticipated implementation activities for Kansas.

The Parties agree:

- Subrecipient will not commence implementation, and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified below;
- Subrecipient 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
- Subrecipient must provide a milestone schedule identifying specific deadlines and describing how Subrecipient 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).

Commerce shall certify the sufficiency of all Subrecipient decision documents either by:

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

Subrecipient shall, as directed by Commerce:

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

III. Compliance with National Historic Preservation Act of 1966 (NHPA)

To ensure the timely completion of historic preservation review for all BEAD- funded activities, the Subrecipient must adhere to the provisions of the NTIA memorandum to SHPOs, Tribal Historic Preservation Officers (THPOs), and Internet for All (IFA) grant recipients authorizing IFA grant recipients to initiate Section 106 consultation for NTIA funded projects.

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

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

IV. Further Environmental and Historic Preservation Review Guidance

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

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

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

V. Limited Permissible Pre-Implementation Activities

Subrecipient shall ensure that implementation (e.g., site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of all EHP requirements as outlined in Attachment 5. Subrecipient must comply with all conditions placed on the grant funded activities as the result of NEPA or NHPA consultation or processes under other applicable laws—e.g., mitigation requirements, best management practices or other measures necessary to reduce environmental impacts—and ensure that Subcontractors comply with such conditions as well. Subrecipient shall provide any related information requested by Commerce or by NTIA (directly or through KOBD) to ensure both initial and ongoing compliance with all requirements described above.

Only if approved by Commerce in writing, the Subrecipient may undertake limited permissible activities under NEPA to proceed using Award Funds prior to the completion of the EHP review process, including the following:

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

Grant funded activities with significant impacts to environmental or historic resources may face deobligation of funding if impacts cannot be avoided, minimized, or mitigated.

Subrecipient shall notify Commerce within twenty-four (24) hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.

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

VI. Archaeological Resources

Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subrecipient must notify Commerce of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws

or protocols. Subrecipients should have an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, Subrecipient must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify Commerce, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of Commerce and NTIA.

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Attachment 6 – Other Federal Construction Obligations

1. **Build America, Buy America (BABA).** 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.

Subrecipient 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 U.S. 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 U.S. Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

2. **Energy Efficiency.** Subrecipient 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.
3. **Signage and Public Acknowledgements.** Subrecipient 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 Commerce, NTIA and NIST that identifies grant funded activities and indicates that those activities are “funded by the Infrastructure Investment and Jobs Act.” Subrecipient 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 Subrecipient burden. Subrecipient should use best effort to use recycled or recovered materials when procuring signs.

Attachment 7 – Cybersecurity and Supply Chain Risk Management Attestation

Pursuant to 47 U.S.C. § 1702(g)(1)(B), Subrecipient, in carrying out activities using amounts received from Commerce, shall comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Federal Communications Commission. Commerce shall not disburse any Grant Funds to Subrecipient until an officer of Subrecipient has made the attestations regarding cybersecurity and supply chain risk management contained herein.

[Subrecipient Entity] hereby attests that:

1. [Entity] has a cybersecurity risk management plan (“CRM Plan”) in place that is:
☐ Operational, if [Entity] is providing service prior to the award of the grant; or
☐ Ready to be operationalized upon providing service, if [Entity] is not yet providing service prior to the grant award;
2. The CRM Plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
3. The CRM Plan will be reevaluated and updated on a periodic basis and as events warrant;
4. If [Entity] makes any substantive changes to the CRM Plan, a new version will be submitted to Commerce within 30 days. [Entity] acknowledges that Commerce must provide [Entity]’s CRM Plan to NTIA upon NTIA’s request.

Signatory further attests:

1. Subrecipient has a supply chain risk management plan (“SCRM Plan”) in place that is either:
☐ a. operational, if [Entity] is already providing service at the time of the grant; or
☐ b. ready to be operationalized, if [Entity] is not yet providing service at the time of grant award;
2. The SCRM Plan is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
3. The SCRM Plan will be reevaluated and updated on a periodic basis and as events warrant;
4. If [Entity] makes any substantive changes to the SCRM Plan, a new version will be submitted to Commerce within 30 days. [Entity] acknowledges that Commerce must provide [Entity]’s SCRM Plan to NTIA upon NTIA’s request.

[Entity]

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

Date: _____

Attachment 8 – Civil Rights and Nondiscrimination Law Compliance

Consistent with 47 U.S.C. § 1702(g)(2)(C)(ii), the Subrecipient must abide by the non-discrimination requirements set forth in the legal authorities listed in the BEAD NOFO, to the extent applicable. Failure to do so may result in cancellation of any grant and/or recoupment of funds already disbursed.

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. Subrecipient 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:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and the U.S. 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;
- 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;
- 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 Commerce and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and U.S. 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;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and U.S. Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
- 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
- Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

Attachment 9 – Other Federal Obligations

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

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

2. Prevention of Waste, Fraud and Abuse

- a. *Training.* Consistent with the principles in 2 CFR part 200, at any time(s) during the period of performance, Commerce or NTIA may direct a member or members of the Subrecipient’s key personnel to take a government-provided training on preventing waste, fraud and abuse. Key personnel may include those responsible for managing Subrecipient’s finances and overseeing any contractors or sub-contractors (for financial matters and/or general oversight related to the grant). NTIA or Commerce will provide instructions on when and how to take such training(s), and costs incurred by Subrecipient relative to the training (e.g., staff time) are eligible for reimbursement pursuant to this Agreement.
- b. *Monitoring.* Subrecipient 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.
- c. *Mandatory Disclosures.* In accordance with 2 CFR 200.113, Subrecipient must disclose, in a timely manner, in writing to Commerce all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award.

Subrecipient 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).

3. Protection of Whistleblowers

The U.S. Department of Commerce Financial Assistance Standard Terms and Conditions (“DOC ST&Cs”) are incorporated into every NTIA grant award, including this Agreement. Section F.05 of the DOC ST&Cs states each award is subject to the whistleblower protections afforded by 41 USC 4712 (i.e., Enhancement of contractor protection from reprisal for disclosure of certain information).

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

Subrecipients 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.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the U.S. 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.

4. Nonprocurement Debarment and Suspension

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

5. Inspection and Testing of Materials

The Subrecipient, as applicable, shall ensure all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Subrecipient shall ensure that documentation of same is cataloged and retained.

6. Requirements During Construction

During construction, the Subrecipient, as applicable, is responsible for:

- Ensuring it meets all deadlines in approved plans and specifications;
- Monitoring the progress of grant funded activities;
- Reporting progress;
- Providing for required construction permits and adequate construction inspection;
- Promptly paying costs incurred for grant funded activities;
- Monitoring contractors' compliance with Federal, State, and local requirements; and
- Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.

7. Subrecipient Integrity and Performance Matters

In accordance with Section 872 of Public Law 110-417, as amended, *see* 41 USC 2313, if the total value of a Subrecipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award, then the Subrecipient shall be subject to the requirements specified in Appendix XII to 2 CFR Part 200, for maintaining the currency of information reported to SAM that is made available in the Federal Awardee Performance and Integrity Information System (FAPIS) about certain civil, criminal, or administrative proceedings involving the Subrecipient.

Attachment 10 – Procurement Standards, Property Standards, and Cost Principles

1. Subrecipient is not required to comply with the federal 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. Thus, the Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law.
2. Recipients of Fixed Amount Subawards are not required to comply with the Cost Principles set forth in 2 CFR Subpart E. However, all Fixed Amount Subawards must be based on a reasonable estimate of actual cost.
3. **“Federal Interest Period”** is the period during which Subrecipient will hold in trust for the beneficiaries of the BEAD Program all real property and equipment acquired or improved in connection with this Agreement. The Federal interest in all real property and equipment acquired or improved as part of this Agreement will start upon acquisition or improvement thereof and continue for 10 years after the year of the Closeout Date. For example, if this award is closed out in 2027, regardless of the month, the Federal Interest Period will last until December 31, 2037.
4. Title to equipment acquired or improved under the Fixed Amount Subaward vests in the Subrecipient upon acquisition, subject to the following conditions and clarifications that apply for the duration of the Federal Interest Period:

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

- b. Subrecipient must comply with the use and equipment disposition requirements of 2 CFR § 200.313(c)(4) and 313(e) as follows:
 - If Subrecipient acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), Subrecipient may treat the equipment to be replaced as “trade-in” even if Subrecipient elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subrecipient will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports (as specified in the DOC ST&Cs § A.01) to the U.S. Department of Commerce to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. Subrecipient will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.
 - Subrecipient may sell, lease, or transfer Project Property only after (a) 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 (b) 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.
 - Subrecipient must notify Commerce and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to Subrecipient or any affiliate that would impact Subrecipient’s ability to perform in accordance with its subaward.

5. Subrecipients must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Grant Officer, to indicate that Project Property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. Specific requirements are set forth in Attachment 10.a to this Agreement.
6. Subrecipient may encumber Project Property only after provision of notice to NTIA and to the Federal Grant Officer, and subject to a requirement that the U.S. Department of Commerce 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 U.S. Department of Commerce 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 U.S. Department of Commerce's percentage of contribution to the project costs. For example, if the U.S. Department of Commerce had contributed 50% of the project costs, the U.S. Department of Commerce would receive, on a *pari-passu* basis, 50% of the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.
7. 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 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.
8. Subrecipient 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, Subrecipient must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.
9. Subrecipient must comply with the insurance requirements of 2 CFR 200.310.
10. Subrecipient must comply with 2 CFR 200.312 to the extent any Federally owned real property or equipment is used by Subrecipient.

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

For the purposes of this Award, the useful life of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period. During the useful life of the BEAD-funded property, the Subrecipient must adhere to the requirements contained in the terms and conditions of the Award, including adherence to the use, management, and disposition requirements set forth in 2 CFR 200.311 or 200.313, as applicable. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded real property and equipment in subsequent guidance.

I. Covenant of Purpose, Use and Ownership

To document the Federal interest in BEAD-funded real property, Subrecipient 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 Commerce. Rather, pursuant to the Covenant, Subrecipient acknowledges that it holds title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and agrees, among other commitments, that it will repay the Federal interest if it disposes of or alienates an interest in the BEAD-funded property, or uses it in a manner inconsistent with the public purposes of the BEAD award, during the useful life of the BEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the BEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the BEAD-funded property during the Federal Interest Period.

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

II. UCC-1 Filing & Attorney’s Certification

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

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

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

In addition, within 15 calendar days following the required UCC filing(s), Subrecipient shall provide Commerce and the Federal Grant Officer with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with Award Funds including all subgrants, along with a certification from legal counsel,

licensed by the State within which the filings were made (Attorney's Certification), that the UCC filing was properly executed and filed in accordance with applicable state law. The Attorney's Certification must include the below or substantively similar language:

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

Attachment 11 – Reporting

FFATA Reporting Requirements

In accordance with 2 CFR Part 170, the Subrecipient is required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). In general, all subrecipients, including the Subrecipient, are responsible for reporting subgrants of \$30,000 or more. In addition, subrecipients that meet certain criteria are responsible for reporting executive compensation. The Subrecipient must ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.

Pursuant to 47 U.S.C. § 1702(j)(2)(A), the Subrecipient shall submit to Commerce a report, monthly, semiannually, and annually, for the duration of the Award to track the effectiveness of the use of Award Funds. Subrecipient must certify the information in the report is accurate. Each report shall describe each type of broadband infrastructure project and/or other eligible activities carried out using the Award Funds and the duration of the Project.

Monthly Reporting Requirements

Subrecipient shall, for the duration of this Agreement, submit to Commerce a “Monthly Progress Report” for the Project on a monthly basis for the period ending the last calendar day of each month, due no later than seven (7) calendar days following the end of each reporting period. Such reports shall be in accordance with the procedures developed and prescribed by Commerce. The report shall include, at a minimum:

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

Acceptance of any reports, including the reports required under this Agreement, does not constitute acceptance of any work performed or deliverables provided under this Agreement. Further, no report shall be construed to modify the terms of this Agreement or operate as a waiver of any terms of this Agreement.

Semiannual Reporting Requirements

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

1. A list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
2. New Project locations served within the relevant reporting period and, for each such service and whether service taken (if applicable);
3. Whether each address or location identified in item 2 is residential, commercial, or a

- community anchor institution;
4. A description of the types of facilities that have been constructed and installed;
 5. A description of the peak and off-peak actual speeds of the broadband service being offered;
 6. A description of the maximum advertised speed of the broadband service being offered;
 7. A description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
 8. List all middle mile interconnection agreements made to Subrecipient during the reporting period, and their current status;
 9. Any other data that would be required to comply with the data and mapping collection standards of the Federal Communications Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
 10. A SF-425, Federal Financial Report that meets the requirements described in the U.S. Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports;
 11. A SF-429, Real Property Status Report Federal Financial Report that meets the requirements described in the U.S. Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Real Property Status Reports;
 12. A SF-428, Tangible Personal Property Status Report that meets the requirements described in the U.S. Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Tangible Personal Property Status Reports;
 13. For projects over \$5,000,000 (based on expected total cost):
 - a. *Wage information.* Subrecipient may provide:
 - i. Certification that all laborers and mechanics employed by contractors and subcontractors in the performance of the Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of Kansas in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”);

or

- ii. A project employment and local impact report detailing:
 - a. The number of contractors and sub-contractors working on the Project;
 - b. The number of workers on the Project hired directly and hired through a third party;
 - c. The wages and benefits of workers on the Project by classification; and
 - d. Whether those wages are at rates less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of Kansas in which the work is to be performed.

14. Certification by an officer of Subrecipient that:
 - a. Broadband Service plans offered over the Project do not contain data usage caps for End Users.
 - b. Subrecipient shall not impose unjust or unreasonable network management practices.
 - c. That Subrecipient has informed its employees in writing of the rights and remedies provided under 41 USC 4712 in the predominant native language of the workforce and required its subcontractors to do the same.
 - d. The information in the Semiannual Progress Report is accurate.

Acceptance of any reports, including the reports required under this Agreement, does not constitute acceptance of any Work performed or deliverables provided under this Agreement. Further, no report shall be construed to modify the terms of this Agreement or operate as a waiver of any terms of this Agreement.

Annual Reporting Requirements

Subrecipient shall, for the duration of this Agreement, submit to Commerce an “Annual Progress Report” for the Project on an annual basis for the period ending June 30 of each year to align with state fiscal year (or any portion thereof) no later than 30 calendar days following the end of each reporting period.

The Annual Progress Report shall include, at a minimum:

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

Acceptance of any reports, including the reports required under this Agreement, does not constitute acceptance of any Work performed or deliverables provided under this Agreement. Further, no report shall be construed to modify the terms of this Agreement or operate as a waiver of any terms of this Agreement.

Project Closeout Report and Process

When (a) all construction has been completed, Subrecipient’s architect/engineer has conducted its own final inspection, and any deficiencies have been corrected, and (b) all Project Completion Criteria have been met, as outlined in Attachment 3, Subrecipient shall submit written certification to Commerce that the Project was placed into service, as defined in 47 USC 1702(h)(4)(C) for last-mile broadband deployment projects, by the end of the Period of Performance (the “Closeout Report”). Project completion and approval of the Closeout Report are required prior to receiving the Final Payment. The Closeout Report

and process shall include the following information:

- a. Validation the Project has been completed in accordance with Attachment B.
- b. FCC Broadband Data Collection Location ID data for each location enabled.
- c. Updated KMZ maps for the completed service area.
- d. Speed and associated latency tests and network performance validation on a per location basis.
- e. Field validation of as-built drawings verses the initial KMZ map and speed tests as services are turned up at specific locations.
- f. Any and all required financial documents related to the Project.

Closeout will be conducted on the timelines and in the manner set forth in 2 CFR 200.344.

Closeout does not affect (a) any of the rights, requirements and obligations set forth in 2 CFR 200.345, or (b) any of Subrecipient's obligations that survive closeout and remain in force during the Federal Interest Period as described in Section VI.

Upon receipt of the Closeout Report, Commerce shall within ten (10) business days request Subrecipient to produce any data Commerce requires to confirm the completion of the Project. Within ten (10) business days of receipt of any requested information, Commerce will schedule a final inspection to be attended by representatives of Commerce, Subrecipient's architect/engineer, and Subrecipient and/or contractor(s). Commerce will provide NTIA reasonable advance notice of the final inspection so that a representative of NTIA may participate.

Subrecipient's failure to meet any of the Project Completion Criteria or failure to meet any material obligation under this Agreement shall be cause for rejection of the Project by Commerce. A Project shall be considered accepted unless, within the ten (10) business days of the final inspection, Commerce notifies Subrecipient in writing (a) the Project is rejected, (b) specifies the items that, if modified or added, will cause the Project to be accepted, and (c) a timeline for resubmission of the notice of completion. Subrecipient shall promptly remedy any defect which prevents the work performed on the Project from satisfying the Project Completion Criteria or meeting any material obligation under this Agreement.

A rejected Project shall be resubmitted within the time period specified in writing by Commerce. Subrecipient shall provide an updated Closeout Report to Commerce when Subrecipient resubmits the Project for acceptance. Commerce shall review the resubmitted Project within ten (10) business days of receipt of the updated Closeout Report. A resubmitted Project shall be considered accepted unless, within this period, Commerce notifies Subrecipient in writing that the resubmitted Project is rejected and specifies the items that, if modified or added, will cause the resubmitted Project to be accepted. The Parties shall repeat this process until the resubmitted Project is accepted, or Commerce determines, in its sole discretion, that Subrecipient has triggered the non-performance section of this Agreement.

Once a Project has been accepted, Commerce shall provide a written certification of Project completion within ten (10) business days of the acceptance of the Project to the Subrecipient.

Additional Reports as Requested. Subrecipient shall submit such reports and information as reasonably requested by Commerce. Subrecipient shall provide additionally requested reports and information no later than 15 business days following such request. Example of reports and information that may be requested by Commerce are, but not limited to, (i) litigation reporting, (ii) violations reporting, or (iii) network outage notifications.

Reporting Requirements on Expiration of the Period of Performance

Subrecipient shall submit a final Form SF-425 and a final Performance (Technical) Report to KOBD within 90 calendar days after the expiration of the period of performance.

Financial Audit Reporting Requirements

Commerce, NTIA, the U.S. Department of Commerce Office of Inspector General, or another authorized Federal or State agency may conduct an audit of this Agreement and Award at any time.

- *Non-Federal Entities.* If Subrecipient is subject to the provisions of Subpart F of 2 C.F.R. Part 200 and expends \$750,000 or more in a year in Federal awards during its fiscal year, Subrecipient must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200, including 200.514 (Scope of Audit). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal Award do not require a financial statement audit of Commerce.

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

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

- *Other Entities, including For-Profit Entities.* If Subrecipient is not subject to the provisions of Subpart F of 2 C.F.R. Part 200 (e.g., commercial entities) that expend \$750,000 or more in Grant Funds during their fiscal year, it must submit to the Grants Officer either:
 - (i) a financial related audit of each U.S. Department of Commerce award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or
 - (ii) a Project specific audit in accordance with the requirements contained in 2 C.F.R. § 200.507.

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

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

Subrecipient shall perform all necessary efforts to assist Commerce in verifying for the benefit of Kansas and Federal auditors that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in Attachment 2, beginning on the Grant Date. If Subrecipient fails to spend or document the expenditure of Award Funds on eligible Project-

related expenses, which include properly approved material changes to the Project, within that timeframe, Subrecipient agrees to immediately return to Commerce any Grant Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to Commerce, upon request, within ten (10) business days.

Attachment 12 – State of Kansas’ Contractual Provisions Attachment (Form DA-146a)

1.1 Important

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof. The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the ____ day of _____, 2025.

1.2. Terms Herein Controlling Provisions

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

1.3. Kansas Law and Venue

This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

1.4. Termination Due to Lack of Funding Appropriation

If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year.

State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

1.5. Disclaimer of Liability

No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).

1.6. Anti-Discrimination Clause

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44 1001, et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the

provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

1.7. Acceptance of Contract

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

1.8. Arbitration, Damages, Warranties

Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

1.9. Representative's Authority to Contract

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

1.10. Responsibility For Taxes

The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

1.11. Insurance

The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

1.12. Information

No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, et seq.

1.13. The Eleventh Amendment

"The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

1.14. Campaign Contributions / Lobbying

Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.