

**MONTANA DEPARTMENT OF ADMINISTRATION  
ARPA BROADBAND DEPLOYMENT GRANT PROGRAM  
CONTRACT #MT-ARPA-BDP-XXX**

This agreement is a federal subaward (“Contract”) and is entered into by Subrecipient’s Name (“Subrecipient”), a [*registered business form – ex. LLC, C Corp, etc.*] existing under the laws of Montana, and the State of Montana Department of Administration (Department), acting through the Administrator of Montana’s ARPA Broadband Deployment Program (BDP).

The definitions of key terms used in this Contract are provided in Exhibit E – Definitions. The Subrecipient and the Department hereby agree as follows:

**Section 1. PURPOSE**

The purpose of this Contract is to provide funding to the Subrecipient to achieve broadband level internet service in “underserved,” “unserved” and rural areas where households are without sufficient access to broadband not meeting the U.S. Treasury desired broadband minimum mbps (megabits per second) information transmission speed that are approved by the Department under the American Rescue Plan Act Broadband Deployment Program (“BDP” or “Program”).

**Section 2. AUTHORITY**

- (a) This Contract is issued under the authority of the American Rescue Plan Act of 2021 (Public Law 117-2) (“ARPA”) and House Bill 632 (Chapter 401, 2021 Laws of Montana) (“House Bill 632”).
- (b) This Contract is also issued under the authority of Montana’s 67th Legislature Senate Bill 297 (Chapter 449, 2021 Laws of Montana), establishing Montana’s Broadband Infrastructure Deployment Laws and Montana Broadband Deployment Program Act, signed May 11, 2021, herein cited as the “Connect Montana Act”, and on the terms and conditions stated herein.

**Section 3. NOTICE OF FEDERAL SUBAWARD**

The Department was awarded federal funds under ARPA on May 24, 2021 by the U.S. Department of Treasury (Treasury) under CFDA number 21.027. This grant is considered a subaward as defined in 2 CFR §200.1 and federal financial assistance in relation to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 – 7507) (“Grant” or “Subaward”). As defined 2 CFR §200.1, “subaward” means “an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity.” See attached Notice of Subaward outlining applicable terms and conditions of a federal subaward attached as Exhibit A, incorporated herein by this reference.

**Section 4. ACCEPTANCE OF PROGRAM REQUIREMENTS**

- (a) Subject to the limitation in subsection (e) below, the Subrecipient shall comply with all applicable (i) local, state, and federal laws and (ii) rules, regulations, guidance, ordinances, and resolutions now in effect or as may be amended during the term of this Contract. Some—but not all— of these laws and regulations are outlined in Section 4 (Acceptance of Program Requirements), Section 7 (Budget), Section 19 (Compliance with Applicable Laws), and Section 20 (Accounting, Cost Principles and Auditing). The Subrecipient is responsible for understanding and following the applicable laws, rules and regulations. The Subrecipient shall also comply with all administrative directives and procedures that may be established or amended by the Department for the Program including but not limited to the ConnectMT Application Guide and Program Administration Manual, found here: [www.connectmt.mt.gov](http://www.connectmt.mt.gov).
- (b) The Subrecipient certifies that the use of Program funds as outlined in Section 6 (Scope of Work) is eligible under ARPA and all applicable guidance.
- (c) The Subrecipient agrees to repay to the Department any funds remitted under this Contract that the Subrecipient, its contractors, agents, or assignees expends in violation of the terms and conditions of this Contract, the laws, rules, regulations, and guidance governing the Program or any other applicable local, state, or federal requirements. This repayment obligation does not limit any other remedies the Department may have under this Contract or law. This obligation survives the termination of this Contract.
- (d) The Subrecipient agrees to comply with the requirements of ARPA including but not limited to regulations adopted by Treasury pursuant to Section 602(f) of ARPA and guidance issued by Treasury.
- (e) The Subrecipient must provide the Department if requested with a statement of what it intends to accomplish with these funds and must state how it will achieve the outcomes intended by their proposal. See House Bill 632, section 27.
- (f) Any publications produced with funds from this award must display the following language: “This project [is being]/[was] supported, in whole or in part, by Connect Montana Act award number SLFRP1747 allocated by the State of Montana via the U.S. Department of the Treasury in accordance with the American Rescue Plan Act for the deployment of broadband in the State of Montana.”
- (g) If it is determined that the use of funds outlined in Section 6 (Scope of Work) is ineligible under ARPA, the Subrecipient understands and acknowledges that the Department may terminate this Contract as outlined in Section 18 (Loss or Reduction of Funding) or amend the terms and conditions of this Contract if feasible and allowed under applicable law.

## **Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE**

- (a) This Contract shall take effect upon execution by the parties and will terminate on [INSERT DATE no more than XXX from date of Gov Award Letter].

- (b) All authorized expenses reimbursed by the Department to the Subrecipient under this Contract must be incurred by the Subrecipient between INSERT DATE and INSERT DATE. All requests for reimbursement must be submitted sixty (60) days prior to INSERT TERMINATION DATE FROM SECTION 5(a) (Effective Date and Time of Performance).
- (c) This Contract shall remain in effect until one of the following two events has occurred:
  - (i) The Subrecipient and the Department replace this Contract with another written agreement; or
  - (ii) All of the Subrecipient's obligations under this Contract, including the Service Obligation (see Section 28 (Service Obligation)), have been discharged and paid.

**Section 6. SCOPE OF WORK**

- (a) The Subrecipient’s application for Program assistance submitted on [www.covidreliefmt.org](http://www.covidreliefmt.org), including all supporting documents and any written modifications or reports resulting from the review of the application by the Department (collectively “Project”), are incorporated into this Contract by this reference and the representations made therein are binding upon the Subrecipient.
- (b) The Subrecipient shall engage in activities as set forth in the Project. Any modifications to the Project must be approved in writing by the Department. This grant is not for Research and Development (R&D) or indirect costs.
- (c) The Subrecipient will complete the following major components of the Project:
  - i. a final buildout map on the Department mapping tool indicating that all construction has been completed as proposed in the application.

**Section 7. BUDGET**

- (a) The total amount awarded to the Subrecipient under this Contract shall not exceed the following limits:
  - i. \$AWARD AMOUNT to \_\_\_\_\_
  - ii. Exhibit D – Budget as approved by the Department and incorporated herein by this reference.
- (b) The Subrecipient must satisfy the matching funds requirements consistent with the purposes expressed in the Subrecipient’s application during the Contract term and will meet or exceed the 20% required match ratio [insert reference to Exhibit D – Budget – Match?]. Any modifications to the approved budget must be approved in writing by the Department.
- (c) The Subrecipient agrees that the funds disbursed under this Contract may only be used in compliance with ARPA, applicable Treasury regulations and guidance, and Montana

House Bill 632 and Montana Senate Bill 297. The funds awarded in this Contract are subject to repayment to the Department as may be required by any applicable law or this Contract and if any expenses incurred are found to be ineligible. The Subrecipient understands that costs overruns beyond the awarded amount will be the responsibility of the Subrecipient. This section shall survive termination of this Contract.

## **Section 8. METHOD OF REIMBURSEMENT**

- (a) The Department will use the funds appropriated in HB 632 to fund eligible Program activities to subrecipients that have received a notice of award letter from the Department.
- (b) The Department agrees that if and when the funds described in paragraph (a) of this Section are available, the Department will authorize the Subrecipient to request reimbursement from funding awarded for the Project.
- (c) The Department agrees to reimburse the Subrecipient for eligible Project costs incurred on or after the date specified in Section 5(b) (Effective Date and Time of Performance) upon the successful completion of activities set forth in Section 6 (Scope of Work) and as outlined in the Program Administrative Manual. All reimbursements must be supported by adequate documentation provided by the Subrecipient and require the Department's approval of the Subrecipient's request for reimbursement. Requests for reimbursement must include the information outlined in Exhibit B – Request for Reimbursement, incorporated herein by this reference.
- (d) The Department will only reimburse the Subrecipient for [insert eligible costs].
- (e) As specified in the Program Administrative Manual, match
- (f) The Department will not reimburse the Subrecipient for any costs incurred prior to the date identified in Section 5(b) (Effective Date and Time of Performance), any ineligible expenses as set forth in the Program Administrative Manual or this Contract, or any expenses not adequately supported by the Subrecipient's records.
- (g) As set forth in Section 17 (Breach, Default and Remedies), if the Subrecipient fails to or is unable to comply with any of the terms or conditions of this Contract, any costs incurred will be the Subrecipient's sole responsibility.
- (h) The Subrecipient understands and acknowledges that the Department will report to the Legislature and the Montana Communications Advisory Commission on the status of all Program projects.
- (i) The Department is allowed fifteen (15) working days to process a request for reimbursement once adequate supporting documentation has been received by the Department. The Subrecipient shall provide banking information before or at the time of Contract execution in order to facilitate electronic funds transfer (EFT) payments.

- (j) If the Department determines that the Subrecipient has failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may, in addition to the remedies available at law or in this Contract, withhold reimbursement to the Subrecipient until such time as the Department and the Subrecipient agree on a plan to remedy the deficiency. If the parties are unable to agree on such a plan, the Department may exercise remedies available at law or in this Contract. The Department reserves the right to withdraw a commitment of any Program award of funds for projects not ready to proceed within one (1) year after the notice of award letter from the Department.
- (k) The Subrecipient may not use Program funds provided through this Contract as payment for broadband expenses that are reimbursed from other sources.

## **Section 9. REPORTING REQUIREMENTS**

- (a) *Quarterly Report.* No later than thirty (30) calendar days after the end of each calendar year quarter during the period in which allocation funds are available for expenditure, the Subrecipient must submit to the Department utilizing the Department's online reporting system, the following information: balance sheets, income statements, statements of cash flow, and the number of customers taking broadband service. In addition, the Subrecipient must provide the Department with such other reports concerning the financial condition or operation of the Subrecipient, including its Subsidiaries, as the Department may request.
- (b) *Annual Performance Report.* For three years starting the first January 31<sup>st</sup> after Project Completion, the Subrecipient must submit the following information utilizing the Department's online reporting system:
  - (i) existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;
  - (ii) the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;
  - (iii) the progress towards fulfilling the objectives for which the assistance was allocated;
  - (iv) the speed and average price of the most subscribed tier of the Subrecipient's broadband service offerings in the Project's service area; and
  - (v) the average price of broadband service in the Project's service area.

(c) *Annual Map Reporting*: No later than thirty (30) calendar days after the end of the Calendar Year, the Subrecipient shall be required to submit annually updated Approved Project Service Area(s) maps through the Department's online mapping tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.

(d) *Close Out Report*. The Subrecipient shall deliver a close out report to the Department no later than ninety (60) days after the completion of project or termination of the Award or expenditure of all Award funds, whichever event occurs last. The close out report shall address:

(i). a comparison of actual accomplishments to the objectives set forth in the Application and the awarded project;

(ii). a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods;

(iii). a comparison of how funds were spent against the original general budget submitted with the Department approved Application, and

(iv). a final buildout map on the Department mapping tool indicating that all construction has been completed as proposed in the application. If parts of the Approved Project Service Area have not been constructed, the Department may require a portion of the award to be rescinded or paid back. The Subrecipient shall comply with any U.S. Department of the Treasury or additional the Department reporting requirements necessary to comply with Connect Montana Act and ARPA.

(d) Within fifteen (15) days of approving the Close Out Report and Program Closeout Certification, the Department will issue the Notice of Project Close-out.

(e) ARPA Reporting. The Subrecipient shall comply with any Treasury or additional Department reporting requirements necessary to comply with ARPA. See Treasury's Compliance and Reporting requirements: [SLFRF-Compliance-Statement.pdf \(treasury.gov\)](https://www.treasury.gov/SLFRF-Compliance-Statement.pdf).

## **Section 10. ACCESS TO AND RETENTION OF RECORDS**

(a) The Subrecipient agrees to create and maintain records supporting the services covered by this Contract, including but not limited to, financial records, supporting documents, and such other records as are required by law or other authority, for a period of five (5) years after either the termination date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the Department, the State of Montana or third party, whichever is later. These records will be kept in the Subrecipient's offices.

(b) The Subrecipient, including its Subsidiaries, if any, shall afford the Department, the Legislative Auditor, the Office of the Inspector General of US Treasury, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project records, any other property encumbered by the allocation terms and conditions, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind belonging to or in any way pertaining to the Project, and to make copies or extracts therefrom. This section shall survive termination of this Contract.

## **Section 11. LIAISONS**

All project management and coordination on behalf of the Department shall be through a single point of contact designated as the Department's liaison. The Subrecipient shall designate a liaison that will provide the single point of contact for management and coordination of Subrecipient's work. All work performed pursuant to this Contract shall be coordinated between the Department's liaison and the Subrecipient's liaison.

The liaisons for this Contract are:

**For the Department:**

**[Name DOA employee] (or successor)**

**[Title], MDOA**

**125 N Roberts St.**

**P.O. Box 200101**

**Helena, MT 59620-0101**

**406-444-[xxxx]**

**[email]**

**For the Subrecipient:**

**[Name] (or successor)**

**[Name of Business]**

**[Mailing Address]**

**[City, MT, Zip Code]**

**[Phone Number]**

**[email]**

## **Section 12. PROJECT MONITORING**

The Department or any of its authorized agents may monitor and inspect all phases and aspects of the Subrecipient's performance to determine compliance with Section 6 (Scope of Work) of this Contract, the proper use of funds, and other technical and administrative requirements of this Contract, including the adequacy of the Subrecipient's records and accounts. The Department may advise the Subrecipient of any specific areas of concern and provide the Subrecipient opportunity to propose corrective actions acceptable to the Department. This section shall survive termination of this Contract.

## **Section 13. NOTICE**

All notices required under the provisions of this Contract must be in writing and delivered to the parties' liaisons identified herein either by first class mail or personal service.

- (a) *Notice.* Any notices or communications required or permitted to be given by this agreement must be provided in writing to the recipient by personal delivery; prepaid, certified mail; overnight courier; or electronic mail.
- (b) *Delivery of Notice.* Notice is deemed to have been given on the day it is personally delivered or delivered by overnight courier, on the day the recipient confirmed receipt if delivered by certified mail; or if delivered by email, on the date the email is sent, unless the sender receives an electronic message that delivery was unsuccessful. In that case, the sender must send notice by another means allowed by this section. If a recipient refuses to sign the certified letter receipt card, notice is effective within five days of mailing

#### **Section 14. REFERENCE TO CONTRACT**

The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

#### **Section 15. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

- (a) The Subrecipient may not assign, transfer, or subcontract any portion of this Contract without the Department's prior written consent. The Subrecipient is responsible to the Department for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Subrecipient. No contractual relationships exist between any contractor, subcontractor, or subrecipient and the State of Montana or the Department under this Contract.
- (b) This Contract shall be binding upon and inure to the benefit of the Subrecipient and the Department and their respective successors and assigns, except that the Subrecipient may not assign or transfer its rights or obligations hereunder without the prior written consent of the Department.

#### **Section 17. BREACH, DEFAULT, REMEDIES, AND PENALTIES**

- (a) The occurrence of any of the following events is a Subrecipient breach under this Contract:
  - i. Failure of the Subrecipient or its contractors, subcontractors, or subrecipient entities to follow a Contract term or condition; or
  - ii. The Subrecipient makes an intentionally untrue statement or materially misleading certification in this Contract or the Application; or
  - iii. The Subrecipient expends Award funds on costs which are not Eligible Purposes in accordance with the Department approved line-item Project budget; or
  - iv. The Subrecipient fails to keep adequate records, including the failure to document Award fund expenditures for Eligible Purposes as required herein; or
  - v. The Subrecipient fails to commence build out of the Project within one (1) year from the date that the Department notifies in writing that the environmental review process has been concluded or otherwise fails to meet or exceed milestones established in the



- Buildout Timeline, as it may be amended with prior written the Department consent;  
or
- vi. Subrecipient fails to comply with the accounting and reporting requirements in Article VI; or
  - vii. The Subrecipient shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents or licenses required to carry on any material portion of its business or the Subrecipient files for or an event occurs which can reasonably be expected to result in its dissolution or termination; or
  - viii. A court having jurisdiction in the premises shall enter a decree or order for relief with respect to the Subrecipient in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs; or the Subrecipient shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; or
  - ix. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Subrecipient, or the filing of such by the Subrecipient; or
  - x. The failure by the Subrecipient to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days; or
  - xi. The Subrecipient fails to provide the Service Obligation (see Section 28 (Service Obligation)) on the Project with respect to the allocation; or
  - xii. A final judgment in an amount of ten thousand dollars (\$10,000.00) or more shall be entered against the Subrecipient and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days; or
  - xiii. Any Subrecipient breach/default expressly specified in another section of this Contract.

- (b) Upon the occurrence of a breach, the Department shall issue a written notice of breach, identifying the nature of the breach, and providing 30 calendar days (or a lesser or additional time as may be agreed to by the parties) in which the Subrecipient shall have an opportunity to cure the breach. The parties will attempt in good faith to resolve all disputes, disagreements or claims relating to this Contract.

However, if the Department determines that a public safety issue or an immediate public crisis exists, the Department will not be required to provide advance written notice or a cure period and may immediately terminate this Contract in whole or in part if the Department, in its sole discretion reasonably exercised, determines that it is reasonably necessary to preserve public safety or prevent an immediate public crisis. Time allowed for cure does not diminish or eliminate Subrecipient's liability for damages.

- (c) If the Subrecipient fails to cure the breach within the period specified in the written notice, Subrecipient is in default of its obligations, and the Department may pursue all rights and remedies available to the Department that are contemplated by the Contract in the manner, upon the conditions, and with the effect provided in the Contract, including any or all of the following:
- i. Requesting repayment of funds;
  - ii. Terminating the Contract or applicable portions that are the subject of the breach in the Contract;
  - iii. Suspending Subrecipient's performance; or
  - iv. Withholding applicable payment until the default is remedied.
- (d) In addition to the remedies described in (b) and (c) above, the Department may pursue such other remedies that are generally available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages.
- (e) Each right, power and remedy of the Department shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.
- (f) If termination occurs under this section, any costs incurred will be the Subrecipient's responsibility. However, at its sole discretion, the Department may approve requests by the Subrecipient for reimbursement of eligible expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Subrecipient to comply with any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Subrecipient's control.
- (g) *Penalties.* As provided in § 90-1-607(7), MCA, the Department may assess penalties as provided in this Section 17(g) for Subrecipient's failure to comply with the provisions of this Contract without reasonable cause.
- i. All penalties are limited to 100% of the allocation to Subrecipient under the ConnectMT Program's terms of agreement.
  - ii. The Department may impose upon Subrecipient a penalty of up to 100% of the construction costs directly assignable to each identified service location (as defined by the following formula: total allocation / # of proposed locations) that fails to complete construction as agreed in the Subaward.
  - iii. The Department may impose upon Subrecipient a penalty of up to 100% of the construction costs directly assignable for each completed buildout service location (as defined by the following formula: total allocation / # of proposed locations) that fails compliance review as a result of the following:
    - A) Delivery speed (minimum download and upload with low latency).
    - B) Scoring chart points that were used as a basis for approval award allocation throughout the compliance service period as identified through departmental compliance reviews.
  - iv. The Department shall not impose penalties unless and until the Communications Advisory Commission makes a final determination of any penalties recommended by the ConnectMT Program throughout the compliance period.

(h)

### **Section 39.3 RESCISSION**

The Subrecipient may elect to rescind the Subaward, in which event the Department shall release the Subrecipient from its obligations hereunder, provided the Subrecipient complies with such terms and conditions as the Department may impose for such release.

### **Section 18. LOSS OR REDUCTION OF FUNDING**

The Department, at its sole discretion, may terminate or reduce the scope of this Contract if any funding sources are eliminated or reduced for any reason or the Project is not eligible for funds. If a termination or modification is required and the Project is eligible for funds, the Department may, if sufficient Program funds are available, compensate the Subrecipient for eligible services rendered and actual, necessary, and eligible expenses incurred as of the revised termination date. The Department will notify the Subrecipient of the effective date of the termination or modification of this Contract and, if a reduction in funding is required, provide the Subrecipient with a modified Project budget.

### **Section 19. COMPLIANCE WITH APPLICABLE LAWS**

- (a) The Subrecipient agrees to comply with the requirements of Section 602 of ARPA and any guidance and regulations adopted by Treasury regarding ARPA.
- (b) The Subrecipient agrees to comply with federal rules and regulations applicable to this Subaward including but not limited to the following:
  - a. 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 Award and subject to such exceptions as may be otherwise provided by Treasury. Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - c. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - d. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (not procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
  - e. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

- f. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - g. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - h. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - i. Generally applicable federal environmental laws and regulations.
- (c) Subject to the limitation set forth in Section 4(e) (Acceptance of Program Requirements), Subrecipient shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to: Montana environment and land use laws and rules; the Montana Human Rights Act (Title 49, MCA); the Equal Pay Act of 1963 (29 U.S.C. § 206(d)); the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); the Americans with Disabilities Act of 1990 (42 U.S. Code § 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*; 7 CFR pt. 15b); the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); the Uniform Federal Accessibility Standards (UFAS), as published by the United States Access Board; the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1970; the Native American Graves Protection and Repatriation Act (25 USC 3001 *et seq.*, 43 CFR § 10.4); (ix) the Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*); the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996)); and the Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*
- (d) The Subrecipient and its contractors, subcontractors and subrecipients are the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].
- (e) In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Subrecipient agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.
- (f) The Subrecipient shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Subrecipient nor its employees are employees of the Department or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and renewal documents must be sent to the Department within thirty (30) days of Contract execution.

- (g) If and when applicable, Subrecipient shall comply with applicable state prevailing wage laws. See sections 18-2-401 – 432, MCA.
- (h) The Subrecipient shall comply with (i) applicable procurement laws, regulations, and policies and (ii) open meeting and public information laws. The Department may review any procurement solicitations that Subrecipient issues. The Department’s review and comments shall not constitute an approval of the solicitation. Regardless of the Department’s review, the Subrecipient remains bound by all applicable laws, regulations, and Contract terms. If during its review the Department identifies any deficiencies, then the Department shall communicate those deficiencies to the Subrecipient as quickly as possible within seven (7) business days.
- (i) Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with the laws of Montana. If businesses are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana.

#### Equal Opportunity Requirements

- (j) *Equal Opportunity Provisions in Construction Contracts.* The Subrecipient shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from the Department pursuant to a allocation, any related contract, loan, insurance or guarantee, or undertaken pursuant to any the Department program involving such allocation, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.
- (k) *Equal Opportunity Contract Provisions Also Bind the Subrecipient.* The Subrecipient further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.
- (l) *Sanctions and Penalties.* The Subrecipient agrees that it shall cooperate actively with the Department in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules. In addition, the Subrecipient agrees that if it fails or refuses to comply with these undertakings the Department may cancel, terminate or suspend in whole or in part this Contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Subrecipient.

## Section 20. ACCOUNTING, COST PRINCIPLES, AND AUDITING

- (a) The Subrecipient shall maintain for the purposes of this Contract an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles (“GAAP”).

As defined by 2 C.F.R. §200.49, GAAP “has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”

"Accounting Requirements" means compliance with GAAP acceptable to the Department; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200; the Federal Single Audit Act of 1984, as amended; Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Guidance”); and the Montana Single Audit Act.

- (b) The Department, any other legally authorized governmental entity, or their authorized agents may, at any time during or after the term of this Contract, conduct in accordance with sections 2-7-503, 5-13-304, and 18-1-118, MCA, and other authorities, audits for the purposes of ensuring the appropriate administration, expenditure of monies, and delivery of services provided through this Contract. This audit authorization shall survive termination of this Contract.
- (c) Non-Federal Entities, which include Subrecipients that are States, local governments, Indian tribes, institutions of higher education, or nonprofit organizations, shall provide the Department with an audit pursuant to 2 C.F.R. part 200, Subpart F (Audit Requirements). The Subrecipient must follow subsection 200.502 in determining federal awards expended. All the Department allocations impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year. Therefore, the audit submission requirement for this program begins in the Subrecipient’s fiscal year that the allocation is made and thereafter. All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor’s report; or (ii) nine months after the end of the Subrecipient’s audit period.
- (d) For all other entities, Subrecipients shall provide the Department with an audit within 120 days after the start of the project date. The audit is required until all allocations funds have been expended or rescinded. While an audit is required, Subrecipients must also submit a report on compliance and internal controls over financial reporting, as well as a report on compliance with aspects of contractual agreements and regulatory requirements.
- (e) The Department, may, at any time during or after the term of this Contract, conduct in accordance with sections 2-7-503, 5-13-304, and 18-1-118, MCA, and other authorities, audits for the purposes of ensuring the appropriate administration, expenditure of monies, and delivery of services provided through this Contract. This audit authorization shall survive termination of this Contract.

## **Section 21. AVOIDANCE OF CONFLICT OF INTEREST**

- (a) The Subrecipient shall comply with Sections 2-2-101 et seq., as applicable (“public employee’ means, a person under contract to the state”), 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, and any other applicable local, state, or federal law, regulation, rule, or policy regarding the avoidance of conflict of interest.
- (b) The Subrecipient agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the Project funded under this Contract.
- (c) The Subrecipient shall promptly refer to the Department any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

## **Section 22. OWNERSHIP AND PUBLICATION OF MATERIALS**

All reports, information, data, and other materials prepared by the Subrecipient or any of its contractors, subcontractors, or subrecipients in furtherance of this Contract are the property of the Subrecipient and the Department. Both Subrecipient and the Department have the royalty-free, nonexclusive, and irrevocable right to reproduce, publish, authorize others to use, and to otherwise use, in whole or part, such property and any information relating thereto. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of both the Department and the Subrecipient.

## **Section 23. INSURANCE**

- (a) General Requirements. The Subrecipient must maintain-- and assure that its contractors, subcontractors and subrecipients maintain-- for the duration of the Contract, at their own cost and expense, primary liability insurance against claims for injuries (including death) to persons or damages to property, including contractual liability, that may arise from or in connection with the performance of the duties and obligations in the Contract by Subrecipient, its agents, employees, assigns, contractors, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission.
- (b) Primary Insurance. The Subrecipient’s insurance coverage must be primary insurance with respect to the State of Montana, its elected or appointed officials, employees, or volunteers and the State’s insurance will not contribute with it.

- (c) Commercial General Liability Insurance. At its sole cost and expense, the Subrecipient must maintain occurrence coverage with minimum combined single limits of \$1 million per occurrence and \$2 million aggregate per year.

The State of Montana, its officers, officials, employees, and volunteers must be covered as additional insureds under the general liability policy covering the Department's oversight of the Subrecipient; the premises operations, whether owned leased; and products and completed operations.

The Subrecipient shall ensure that its contractors, subcontractors, and subrecipients carry the commercial general liability insurance at the limits described above.

- (d) Professional Liability Insurance. The Subrecipient shall assure that any representatives, assigns, and subcontractors performing professional services under this Contract purchase occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year. *Note: if "occurrence" coverage is unavailable or cost prohibitive, the contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are filed after the cancellation or expiration date of the policy.*

- (e) General Provisions. All insurance coverage must be with a carrier licensed to do business in the State of Montana and with a Best's rating of at least A-, or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA. All certificates and endorsements must be received by the Department prior to beginning any activity provided for under the Contract. The Subrecipient must notify the Department immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The Department reserves the right to request complete copies of the Subrecipient's insurance policy, including endorsements, at any time.

- (f) The insurance coverage limits do not limit the Subrecipient's liability under this Contract.

## **Section 24. DEFENSE AND INDEMNIFICATION**

- (a) Duty to Defend. The Subrecipient, at its sole cost and expense, shall defend the State of Montana and the Department, their officials, employees, and agents (collectively, Indemnites) from and against all claims/demands, allegations, lawsuits, or any other action (Claim or Claims) arising or allegedly arising from the Subrecipient's or its contractor's, subcontractor's or subrecipient's (i) negligence; (ii) wrongful act or omission; (ii) breach/default of this Contract; or (iii) other failure to follow the terms and conditions of this Contract.



- (b) Duty to Indemnify. The Subrecipient shall indemnify the Indemnitees against losses, liabilities, damages, judgments, settlements, penalties, fines, attorney/expert fees, expenses, interest, or fees, including the reasonable cost of investigation, defense, settlement, accounting, reporting and any advance of an expense or fee arising from the Claims.
- (c) Notice of Claim. The Department shall give the Subrecipient prompt notice of any Claim, and at Subrecipient's expense, the Department shall cooperate in the defense of the matter. The Subrecipient acknowledges that under Montana law, the Montana Attorney General may participate in an action involving the State of Montana.
- (d) Survival. The duties to defend and indemnify survive termination or expiration of this Contract.

[inserted from JB's version]

## **Section 25. REPRESENTATIONS AND WARRANTIES**

Recognizing that the Department is relying hereon, the Subrecipient represents and warrants, as of the date of this Contract, as follows:

- (a) *Organization; Power, Etc.* The Subrecipient: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Contract; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from the Department contemplated by this Contract.
- (b) *Authority*. The execution, delivery and performance by the Subrecipient of the Contract and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Subrecipient or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Subrecipient is a party or by which it may be bound. The Subrecipient has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.

- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance, or enforcement of the Contract, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each part of the Contract is, or when executed and delivered will be, the legal, valid, and binding obligation of the Subrecipient, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally.
- (e) *Compliance with Laws.* The Subrecipient complies in all material respects with all federal, state, and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws.").
- (f) *Litigation.* There is no pending or threatened legal, arbitration or governmental actions or proceedings to which the Subrecipient is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect.
- (g) *Information Submitted with Application.* All information, reports, and other documents and data submitted to the Department in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to the Department in connection with the Application present fairly, in all material respects, the financial position of the Subrecipient and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Subrecipient.
- (h) *Principal Place of Business.* The principal place of business and chief executive office of the Subrecipient is at the address of the Subrecipient specified in Schedule 1 hereto.
- (i) *Organization Number.* The Subrecipient's organization number is correctly identified in Schedule 1 hereto.
- (j) *Subsidiaries and Parent.* Any subsidiaries or parent of the Subrecipient are disclosed on the attached Schedule 1.
- (k) *Defaults Under Other Agreements.* No default by the Subrecipient has occurred under any agreement or instrument to which the Subrecipient is a party or to which any of its property is subject that could have a Material Adverse Effect.

- (1) *Additional Representations and Warranties.* The Subrecipient further represents and warrants as set forth in Schedule 1.

## 26. CONDITIONS OF FINANCIAL ASSISTANCE

### 26.1 Conditions Precedent to Closing on Allocation

In connection with the execution and delivery of this Contract, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to the Department in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for the Department;
- (b) *Contract.* The Department shall receive duly executed originals of the Contract;
- (c) *Matching Funds Statements.* The Department shall have received executed, filed and indexed financing statements covering *at least* the minimum required 20% matching funds;
- (d) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Subrecipients, the Department shall have received certified copies of the Subrecipient's most recent articles of incorporation or charter and bylaws. With respect to limited liability companies or similar organizations, the Department shall have received certified copies of the Subrecipient's most recent organization documents;
- (e) *Authorizations.* The Department shall have received satisfactory evidence that all parts of the Contract and proceedings of the Subrecipient necessary for duly authorizing the execution, delivery and performance of the Contract have been obtained and are in full force and effect;
- (f) *Approvals.* The Department shall have received satisfactory evidence that the Subrecipient has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, right of way permits, municipal approvals, and state and federal regulatory approvals necessary for, or required as a condition of, the validity and enforceability of each part of this Contract;
- (g) *Title Evidence.* The Department shall have received satisfactory evidence that the Subrecipient has good and marketable title to its property, including the Project, and holds such franchises, permits, leases, easements, rights, privileges, licenses, or right-of-way instruments, reasonably adequate in form and

substance, as may be required by law for the continued maintenance and operation of the existing facilities and Project;

- (h) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 26.2 (General Conditions Precedent to DOA’s Obligations to Dispersal of Allocation) and/or 26.3 (Conditions to Individual Advances) herein, The Department shall have received all management, service, and operating agreements, in form and substance acceptable to the Department, which shall be in accordance with fees or rates presented in the *pro forma* financial statements submitted to the Department in the Department’s approved Application;
- (i) *Opinion of Counsel.* the Department shall have received an opinion of counsel for the Subrecipient (who shall be acceptable to the Department) in form and substance acceptable to the Department for each state in which the Subrecipient operates; and
- (j) *Additional Conditions.* The Subrecipient has met all additional conditions specified in Schedule 1 hereto.
- (k) *Engineering and/or Architectural approval stamp.* The Subrecipient has provided the Department for evaluation and approval of project proposal the necessary approval stamp on infrastructure plans, designs, products/technology utilized, and secured surveys of project areas.
- (l) *Environmental.* The Subrecipient agrees that the Project will adhere to all applicable design standards required by the Department of Environmental Quality (“DEQ”), and Subrecipient shall obtain all applicable federal, state, and local permits required for the Project. If no DEQ standards are applicable to the Project, the Subrecipient agrees that the Project will adhere to generally accepted industry standards, such as *Recommended Standards for Wastewater Facilities* or *Recommended Standards for Water Works*, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.
- (m) *Form 477.* The Subrecipient agrees to provide the Department the last two file Form 477 with the FCC as the Subrecipient is required to do so every June and December of each year to report on coverage and service of areas as part of the FCC’s Broadband Data Collection (BDC) program.

**Section 26.2 General Conditions Precedent to the Department’s Obligations to Funding Reimbursement**

The obligations of the Department hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificates and other evidence of such conditions are to be satisfactory to the Department in its discretion):

- (a) *Current Financial Information and Certificate of Authority.* The Department has received from the Subrecipient: (i) its updated balance sheet, statement of cash flow, and income statement and (ii) a duly authorized and executed certification, "Certification of Authority," designating an officer, employee, or agent of the Subrecipient as the person or persons authorized to execute and submit, on behalf of the Subrecipient, "Financial Requirement Statement;" all subject to perjury laws of the State of Montana.
- (a) *Deposited Funds.* the Department has received from the Subrecipient evidence, satisfactory to the Department, verifying that the Subrecipient has on deposit in the Matching Funds Account, the required 20% of the Project funds sufficient to fulfill the minimum funds requirement and to complete the Project as specified on Schedule 1; and
- (b) *Additional Conditions.* The Subrecipient has met all additional conditions specified in Schedule 1 hereto.
- (c) *Broadband Mbps Speed testing.* The Subrecipient has provided to the Department its broadband speed test readings and the Department has verified the results.

**Section 26.3 Conditions to Individual Reimbursement of Funds**

The obligations of the Department to approve any request for reimbursement are subject to the satisfaction of each of the following conditions precedent on or before the date of such request for reimbursement (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to the Department in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Subrecipient contained in this Contract be true and correct on and as of the date of such reimbursement as though made on and as of such date;
- (b) *Expenditure of Funds.* At least 20% approved matching funds have been expended with each request for reimbursement of funds is made, as stipulated in the NAO.
- (c) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, or shall have occurred after giving effect to reimbursement of funds to the Subrecipient;

(d) *Current Financial Information.* That the Department has received from the Subrecipient: its current, updated balance sheets, income statements and statements of cash flow;

(e) *Compliance with Buildout Timeline and Reporting Requirements.* That the Department has received from the Subrecipient evidence, satisfactory to the Department, that the Project is being constructed in accordance with the Buildout Timeline and Reporting requirements in Section 20 (Accounting, Cost Principles, and Auditing);

(f) *Compliance with Contract.* That the Subrecipient is in material compliance with the Contract;

(g) *Permits, Licenses and Franchises.* That the Department shall have received satisfactory evidence that the Subrecipient has obtained the permits, licenses, franchises and other approvals identified on Schedule 1;

(h) *Deposited Funds.* That Subrecipient has maintained on deposit in the Matching Funds Account the matching funds requirement as well as other funds to complete the Project as specified on Schedule 1, unless expended and withdrawn as authorized by the Department;

(i) *Additional Documents.* That the Subrecipient agrees to provide the Department with such additional documents as the Department may request, including but not limited to required engineering report of Project and architectural report as needed for Project with engineering stamps approving plans; and

(j) *Additional Conditions.* That the Subrecipient has met all additional conditions specified in Schedule 1 hereto.

## **Section 27. AFFIRMATIVE COVENANTS**

### **(a) Deposit of Matching Funds into Broadband Funds Account**

The Subrecipient shall open and maintain a bank deposit account with the proposed matching supporting funds, which at a minimum is 20% of the proposed project. The Subrecipient shall designate the account as the Broadband Funds Account and inherently within the account the Subrecipient should identify its proposed matching funds as the *Broadband Matching Funds*. The account must be in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to the Department and shall be identified by the Department's designation of the Subrecipient followed by the words "Broadband Matching Funds". Moneys in the Broadband Funds Account shall be used solely for the purposes of the approved Project, or for such other purposes as may be approved in writing by the Department in fulfillment of the Broadband Deployment Program.

Deposits and disbursements from the Broadband Funds Account shall be made and recorded in accordance with the Broadband Program Administration Manual.

**(b) Additional Project Funding**

The Subrecipient shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of the Department, obtain additional loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

**(c) Miscellaneous Notices**

The Subrecipient shall furnish to the Department:

- i) *Notice of Default.* Promptly after becoming aware thereof, notice of the occurrence of any default under the Contract or the receipt of any notice given pursuant to the Contract with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under any other part of the Contract.
- ii) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Subrecipient or any Affiliate which, if adversely determined, could have a Material Adverse Effect.
- iii) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect.
- iv) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect.
- v) *Corporate Document Changes.* Thirty (30) days prior to their effectiveness, any amendments, supplements or modifications to the Subrecipient's Articles of Incorporation, Charter, Bylaws, Operating Agreement, Members Agreements, or other Organizational Documents.
- vi) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Subrecipient as the Department may, from time to time, reasonably request, including the Subrecipient providing the Department notice of impending bankruptcy or dissolution.
- vii) *Notice of Timeline Extension.* The Subrecipient is held to comply with submitted proposal upon which Allocation was awarded for the eligible project. In the unforeseen

occurrence that the Subrecipient seeks an extension to the established timeline for completion of the approved project, the Subrecipient shall, 60 days prior to the set project completion date, submit to the Department, a progress report in accord with this Contract and the terms of the NAO and the Subrecipient's submitted proposal, stating what has been accomplished pursuant to the preceding, and if an extension is being requested, the Subrecipient, under penalty of being declared in default and subject to the obligation of reimbursing the Program the funds allocated, declare that its failure to comply with any of those services, duties, terms, or conditions within the stated timeline, resulted from circumstances beyond the Subrecipient's control. A written request for an extension must be submitted at least sixty (60) days prior to the set project deadline date.

### **Section 28. Service Obligation**

The Subrecipient shall provide the level of broadband service described in the Department approved Application commencing from the date of Project Completion until the end of the Composite Economic Life of the facilities funded by the Award as specified on Schedule 1. Subrecipient acknowledges that given the significant amount of government contribution to the Project in the form of an allocation, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default.

### **Section 29. Obligations with Respect to the Construction, Operation and Maintenance of the Project**

- (a) *Project Management and Operation.* The Subrecipient shall be responsible for the management of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Construction in Accordance with Network Design and Buildout Timeline.* The Subrecipient shall cause the Project to be constructed and/or built out and completed in accordance with the Network Design submitted to the Department in Subrecipient's allocation Application, as such design may be amended with prior the Department consent, and the Buildout Timeline.
- (c) *General Insurance Requirements.* The Subrecipient shall take out and maintain insurance on the Project and any other property acquired with the allocation in accordance with 7 CFR Section 1788 as well as maintaining the fidelity bond or theft insurance coverage required in Section 26.2(a) (Current Financial Information and Certificate of Authority) hereof.
- (d) *Contracting.* The Subrecipient may, in accordance with the Broadband Deployment Program Construction Procedures, contract for goods and services to be funded by the Award, provided that the contracts must comply with equal employment opportunity and civil rights requirements.



- (e) *Commencement and Completion of the Project.*
  - (1) Subrecipients are required to commence the Project within 45 days from the date that the Department receives confirmation of all outstanding municipal, federal, and state permits, related regulatory clearances, and
  - (2) Project Completion shall occur within [ *time for projected project life*].
- (d) *National Programmatic Agreement.* If indicated on Schedule 1, Subrecipient shall be bound by the requirements of the National Programmatic Agreement (NPA), whose terms and conditions shall be incorporated into this Agreement. Failure to abide by the NPA, if entered into, shall be an Event of Default hereunder.
- (e) *Subcontractor Compliance.* The Subrecipient agrees that all contracts and subcontracts entered into for the completion of the activities described in Section 20 (Accounting, Cost Principles, and Auditing) will require such contractors, subcontractors, and subrecipient entities to also comply with all requirements placed on the Subrecipient in paragraph (a) of this Section. Such requirements must be included in the agreements with such entities.
- (f) *Allocation Reimbursement.* The Subrecipient agrees to repay to the Department any funds advanced under this Contract that the Subrecipient, its contractors, subcontractors, or subrecipient entities, or any public or private agent or agency to which it delegates authority to implement portions of this Contract, expends in violation of the terms and conditions of this Contract, the laws, rules, regulations and guidance governing the Program or any other applicable local, state, or federal requirements. This repayment obligation does not limit any other remedies the Department may have under this Contract or applicable law.

### **Section 30. PRESERVATION OF EXISTENCE AND RIGHTS**

The Subrecipient shall take or cause to be taken all such actions as from time to time may be necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be issued or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect.

### **Section 31. PURCHASES WITH AWARD FUNDS**

Except as specifically authorized in writing in advance by the Department, all facilities, materials, equipment, supplies, replacements, and all other items purchased with Award funds shall be purchased outright, and not subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

### **Section 32. FUTHER ASSURANCES**

- (a) The Subrecipient shall from time to time upon written demand of the Department make, execute, acknowledge, and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental account statements with respect to the Matching Funds Account as may be requested by the Department.
- (b) The Subrecipient shall cause this Contract, bank statements, continuation statement and every additional instrument which shall be executed pursuant to subsection (a) immediately above, to forthwith upon execution to be filed and recorded as necessary to fully authorize the allocation, and to confirm the minimum funding allocated by Subrecipient to the Project.

### **Section 33. BUY AMERICAN**

Subrecipient agrees to use in connection with the expenditure of award funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in any eligible country. For purposes of this section, an 'eligible country' is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.” The regulations may be found at, and any requests for waiver must be submitted pursuant to, 7 CFR 1787.

### **Section 34. FINANCIAL REQUIREMENTS**

The Subrecipient shall maintain a positive ending cash balance as reflected on the cash flow statement for each year in which allocation funds are expended.

### **Section 35. CORRECTIVE ACTION**

(a) Within thirty (30) days of: (i) sending the financial reports required by Section 9 (Reporting Requirements) that show the Financial Requirements of Section 34 (Financial Requirements) were not met for the reported fiscal period; or (ii) being notified by the Department that such requirements were not met for the period, whichever is earlier, the Subrecipient, in consultation with the Department, shall provide a written plan satisfactory to the Department setting forth the actions that shall be taken to achieve the specified Financial Requirements on a timely basis and shall promptly implement said plan.

(b) Furthermore, the Department may reduce the Subrecipient’s Program funds

provided by this Contract if one or both of the following occur: (1) if actual Project expenses are lower than projected by the Subrecipient or the Subrecipient obtains a greater amount of grant funds from other sources than as presented in the Project application; or (2) if the Subrecipient's projected average mbps speed indicated to be below the proposed project's target mbps speed for the amount awarded, as determined by the Department.

(c) If the Department determines that the Subrecipient failed to satisfactorily carry out its responsibilities under this Contract or has breached the terms of this Contract, the Department may, in addition to the remedies available at law and by this Contract, seize the established funding account for the Subrecipient proposed project, until the Subrecipient enters into a plan to remedy the deficiency. If the parties are unable to agree on such a plan, the Department shall exercise remedies available at law or in this Contract.

## **Section 36. NEGATIVE COVENANTS**

### **Section 36.1 GENERAL**

Unless otherwise agreed to in writing by the Department, while this Contract is in effect, the Subrecipient shall duly observe each of the negative covenants set forth in this Article VII.

### **Section 36.2 NEGATIVE PLEDGE**

The Subrecipient shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest in the matching funds deposited in the Broadband Funds Account, other than allowed expenses.

### **Section 36.3 CONTRACTS**

The Subrecipient shall not, without the prior written consent of the Department, enter into any contract or contracts for the operation or management of all or any substantial part of the Project, and shall not enter into any contract for the use by others of all or any substantial part of the Project.

### **Section 36.4 DISTRIBUTIONS OR WITHDRAWALS**

Before Project Completion, the Subrecipient shall not, without the prior written approval of the Department or granted a waiver request for publicly traded companies by the Department, make any dividend, stock, or capital distribution, or any membership withdrawals, unit redemptions, or other type of profit allocated to its members, or other distribution in the nature of an investment, guarantee, extension of credit, advance, or loan, nor make a capital credit distribution (all such distributions being hereinafter collectively called "Distributions;") *provided, however,* Distributions may be made in each fiscal year as follows:

- (a) Aggregate, annual Distributions not to exceed twenty-five percent (25%) of the prior fiscal year's Net Income or Margins may be made if, after such aggregate annual Distributions, the Subrecipient's net worth is at least one percent (1%) of its Total Assets;
- (b) Aggregate annual Distributions not to exceed fifty percent (50%) of the prior fiscal year's Net Income or Margins may be made if, after such aggregate annual Distributions, the Subrecipient's Net Worth is at least twenty percent (20%) of its Total Assets;
- (c) Aggregate annual Distributions not to exceed seventy-five percent (75%) of the prior fiscal year's Net Income or Margins may be made if, after such aggregate annual Distributions, the Subrecipient's Net Worth is at least thirty percent (30%) of its Total Assets; or
- (d) There is no limit on aggregate, annual Distributions if, after making such aggregate, annual Distributions, the Subrecipient's Net Worth is at least forty percent (40%) of its Total Assets.

**Section 36.5 CHANGING PRINCIPAL PLACE OF BUSINESS, CONDUCTING BUSINESS, OR TYPE OF BUSINESS STRUCTURE**

The Subrecipient shall not change its principal place of business, place of conducting business, or type of organization without the prior written consent of the Department.

**Section 36.6 CHANGING NAME AND CHANGING OR PLACE OF BUSINESS ORGANIZATION**

The Subrecipient shall not change its legal name or place of incorporation or organization without giving the Department sixty (60) days prior written notice.

**Section 36.7 HISTORIC PRESERVATION**

The Subrecipient shall not, without the prior written consent of the Department, use any BDC program funds to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

**Section 36.8 RESTRICTIONS ON TRANSFERS OF PROPERTY**

- (a) Except as provided in Paragraph (b) and excluding any property which the Subrecipient must sell to customers in the ordinary course of business, the Subrecipient shall not sell, lease or transfer any Collateral to any

other person or entity (including any subsidiary or affiliate of the Subrecipient) without the prior written consent of the Department.

- (b) So long as the Subrecipient is not in default hereunder, the Subrecipient may, without obtaining the consent of the Department, sell or otherwise dispose of, free from the lien hereof, any of the Collateral which is neither necessary to, nor useful for, the operation of the Subrecipient's business, or which has become obsolete, worn out, damaged, or otherwise unsuitable for the purposes of the Subrecipient; provided, however, that the Subrecipient shall follow 2 C.F.R. 200 with respect to any proceeds.

### **Section 36.9 RESTRICTIONS ON CHANGES TO LINE-ITEM BUDGET**

The Subrecipient agrees that the budget for the Project is a line-item budget and agrees not to make any revisions to the Department approved line-item Project budget, including, without limitation, the part of the budget for Broadband Deployment Infrastructure construction, without the prior written approval of the Department.

### **Section 37. TERMINATION OF AWARD OFFER**

The Department, in its sole discretion, may terminate the offer to make the allocation if it does not receive the Contract, duly executed on behalf of the Subrecipient and all conditions in 26.1 (CONDITIONS PRECEDENT TO CLOSING ON ALLOCATION) hereof are not satisfied within sixty (60) days from the date that the Department notifies in writing that the environmental review process has been concluded.

### **Section 40. DEBARMENT**

The Subrecipient certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any governmental department or agency.

### **Section 41. FORCE MAJEURE**

Neither party will be liable for any failure or delay in performing its duties in this agreement due to Force Majeure Events. "Force Majeure Event" means an event or circumstance beyond a party's reasonable control, such as natural catastrophes and acts of terrorism or war, and the consequences of that event or circumstance. Force Majeure Events do not include labor unrest, price increases, or changes in general economic conditions. If a Force Majeure Event continues for 30 days, the other party may terminate this agreement or suspend payments while the event continues.

## **Section 42. SEVERABILITY**

A declaration by any court, or any other binding legal forum, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent. If the provisions are mutually dependent, the parties shall attempt to negotiate changes to the Contract consistent with the legal ruling and applicable law including but not limited to ARPA and its implementing regulations. If the negotiations are unsuccessful, then either party may terminate this Contract, and the Department shall determine how to proceed based on ARPA, its regulations, and other applicable law.

## **Section 43. ARBITRATION**

Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under the Contract.

## **Section 44. JURISDICTION AND VENUE**

This Contract will be governed and interpreted according to Montana law. Any litigation concerning this Contract will be brought only in the Montana First Judicial District, Lewis and Clark County. Each party shall pay its own costs and attorney fees, except as otherwise stated in this Contract. (18-1-401, MCA)

## **Section 45. NO WAIVER OF BREACH**

- (a) Department's failure to complain of any act or omission on the part of Subrecipient, no matter how long the same may continue, may not be deemed to be a waiver by Department of any of its rights hereunder. No waiver by Department of satisfaction of condition or nonperformance of an obligation under this Contract will be effective unless it is in writing and signed by Department's authorized representative
- (b) In the case of any consent, approval or waiver from the Department that is required under this Contract or any other part of the Contract, such consent, approval or waiver must be in writing and signed by an authorized the Department representative to be effective. As used in this section, "authorized the Department representative" means the Director of the Department, and also means a person to whom the Director has officially delegated specific or general authority to take the action in question.

## **Section 46. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

### **Agreement**

- (a) This agreement consists of the agreement, all attachments, exhibits, and amendments thereto, final Solicitation # \_\_\_\_\_, and Contractor's final response to the solicitation. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

- (b) The headings and sub-headings contained in the titling of this Contract are intended to be used for convenience only and do not constitute part of this Contract.
- (c) These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment must be in a written agreement signed by the parties.

**Section 48. ARPA CERTIFICATION**

By signing this Contract, Subrecipient agrees and certifies to the terms and conditions attached as Exhibit C ARPA Terms and Conditions, incorporated herein by this reference.

The parties' authorized representatives have signed this Contract.

**SUBRECIPIENT**

\_\_\_\_\_  
 [Name], [Title]  
 [Business Legal Name]

\_\_\_\_\_  
 Date

**DEPARTMENT**

\_\_\_\_\_  
 Misty Ann Giles, Director  
 State of Montana  
 Department of Administration

\_\_\_\_\_  
 Date

## Exhibit A

### Notice of Subaward

#### Requirements for Pass-Through Entities and Subrecipients

(See 2 CFR §200.332)

1. **Subaward Notice:** This is an award provided by a pass-through entity, State of Montana, to a subrecipient to carry out part of a Federal award received by the State of Montana. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of a legal agreement, including an agreement that the State of Montana considers a contract. Here, the subaward is provided through Contract #MT-ARPA-BDP-22-XXX (“Contract”).
2. **Subrecipient Name:** See page one of the Contract.
3. **Subrecipient’s Unique Entity Identifier:** INSERT SUBRECIPIENT’S TAX ID #
4. **Federal Award Identification Number (FAIN):** SLFRP1747
5. **Federal Award Date** (award to recipient by federal agency): May 24, 2021
6. **Subaward Period of Performance** Start and End Date: See Section 5(a) of the Contract.
7. **Subaward Budget Period** Start and End Date: See Section 5(b) of the Contract.
8. **Amount of Federal Funds Obligated by this Action** by the Pass-Through Entity to the Subrecipient: See Section 7 of the Contract.
9. **Total Amount of the Federal Funds Obligated** to the Subrecipient by the Pass-Through Entity Including the Current Financial Obligation: See Section 7 of the Contract.
10. **Total Amount of the Federal Award Committed** to the Subrecipient by the Pass-Through Entity: See Section 7 of the Contract.
11. **Federal Award Project Description:** See Section 6 of the Contract.
12. **Awarding Agencies’ Information:**
  - a. Federal Awarding Agency: U.S. Dept. of Treasury
  - b. Pass-Through Entity: State of Montana
  - c. Contact Information for Awarding Official of the Pass-Through Entity: Misty Ann Giles, Director, Montana Department of Administration, [mistyann.giles@mt.gov](mailto:mistyann.giles@mt.gov)



13. **Assistance Listings Number and Title:** CFDA 21.027
14. **Identification of Whether the Award is R&D:** Not for R&D.
15. **Indirect Cost Rate** (per §200.414): Not applicable.
16. **Requirements of Federal Award Imposed on Subrecipient:** The Federal award must be used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See the Contract including Sections 3, 4, and 19 for more specific information.
17. **Additional Requirements:** Any additional requirement imposed on the Subrecipient is outlined in the Contract including any required financial and performance reporting.
18. **Negotiated Indirect Cost Rate** (negotiated between subrecipient and Federal Government): Not applicable.
19. **Access to Records:** Subrecipient must allow the Department and any authorized auditors access to the Subrecipient's records and financial statements as necessary for the Department to meet the requirements of 2 CFR Part 200.
20. **Closeout Requirements:** Subaward closeout terms and conditions can be found in the Contract including Section 9.
21. **Risk Assessment:** Documentation of the Subrecipient's risk of noncompliance can be found on file with the Department. See also monitoring and reports required in the Contract Sections 9, 10, and 19.
22. **Specific Subaward Conditions:** See the Contract for any specific subaward conditions imposed on the Subrecipient. (See §200.208)
23. **Monitoring:** The Department will monitor the Subrecipient to ensure the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward included in the Contract; and that the subaward performance goals are achieved. The Department will monitor the following items:
  - a. Financial and performance reports
  - b. Deficiencies are addressed
  - c. Compliance with any management decision(s) (as required by §200.521)
  - d. Resolving audit findings
24. **Audited as Required by Subpart F:** The Department will verify that the Subrecipient is audited as required by Title 2, Part 200, Subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501.

25. **Adjustments to Records:** The Department will consider whether the results of the Subrecipient's audits, on-site reviews, or monitoring indicate conditions that necessitate adjustments to the Department's records.

26. **Enforcement Action:** The Department may take enforcement action against noncompliant Subrecipients as described in §200.339 of this part and in program regulations.

**Exhibit B**  
**Request for Reimbursement**

Requests for Reimbursement must include the following information:

- a. Total cost and breakdown of costs and supporting documentation for each cost for which funds are being requested or match funding has been expended.
- b. Amount of matching funds expended to date
- c. Total amount requested and total remaining under the Contract
- d. Total payroll and employment for statewide operations
- e. Certification by the authorized representative certifying that the information within the request for reimbursement is correct
- f. Any other pertinent information related to the grant and progress on the Project; and
- g. If this is the final request for contract closeout, identify \_\_\_\_\_

## Exhibit C

### ARPA Terms and Conditions

**Assistance Listing Number and Title: 21.027** (formerly CFDA Number)

Section 602 of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund.

As a condition to receiving such payment from Treasury through the State of Montana, the authorized representative below hereby (i) certifies that the Subrecipient named as a Subrecipient in the attached subaward Grant Agreement executed between the Subrecipient and Department of Administration (Contract) requires the payment to be made pursuant to section 602 of the Act in order to carry out the activities listed in section 602 of the Act and (ii) agrees to the terms below and attached hereto.

#### U.S. DEPARTMENT OF THE TREASURY

#### CORONAVIRUS STATE FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

1. Use of Funds.
  - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602 of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
  - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins and ends in accordance with the dates outlined in the Contract.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury, as it relates to this award.
4. Maintenance of and Access to Records
  - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c) and Treasury's regulations implementing that section and guidance regarding the eligible uses of funds.

- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover direct costs.
7. Cost Sharing. Subrecipient must meet or exceed the 20% required match ratio.
8. Conflicts of Interest. Subrecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.
9. Compliance with Applicable Law and Regulations.
- a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
- i. 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 Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F - Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180,

subpart B) that the sub-award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Subrecipient Integrity and Performance Matters, pursuant to which the sub-award terms set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

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

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this sub-award, include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury 's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (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 state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. §200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act.

11. Hatch Act Subrecipient 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.

12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRP1747 awarded to State of Montana by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

a. Any funds paid to Subrecipient (1) in excess of the amount to which Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by Subrecipient shall constitute a debt to the federal government.

b. Any debts determined to be owed the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.

b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship among or between the United States, State of Montana, Montana Department of Commerce, and the Subrecipient.

16. Protections for Whistleblowers.

a. In accordance with 41 U.S .C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds,

an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for contract or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

- 17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

[Remainder of page intentionally left blank.]



## ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

### ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury through the State of Montana, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits. This assurance applies to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of this assurance apply to all of the Subrecipient's programs, services and activities, so long as any portion of the Subrecipient's program(s) is federally assisted in the manner proscribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166; directives; circulars; policies; memoranda and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on LEP, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

*The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 US C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property;

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. That is, the Subrecipient shall comply with information requests, on-site compliance reviews, and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative

agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that subrecipients also comply with Title VI and other applicable authorities covered in this document. Subrecipients that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the signing official(s) on behalf of the Subrecipient certifies that he/she has read and understood its obligations as herein described, that any information submitted in conjunction with this assurance document is accurate and complete, and that the Subrecipient is in compliance with the aforementioned nondiscrimination requirements.

**EXHIBIT D**

**Budget**

Source	Broadband	Match	Other	Total
ARPA BDP	\$0	\$0	\$0	\$0
ISP Name	\$0	\$0	\$0	\$0
Other- XXX	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **EXHIBIT E**

### **DEFINITIONS**

The terms defined herein include both the plural and the singular. Unless a specific section of the Contract provides otherwise, the following definitions apply to this Contract:

"Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts (other than money exchanged) for property or services.

“Applicant” shall mean the applicant for the award to expand Broadband access in the state of Montana.

“Approved Project Service Area” shall mean all or a portion of the Proposed Funded Service Area, as such term is defined in the Notice of Award Opportunity (NAO) and detailed in the map submitted to the Department by the Subrecipient, that is approved by the Department for funding.

“Broadband Funds Account” shall have the meaning of the bank account required applicant to be eligible to be considered for an award.

"Broadband service infrastructure" shall mean the signal transmission facilities and associated network equipment proposed to be deployed in a project area used for the provision of broadband service to residential, business, and government customers. [Section 2 (2) SB 297]

"Buildout Timeline" shall mean the detailed schedule describing the Project build out, submitted with the Department approved Application, as may be amended from time to time with prior written Department consent.

"Business Day" shall mean any day that the Department is open for business.

"Composite Economic Life" shall mean the weighted (by dollar amount of each class of facility in the Award) average economic life of all classes of facilities in the Subaward, as determined by Department.

“Contract” shall mean, collectively, this Contract and the Security Documents.

“Current ratio” shall mean the current assets divided by current liabilities, as set forth in Section 5.16 hereof.

"Distribution" shall have the meaning as defined in Section 7.4.

"Eligible Purposes" shall mean purposes and expenses which are specified in the ConnectMT Application Guide and program administration manual as being eligible for funding.

“Eligible project” may be awarded funding under this section for an eligible project that constitutes an unserved or underserved area as defined. [Section 2 (11) and (12), SB 297]

“Eligible proposals” shall mean responsive proposals that do not receive funds under any other federal or state government grant or loan program where government funding supports 100% of the proposed project’s capital

costs; that commit a minimum of 20% of the project costs and may not provide a minimum matching amount from any funds derived from government grants or subsidies, except for federal funds designated for broadband deployment. [Section 5, SB 297]

"Eligible Provider" shall mean an entity that: has authorization to do business in the state; and has demonstrated that it has the technical, financial, and managerial resources and experience to provide broadband service or other communications service to customers in the state. [Section 2 (4) SB 297]

"Event of Default" shall have the meaning as defined in Article X.

"Expiration Date" shall have the meaning as defined in Section 3.1(b).

"Form 477" shall have the meaning as the Federal Communications Commission broadband data collection requirement.

"Laws" shall have the meaning as defined in paragraph (e) of Article II.

"Material Adverse Effect" shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business, or prospects of the or on the ability of the Subrecipient to perform its obligations under the Contract as determined by the Department.

"Matching Funds Account" shall have the meaning of the funds Subrecipient would have deposited in identified account to partially fund the Project as required by SB 297 requiring applicants to provide a minimum of 20% funding of the Project.

"NAO" shall mean the Notice of Award Opportunity, published in the Connect Montana Portal.

"Network Design" shall mean the network as described in the Department approved Application.

"Permitted Encumbrances" shall mean:

- (1) liens for taxes, assessments and other governmental charges which are not delinquent;
- (2) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Subrecipient shall have set aside on its books adequate reserves with respect thereto;
- (3) mechanics', workmen's, repairmen's, materialmen's, warehousemen and carriers' liens and other similar liens arising in the ordinary course of business, and which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Subrecipient shall have set aside on its books adequate reserves with respect thereto;
- (4) liens in respect of judgments or awards with respect to which the Subrecipient shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Subrecipient shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Subrecipient shall have set aside on its books adequate reserves with respect thereto;
- (5) liens or privileges of any employees of the Subrecipient for salary or wages earned but not yet payable;
- (6) any obligations or duties, affecting the property of the Subrecipient, to any municipality or governmental or other public authority with respect to any franchise, allocation, license or permit;

- (7) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Subrecipient upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Subrecipient; PROVIDED, HOWEVER, that nothing in this clause 7 is intended to waive any claim or rights that the Department may otherwise have under Federal laws; and
- (8) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Subrecipient to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 8 is intended to waive any claim or rights that the Department may otherwise have under Federal laws.

"Project" shall mean all of the work, as approved by the Agency, to be performed to bring broadband service to all premises in the Approved Project Service Area under the Application, including construction, the purchase and installation of equipment, and professional services including engineering and accountant/consultant fees, whether funded by federal assistance, matching, or other funds.

"Project area" shall mean a shapefile area in an unserved or underserved area where the proposed broadband service infrastructure would be built as described in a proposal for funding authorized under sections 1 through 9, SB 297, [Section 2 (9) SB 297]

"Project Completion" shall mean that all Award funds for construction of the broadband system, excluding those funds for subscriber drop connections and customer premises equipment, have been advanced to the Subrecipient by the Department.

"Act" shall mean the Connect Montana Act, Implementing the American Rescue Plan Act (ARPA), Public Law 117-2, Montana 67<sup>th</sup> Legislature SB 297, signed May 11, 2021, and Montana's 67<sup>th</sup> Legislature SB 297, setting Montana's Broadband Infrastructure Deployment Laws and establishing Montana Broadband Deployment Program, signed May 11, 2021.

"Release of Funds Date" shall mean the date funds are first made available as evidenced by the notice sent by the Agency to the Subrecipient.

"Shapefile" means a GIS file format for storing, depicting, and analyzing geospatial data depicting broadband coverage. It is made up of several component files, such as a main file (.shp), an index file (.shx), and a dBASE table (.dbf). [Section 2 (10) SB 297]

"Subsidiaries" shall mean the subsidiaries listed in Schedule 1.

"Underserved area" means an area where any of the delivery points have no access to broadband service offered with a download speed range of less than 100 megabits per second and an upload speed of 20 megabits per second or less with low latency. [Section 2 (11) SB 297]

"Unserved area" means a project area where at least 10% of delivery points have no access to broadband service or have no access to services operating with a download speed of at least 25 megabits per second and upload speed of at least 10 megabits per second with low latency. [Section 2 (12) SB 297]