

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
OFFICE OF STATEWIDE BROADBAND  
MARYLAND NETWORK INFRASTRUCTURE GRANT PROGRAM – SMITH ISLAND AGREEMENT

FY2024

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
OFFICE OF STATEWIDE BROADBAND  
MARYLAND NETWORK INFRASTRUCTURE GRANT PROGRAM – SMITH ISLAND AGREEMENT  
Project/Capital Grant**

**THIS NETWORK INFRASTRUCTURE GRANT PROGRAM – SMITH ISLAND AGREEMENT (“Agreement”)** is entered into as of the Effective Date (as defined herein) by and between the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (the **“Department”**), a principal department of the State of Maryland (**“State”**) and \_\_\_\_\_ (the **“Grantee”**). The Department and the Grantee are each a **“Party”** and may collectively be referred to as the **“Parties”**.

**RECITALS**

- A. This Agreement is issued pursuant to the State’s appropriation of funding received from the United States Department of the Treasury’s Coronavirus Capital Projects Fund, established by Section 604 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act (the **“Act”**), to the Office of Statewide Broadband (the **“Office”**). This federal funding is the sole source of funds for the Maryland Network Infrastructure Grant Program (the **“Program”**).
- B. The purpose of the Program is to:
1. Address the deficit of broadband resources in areas of the State where broadband services does not exist; and
  2. Provide financial assistance, in the form of grants, to local governments and their non-governmental partners for necessary improvements to broadband access, and projects aimed at overcoming infrastructure barriers to the expansion and availability of broadband in unserved areas.
- C. The purpose of the federal funding referenced above is to address the economic consequences of the COVID-19 pandemic by facilitating, among other things, necessary State investment in broadband infrastructure. This federal funding is subject to any applicable rules, regulations, and guidance issued by the Treasury related thereto (the **“Regulations”**).
- D. In reliance upon the representations and certifications contained in Grantee's Fiscal Year 2024 Network Infrastructure Grant Program – Smith Island Application Form and the supporting documents submitted therewith (together the **“Application”**), the Department has approved an award of funds to Grantee to carry out a necessary Network Infrastructure project.
- E. The provisions of the Act, the Regulations, the Office’s FY24 Network Infrastructure Smith Island Notice of Funding Opportunity, the Application Guide, and its Contracting and Procedures Guide, as amended from time to time (the **“Program Guides”**), are hereby incorporated into this Agreement as if fully restated herein.
- F. **“Effective Date”** means the date that this Agreement has been executed by the Department.

## AGREEMENT

**IN CONSIDERATION** of the Recitals (which are incorporated herein by reference), the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Department and Grantee agree as follows:

### 1) Grant.

- a) In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, the Department agrees to provide Grantee with funds not to exceed \$ \_\_\_\_\_ **Million Dollars (\$X,XXX,XXX.00)** (the “**Grant**”) to be used for the purposes of funding the Network Infrastructure Project (the “**Project**”) described in Exhibit B hereto (“**Network Infrastructure Grant Program Application Form**”), as well as in the remainder of the Application, the contents of which are hereby incorporated into Exhibit B by reference, as limited in scope by Exhibit E (the “**Project Map**”).
- b) Grantee shall use the Grant only for the approved Project and only in the approved Area. Grantee agrees that it will use the Grant and construct the Project in accordance with the provisions of the Guides and this Agreement.
- c) Grantee shall expend the Grant in accordance with the budget set forth in Exhibit C (the “**Project Budget**”) and the “Eligible Grant Purposes” set forth in the Program Guides. Grant eligible expenses are capital expenses defined as expenses that are capitalized, with the final asset being owned by the applicant. All grant eligible capital expenditures must be for new, non-depreciated items and can include the construction of outside-plant deployment (including last mile, interconnect, and middle mile infrastructure, to the extent that no other middle mile provider is able to provide suitable service), electronic equipment necessary to deliver service (including, but not limited to, electronic equipment referenced in Section D of the Application, such as, but not limited to, Optical Light Terminals (“OLT”), fiber jumper cross connects, fiber distribution hubs, switches, Optical Network Terminals (“ONT”), and customer premise equipment necessary for delivery of service (so long as the same do not go beyond the ONT or fixed wireless modem), equipment shelters, wireless radio, and antenna), and other capital expenses that are directly necessary to provide broadband service to the end user that comports with Section 1(e) below.
- d) The Application may have referred to proposed projects in other jurisdictions other than the Project. The approval of the Application as to the Project and the execution of this Agreement are not to be construed as approval of any other proposals described in the Application.
- e) Grantee acknowledges that the Project must achieve Minimum Network Requirements. “**Minimum Network Requirements**” means a minimum internet connectivity of 100 Mbps down and 100 Mbps up with a maximum latency of 50 milliseconds measured at the served subscribers’ location, unless the ISP submits a Certification as to circumstances preventing the ISP from achieving such speeds. Where the ISP has certified to its need for exemption and said Certification is an Exhibit to this Agreement, Minimum Network Requirements shall mean a minimum internet connectivity that reliably meets or exceeds 100 Mbps download and at least 20 Mbps upload speeds, and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances, with a maximum latency of 50 milliseconds measured at the served subscribers’ location.

### 2) Expenditure of Grant Funds.

- a) All Grant funds shall be expended on or before the Completion Date (as defined in Section 3(b) of this Agreement).
- b) Grantee may not expend Grant Funds for purposes contrary to this Agreement, or for any purpose described under “Ineligible Grant Purposes” in the Program Guides. Grantee also may not expend more than the amount allocated for any category in the Project Budget without the prior written consent of the Office.

- c) Unless otherwise agreed to in writing by the Office, Grantee shall expend at least fifty percent (50%) of the Grant funds for the Project by the second (2<sup>nd</sup>) anniversary of the Effective Date.
  - d) All costs incurred by Grantee before the Effective Date and before approval by the Department of the release of Grant funds are incurred voluntarily, at Grantee's risk and upon its own credit and expense, and Grantee's authority to be reimbursed from the Grant funds shall be governed by the provisions of this Agreement.
  - e) If, upon completion of the Project, there are cost savings that result in unexpended Grant funds, Grantee shall return such Grant funds to the Department. The Department shall have the rights and remedies with respect to unexpended funds as provided by Section 8.
- 3) Commencement and Completion of the Project; Field Review during Construction or Rehabilitation; Changes.
- a) Grantee shall commence the Project on or prior to September 1, 2024 (“**Commencement Date**”).
  - b) Grantee shall complete the Project prior to August 31, 2027 (“**Completion Date**”).
  - c) If the Project involves capital construction or improvements, the Department, its agents, and its employees shall be allowed to field review the Project during construction and upon completion, upon ten (10) calendar days’ notice to Grantee. Grantee shall bear no responsibility for the State’s costs associated with such field review (e.g. hourly wages for Department personnel, travel expenses for Department personnel to Project sites) and Department personnel shall comply with all safety protocols at Project sites.
  - d) The Office must approve, in writing, all changes to the Application, Project Map, Project Budget, including modifications to the scope of work of the Project, modifications involving carrying out Project activities in a geographic area other than the approved service area, and modifications to the Completion Date or any submission deadlines contained herein. Such changes will not require a formal amendment to this Agreement, so long as they are approved in writing by the Office and the total amount of the Grant does not change.
  - e) Grantee shall ensure that all necessary approvals for the commencement of the Project have been obtained, including all applicable permits and licenses.
  - f) On or before the Completion Date, Grantee shall obtain all certifications, licenses, permits, and approvals necessary for the Grantee to complete its obligations with respect to the Project, including all requirements necessary to operate the Project.
- 4) Conditions Precedent to Disbursement of the Grant. The Department shall not disburse the Grant until Grantee has complied with the following conditions:
- a) Grantee has submitted all the Project plans required under the Program Guides.
  - b) Unless otherwise agreed to in writing by the Office, work related to the disbursement has been completed.
  - c) Grantee shall provide service data<sup>1</sup> to the Office and its agents, upon request, in cooperation with the State’s Statewide Broadband Mapping efforts undertaken pursuant to the Digital Connectivity Act of 2021 (Chapter 74). Any confidential service information provided to the Office or its agents shall be held in confidence, as permitted by the Maryland Public Information Act, and used for the sole and exclusive purpose of identifying unserved and underserved areas of Maryland, in order to fulfill the mapping tasks outlined in the Digital Connectivity Act.

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<sup>1</sup> Service data, for the purposes of this provision, means data reflecting locations that have the ability to connect to the Grantee’s network without lengthening Grantee’s distribution lines, or additional cost to the end user customer.

- d) Grantee has complied with all other terms and conditions of the Grant as required by the Office to the Office's reasonable satisfaction.

5) Additional Funding; Matching Funds Requirement.

- a) In addition to the Grant, Grantee may (i) be in the process of obtaining written commitments to receive additional funds for the Project; (ii) have written commitments to receive additional funds for the Project; or (iii) have already received additional funds for the Project (collectively, the "**Additional Funding**"). As Exhibit D to this Agreement, Grantee shall provide a listing of all such Additional Funding, which describes the source of said funds, and where the source is other than the Grantee, shall also provide a letter from the source of funds confirming the availability of the funds and setting forth any special conditions or restrictions on their use.
- b) Upon request, Grantee shall provide the Office with information and documentation in forms acceptable to the Office regarding the Additional Funding. Such information and documentation shall include, but not be limited to, information concerning Grantee's receipt and expenditure of the Additional Funding.
- c) Grantee is required to contribute a match towards the Project that is at minimum an 11.11% equivalent of the Grant amount (the "**Match**"), except as provided below. The Match must be available cash and cannot be used to fund operational costs, except as provided in the Guides. Any exception to this Match requirement must be confirmed in writing by the Office prior to disbursement of the Grant.
- d) In the event the Office determines, in its sole reasonable discretion, that all or any portion of the Additional Funding are not available, are not going to be disbursed to Grantee for any reason, or that Additional Funding received by Grantee have not been properly expended, the Department may, in consultation with the Office, declare Grantee in default of this Agreement and exercise its remedies pursuant to this Agreement.

6) Disbursement of the Grant.

- a) After the Effective Date, the Department will disburse Grant funds to Grantee on a reimbursement basis as the Project progresses. Grantee shall submit a request for disbursement consistent with the procedures set forth in the Program Guides. A request for disbursement shall identify in detail all expenses incurred for which reimbursement is being sought and shall have attached copies of the supporting invoices and other documentation of such expenses as required by the Office. A request for disbursement must be based on the actual expenses incurred by Grantee for eligible, approved grant activities, and Grantee's actual disbursement for eligible, approved grant activities.
- b) Requests for disbursement should be made allowing at minimum thirty (30) calendar days to receive the Grant funds. The request shall not exceed the eligible costs incurred and approved by the Department. The Department, in its sole reasonable discretion, may disburse funds for eligible costs anticipated to be incurred or costs incurred prior to the Effective Date.
- c) The Department shall have the right at any time to request that Grantee provide additional reasonable supporting documentation with any request for payment.
- d) The Department reserves the right not to disburse any Grant funds if, in the Department's determination:
  - i) Grantee has failed to supply a material fact in a request for disbursement;
  - ii) Grantee's disbursement request, when combined with all prior disbursement requests, exceeds the total amount of the Grant;
  - iii) Grantee has used any portion of the Grant for uses or activities other than the Project, or in a manner inconsistent with the terms and conditions of this Agreement, the Act, the Regulations, and the Guides;

- iv) Grantee is not performing or completing the Project in a manner reasonably satisfactory to the Department; or
- v) Grantee is in default under any other term or condition contained in this Agreement.

7) Records, Inspections and Reports.

This Section shall survive the term of this Agreement.

a) Records.

- i) Grantee shall maintain accurate financial, management, programmatic and other records of the Grantee, of all transactions relating to the receipt and expenditure of the Grant and administration of the Project (collectively, “**Records**”). The Records shall be in a commercially reasonable form acceptable to the Department and sufficient to support the State’s production of evidence of compliance with Section 602(c) of the Social Security Act, Treasury’s regulations implementing that section, all reporting guidance issued by Treasury regarding the foregoing. Grantee shall retain the Records for five (5) years following the date the Office approves the Final Report described in Section 7(c) below.
- ii) Grantee shall make the Grantee’s administrative offices, its personnel, whether full time, part time, consultants or volunteers, and the Records available to the Department for inspection upon request, during the term of the Agreement and for a period of five (5) years following the date the Office approves the Final Report. Grantee personnel with knowledge of the Records will be available for interview by authorized representatives of the Department, provided Grantee receives fifteen (15) calendar days written notice of such interviews. The Grantee shall permit the Office to perform program monitoring, evaluation and audit activities as determined to be necessary, at the reasonable discretion of the Office provided such activities are limited to Project monitoring, establishing completion of the Project, ensuring proper expenditure of grant funds, and Grantee is provided fifteen (15) calendar days written notice by the Department. Grantee shall bear no responsibility for the State’s costs associated with such monitoring and inspection (e.g. hourly wages for Department personnel, travel expenses for Department personnel to Grantee’s offices, etc.).
- iii) Grantee shall cause to be maintained for the Department’s inspection the books, accounts, and records of contractors in connection with the Project for five (5) years past the date of termination of the contractual relationship between the contractor and Grantee.

b) Inspections. During the term of this Agreement and for a period of up to two (2) years following the Completion Date, Grantee shall permit the Department to monitor the Project to ensure that the Project is being carried out in accordance with the terms of this Agreement.

c) Reports.

- i) Consistent with Treasury compliance and reporting guidance in place as of the execution of this Agreement, for projects receiving \$5 Million or more in CPF funding (based on expected total cost):
  - a. Grantee may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such 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 the State (or the District of Columbia) 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”). If such certification is not provided, then upon request of the Office, Grantee must provide a project employment and local impact report detailing:

- The number of employees of contractors and sub-contractors working on the project;
- The number of employees on the project hired directly and hired through a third party;
- The wages and benefits of workers on the project by classification; and
- Whether those wages are at rates less than those prevailing.

Grantee must maintain sufficient records to substantiate this information upon request.

- b. Grantee may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the Grantee does not provide such certification, then, upon request of the Office, Grantee must provide a project workforce continuity plan detailing:
    - How the Grantee will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
    - How the Grantee will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
    - How the Grantee will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
    - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
    - Whether the project has completed a project labor agreement.
  - c. Whether the project prioritizes local hires.
  - d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- ii) On January 1, April 1, July 1, and October 1 of each year during the term of this Agreement, Grantee shall provide the Office with interim progress reports in a manner and form to be determined by the Office. The interim progress reports shall contain such information as the Office requests, including, but not limited to, work accomplished and problems encountered, past and projected expenditures made against the Project Budget, and benchmarks reached. Grantee shall ensure that each interim progress report is received by the Office no later than ten (10) business days after the due date.
  - iii) Within forty-five (45) calendar days after Grantee completes the Project, Grantee shall submit to the Office a final report (the “**Final Report**”) in a manner and form to be determined by the Office that describes the completed Project, the success of the Project, any problems encountered in completing the Project, and such other information as the Office requires. The Final Report shall also contain an expense and revenue summary of the Project including the number of homes and businesses that gained access to broadband facilities, any problems encountered in completing the Project, and such other information as the Department requires. The Final report shall also contain an expense and revenue summary of the Project, certified by the highest fiscal officer of Grantee, that lists all expenditures relating to the Grant. In addition, any completed studies, surveys, reports, or other work products, if applicable, shall be attached to the Final Report. The Grant will not be considered fully closed out until the Final Report has been submitted to, and accepted by, the Office.
  - iv) In addition to the requirements set forth above, Grantee shall cooperate fully and promptly with the Department as to any and all reporting obligations established by Treasury or the State as they relate to this award, and provide the Department with such additional records, reports, and other documentation as may be required by the Department, the U.S. Department of the Treasury, or the Office of the Inspector General.

8) Default and Remedies; Termination.

- a) A default shall consist of: (i) the breach by Grantee of any term, condition, covenant, agreement, or certification contained in this Agreement; (ii) the expenditure of Grant funds for any use other than as provided in the Project Budget or in the approved scope of work for the Project; (iii) the failure to commence or complete the Project by the dates set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, in the Department's sole reasonable determination; (iv) Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets; (v) the failure to obtain Additional Funding if, in the Department's sole reasonable discretion, such failure would significantly impact the Project; (vi) a change in Grantee's staffing capacity that adversely affects Grantee's ability to carry out the Project, in the Department's sole reasonable discretion.
- b) If a default described in Section 8(a) occurs, the Department shall give Grantee written notice of default, and Grantee shall have thirty (30) calendar days from the date of such notice to cure the default. If Grantee has not cured the default to the reasonable satisfaction of the Department by the conclusion of the 30-day period, this Agreement shall terminate at the end of the 30-day period and the Department may demand immediate repayment of the Grant. Notwithstanding the above, upon the occurrence of a default under this Agreement involving Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets, the Department's right to terminate this Agreement shall be immediate, without a notice and cure period.
- c) Notwithstanding the foregoing notice and cure period set forth in Section 8(b), in the event that the Treasury requires the repayment of any Grant funds, Grantee shall immediately return the Grant funds to the Department.
- d) In the event of termination of the Agreement, whether due to default or otherwise:
  - i) The Department may withhold disbursement of Grant funds and Grantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
  - ii) The Department may demand repayment from Grantee of any portion of the Grant proceeds that the Department, in its sole reasonable discretion, determines were not expended in accordance with this Agreement, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings; and
  - iii) The Department, in its sole reasonable discretion, may demand repayment of all Grant funds disbursed to Grantee, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings.
- e) In addition to exercising any or all of the rights and remedies contained in this Agreement, the Department at any time may proceed to protect and enforce all rights available to the Department by suit in equity, action at law, or by any other appropriate proceedings, all of which shall survive the termination of this Agreement.
- f) Grantee agrees to return any remaining proceeds of the Grant to the Department upon termination of the Agreement, whether due to default, completion of the Project, or for any other reason.
- g) Nothing in this Agreement shall serve to prohibit Grantee from continuing to complete the Project at Grantee's own cost after termination of the Agreement, or otherwise impair, alter, or amend any of Grantee's existing rights under applicable law to construct, own, operate, and maintain its networks and provide services including, without limitation, to the locations that were in the Grant's approved service area.

9) Grantee's Certifications. Grantee certifies that:



- a) Grantee is a local jurisdiction, a governmental unit of a local jurisdiction, an incorporated organization that is regarded as a partner of the local jurisdiction, or any other legal entity other than an individual or partnership that is recognized as a partner by the local jurisdiction.
  - b) The acceptance of the Grant and the entering into of the Agreement have been duly authorized, executed, and delivered by Grantee, and are the valid and legally binding acts and agreements of Grantee.
  - c) Grantee is duly organized and validly existing under the laws of the jurisdiction of which Grantee is a part, and has all the requisite power and authority to enter into and carry out the transactions contemplated by this Agreement, including, but not limited to, legal capacity and authority to own and operate the Project, to enter into contracts, and to otherwise comply with applicable statutes and regulations.
  - d) The representations, statements, and other matters contained in the Application are and remain true and complete in all material respects.
  - e) Prior to commencement of the Project (or appropriate phase of construction, if phased construction is being utilized), Grantee has obtained or will obtain all federal, state, and local government approvals, permits, and licenses that may be required to accomplish the Project, or the appropriate phase of the Project, and the scope of work.
  - f) In the past four (4) years, Grantee has not been debarred by any federal, state, or local government entity, nor is Grantee presently subject to, or liable for, any civil claims for non-payment with a potential or realized value of \$30,000.00 or more.
  - g) Grantee shall comply with all applicable laws, regulations, terms, and conditions established by Treasury, the Department, and the State with respect to the use of Grant funds.
  - h) Grantee will make a certification prohibiting the use of federal funds for lobbying in the form attached in Exhibit A.
  - i) The activities and expenses being reimbursed under this Agreement are not subject to reimbursement from other federal or state funding sources, and Grantee has not received, nor will Grantee seek, reimbursement from any other source for expenses submitted for reimbursement under this Agreement.
  - j) Neither the Grantee, nor any of its officers or directors, nor any employee of the Grantee involved in obtaining contracts with or grants from the State or any subdivision of the State, has engaged in collusion with respect to the Grantee's application for the Grant or this Agreement or has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States.
  - k) The Grantee, if incorporated, is registered or qualified in accordance with the Corporations and Associations Article of the Annotated Code of Maryland, is in good standing, has filed all required annual reports and filing fees with the Department of Assessments and Taxation and all required tax returns and reports with the Comptroller of the Treasury, the Department of Assessments and Taxation, and the Department of Labor and has paid or arranged for the payment of all taxes due to the State.
- 10) Liability. Grantee releases the State and the Department, from, agrees that the State and the Department shall not have any liability for, any and all suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorneys' fees, incurred by, or asserted or imposed against the State or the Department as a result of or in connection with the Project, except for the gross negligence or willful misconduct of the Department. This Section shall survive the term of this Agreement.
- 11) Indemnification. To the extent permitted by the laws of the State, and subject to appropriations as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301, et seq. (2013 Repl. Vol.) (the "LGTC") and Md. Code Ann., Cts. & Jud. Proc. §§5-509 and 5-5A-02 (2013 Repl. Vol.), all as amended from time to time, and except in the event of the Department's negligence or willful misconduct or the negligence or willful misconduct of the

Department's officers, agents, employees, successors and assigns, Grantee shall indemnify and hold harmless, the Department, its officers, agents, employees, successors and assigns against liability for any suits, actions or claims of any character arising from or relating to the performance by Grantee (or its officers, agents, employees, successors or assigns) of any of its rights or obligations under this Agreement. If Grantee is a local government, its chief executive officer hereby agrees to use his or her best efforts to include a request in the Annual Budget and Appropriation ordinance to appropriate funds in the event there is an otherwise indemnifiable cost to the Department under this Section 11.

12) Nondiscrimination and Drug- and Alcohol-Free Workplace; Fair Practices Certification.

- a) Grantee certifies that it does not discriminate and prohibits discrimination in, and shall not exclude from the participation in, or deny the benefit of any program or activity funded in whole or in part with the Grant, on the basis of political or religious opinion or affiliation, marital status, race, color, creed or national origin, or sex or age, except when age or sex constitutes a bona fide occupational qualification, sexual orientation, gender identity, or the physical or mental disability of a qualified individual with a disability.
- b) Grantee shall comply with the provisions of all federal, State and local laws prohibiting discrimination on the grounds of race, color, religion, national origin, sex, marital status, disability, sexual orientation, age, gender identity, genetic information, or an individual's refusal to submit to a genetic test or make available the results of a genetic test, including Title VI and VII of the Civil Rights Act of 1964, as amended (Public Law 88-352); and Title VIII of the Civil Rights Act of 1968, as amended (Public Law 90-284); the Fair Housing Act (42 U.S.C. §§3601-3620); the Americans with Disabilities Act of 1990, as amended; and Title 20 of the State Government Article of the Annotated Code of Maryland, as amended.
- c) Grantee shall comply with the provisions of the Governor's Executive Order 01.01.1989.18 regarding a drug- and alcohol-free workplace and any regulations promulgated thereunder.

13) Insurance.

- a) Grantee shall maintain or shall cause to be maintained commercial general liability insurance coverage on the Project both during and after construction, and if necessary, Grantee shall pay the expense of such insurance.
- b) Grantee shall require the general contractor to provide general contractor's insurance coverage for comprehensive public liability, property damage liability/builder's risk, and workers' compensation in the form and amounts required by the Grantee.
- c) Insurance coverages shall be provided by a company that is registered with the Maryland Insurance Administration and authorized to transact business in the State.
- d) To the extent applicable, insurance coverage shall be in force prior to the disbursement of the Grant proceeds and shall contain terms and coverages satisfactory to the Department.
- e) To the extent required by the Department, Grantee shall submit to the Department an ACORD insurance certificate naming the Department and the Grantee as loss payee and additional insured.
- f) To the extent required by the Department, ACORD insurance certificates shall provide for notification to the Department and Grantee prior to Project-related cancellation of any insurance policies.
- g) If Grantee is a Local Government, the insurance requirements contained herein may be satisfied through evidence of a self-insurance program satisfactory to the Department.

14) Notices. All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is mailed, postage prepaid, addressed as follows:

a) Communications to the Department shall be mailed to:

Kenrick Gordon, P.E.  
Director, Office of Statewide Broadband  
Department of Housing and Community Development  
7800 Harkins Road  
Lanham, MD 20706  
With an electronic courtesy copy to: kenrick.gordon@maryland.gov

b) Communications to Grantee shall be mailed to:

ATTN:

- 15) Amendment. Other than as set forth in Section 3(d), this Agreement may not be amended except by a written instrument executed by the Department and Grantee.
- 16) Execution. This Agreement and any amendments thereto may be executed, by hand or electronic signature, in one or more counterparts, each of which will be deemed to be an original copy of this Agreement or the amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement or any amendments thereto and of signature pages by facsimile or by electronic transmission shall constitute effective execution and delivery of this Agreement or amendment as to the parties and may be used in lieu of the original Agreement or amendment for all purposes. Without limitation, “electronic signature” shall include: faxed versions of an original handwritten signature; electronically scanned and transmitted versions (e.g., via pdf) of an original handwritten signature; and any typed signature (including any electronic symbol or process attached to, or associated with, the Agreement) adopted by the parties with the intent to sign the Agreement. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
- 17) Assignment. This Agreement may not be assigned without the prior written approval of the Department; such approval shall not be unreasonably withheld.
- 18) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Grant.
- 19) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland without regard to conflict of laws provisions.
- 20) Term of Agreement. Unless sooner terminated pursuant to Section 8 of this Agreement or by the mutual consent of Grantee and the Department, the term of this Agreement shall be from the date of execution of this Agreement by the Department (the “**Effective Date**”) until the proceeds of the Grant have been either disbursed or returned to the Department, all reports and records due by Grantee to the Department have been received and approved by the Department, and there has been a final settlement and conclusion between the Department and Grantee of all issues arising out of the Grant.
- 21) Further Assurances and Corrective Instruments. Grantee agrees that it will, from time to time, execute and deliver, or cause to be delivered, such amendments hereto and such further instruments as may be required by the Department to comply with any existing or future State regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Agreement.
- 22) Delay Does Not Constitute Waiver. No failure or delay of the Department to exercise any right, power or remedy consequent upon default shall constitute a waiver of any such term, condition, covenant, certification or agreement of any such default or preclude the Department from exercising any right, power or remedy at any later time or times.

- 23) Technical Assistance. If the Project is not being completed or performed in a manner satisfactory to the Department, or Grantee has violated a provision of this Agreement, prior to the Department declaring a default, the Department may request that Grantee accept technical assistance the Department feels is necessary for the Project to proceed in a manner acceptable to the Department. Grantee shall bear no responsibility for the State's costs associated with such technical assistance (e.g. hourly wages for Department personnel, travel expenses for Department personnel to visit Grantee sites).
- 24) Department's Signs. If required by a federal funding source of this Grant, Grantee agrees to display one or more signs identifying the Project as a recipient of financial assistance under the Program, if the Department furnishes such sign(s). Grantee shall be responsible for the installation of the signs. In the event that a license, permit, or other permission is required from a local jurisdiction in order to display said signs, Grantee agrees to pay all requisite license or permit fees.
- 25) Notice Regarding Disclosure of Information Relating to the Project. The Department intends to make available to the public certain information regarding the Project and the Grantee. In addition, the Department may be required to disclose information about the Project to the Board of Public Works and the Maryland General Assembly and may desire to disclose such information to other State officials or their staff, local government officials or their staff, and other lenders and funding sources. The Department may also be required to disclose information in response to a request for information made pursuant to the Public Information Act, §4-101 et seq. of the General Provisions Article, Annotated Code of Maryland (the "PIA"). Information that may be disclosed to any of the foregoing, including the public, may include, among other things, the name of the Grantee; the name, location, and description of the Project; the date and amount of financial assistance awarded by the Department; the terms of the financial assistance; use of funds; information contained in the application for financial assistance; a redacted copy of the Application; and the sources, amounts and terms of other funding used to complete the Project, including capital contributions from the Grantee. Certain information may be exempt from disclosure under the PIA. Requests for disclosure of information made pursuant to the PIA are evaluated on an individual basis by the Department. If Grantee believes that any of the information it has provided to the Department is exempt from disclosure, Grantee has attached an Exhibit to this Agreement describing the information it believes to be exempt from disclosure and provide an explanation therefor. The Department cannot guarantee non-disclosure of such information but may consider Grantee's statement when responding to a request made pursuant to the PIA.
- 26) Excusable Delay Events. Grantee agrees to prosecute the Project continuously and diligently. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the reasonable control and without the fault or negligence of the Grantee, including but not limited to, unreasonable delays by pole owning utilities in granting required permits, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of the Grantee.
- 27) No Third-Party Beneficiary Rights. With the limited exception of the Federal Interest Conditions, this Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with this Agreement or provision contained herein or contemplated hereby, even if indirectly benefited by it.

[SIGNATURES ON FOLLOWING PAGE]

**WITNESS**, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officer(s) as of the dates below.

<<FULL LEGAL NAME OF GRANTEE  
HERE>>

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT**

By: \_\_\_\_\_ (SEAL)  
Jacob R. Day, Secretary

\_\_\_\_\_  
Date

Approved for form and legal sufficiency,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Assistant Attorney General

**Exhibits:**

- Exhibit A – Federal Funding Acknowledgment and Certification Regarding Use of Federal Funds for Lobbying
- Exhibit B – Network Infrastructure Grant Program Application Form
- Exhibit C – Project Budget
- Exhibit D – Additional Funding
- Exhibit E – Project Map
- Exhibit \_\_\_\_ – Certification Regarding Exemption from Standard Minimum Speed Requirements (if applicable)
- Exhibit \_\_\_\_ – Grantee’s Statement Regarding Confidentiality (if applicable)

**EXHIBIT A**  
**CERTAIN FEDERAL FUNDING CONDITIONS AND LOBBYING CERTIFICATION**

This is a fixed-price sub-award. Federal regulations that may be applicable to this sub-award include, without limitation, the following:

- A. 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all prospective and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form “Certification Against Lobbying.” It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF-LLL.
  
- B. “Form LLL, Disclosure of Lobbying Activities” must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
  
- C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this sub-award and subject to such exceptions as may be otherwise provided by Treasury, such as those included in Treasury’s SLFRF and CPF Supplementary Broadband Guidance dated May 17, 2023.
  
- D. All sub-recipients of federal funds must comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (E).
  
- E. Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (D). Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- 1) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 3) In the event of the contractor’s non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 4) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting

office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973 and committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

6) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

F) All sub-recipients agree to comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.

G) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.

H) National Defense Authorization Act of 2019 (NDAA). The NDAA prohibits the use of federal funds to cover the cost of equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or critical technology as part of any system. Section 889 of the NDAA defines "covered telecommunications or services" to mean telecommunications and video surveillance equipment or services produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). "Covered telecommunications equipment or services" also includes telecommunications or video surveillance equipment or services provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity that is owned or controlled by the government of a covered foreign country, i.e. The Republic of China.

I) Clean Air Act. The sub-recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The sub-recipient agrees to report each violation to the Office of Statewide Broadband and understands and agrees that the Office will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The sub-recipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

J) Federal Water Pollution Control Act. The sub-recipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The sub-recipient agrees to report each violation to the Office of Statewide Broadband and understands and agrees that the Office will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The

sub-recipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

K) Hatch Act. Sub-recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.



**CERTIFICATION PROHIBITING THE USE OF FEDERAL FUNDS**

**FOR LOBBYING**

Grantee hereby certifies that to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any persons who fail to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

  
Full Name of Entity Making this Certification

By: \_\_\_\_\_  
Authorized Signature for Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**EXHIBIT \_\_**

**Template for  
ISP Certification**

*Note: The ISP shall submit the following certification on company letterhead. Failure to provide a certification with sufficient justification to support divergence from the U.S. Treasury's symmetrical 100 up/down standard will result in the ISP being required to comply with the 100 up/down standard in order to be eligible for any match or reimbursement funding.*

**Project Title:** *[Insert title]*

**Local Jurisdiction Partner:** *[Insert name]*

This is to certify, to the best of undersigned's knowledge, professional experience, and belief, that the above-referenced broadband investment project cannot practically deliver service speeds of 100 Mbps down and 100 Mbps up, by reason of the following (*select at least one*):

- Geography
- Topography
- Excessive Costs

Rationale (*this section must be completed; additional pages may be attached if needed*):

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**(ISP)** understands that if granted an exemption from the 100/100 standard, this project will nonetheless be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and at least 20 Mbps upload speeds, and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds based on future technology advances.

**(ISP)** further acknowledges that this certification is a material representation of fact upon which reliance was placed by the State of Maryland in approving either its or the above-referenced Local Jurisdiction Partner's application for funding regarding this project.

\_\_\_\_\_  
Authorized signature for ISP

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title