



## 2023 CPF GRANT AGREEMENT BETWEEN STATE OF IDAHO AND GOODING COUNTY

**THIS AGREEMENT** is made and entered into by and between the State of Idaho (the “State”) acting by and through the Idaho Department of Commerce (the “Department”), and Gooding County (“Grant Recipient”), each individually referred to as a “Party” and collectively as the “Parties.” This Agreement is effective as of the date it is executed on behalf of the Department (“Effective Date”) and shall continue through December 31, 2026.

**WHEREAS** the United States Department of the Treasury (“Treasury Department”) awarded the State \$125,000,000.00 for Calendar Year 2023 from the Coronavirus Capital Projects Fund (“CPF”) pursuant to 42 U.S.C. § 804, as added by section 9901 of the American Rescue Plan Act of 2021 (ARPA); and

**WHEREAS** the CPF allows for investments in high-quality broadband infrastructure in communities lacking affordable access to reliable high quality internet service to enable full participation in education, healthcare, employment, social services, government programs, and civic life; and

**WHEREAS** in 2021, the State of Idaho Legislature created the Idaho broadband advisory board (“IBAB”), within the Department of Commerce, to: (1) create, maintain, and administer a statewide broadband plan governing the structure, prioritization, and disbursement of grants from the Fund to areas of the state most in need; and (2) determine which broadband projects are undertaken; and

**WHEREAS** in June 2022, IBAB finalized the Idaho Broadband Strategic Plan (“Plan”); and

**WHEREAS** IBAB issued a Notice (“Idaho Broadband Advisory Board Idaho Capital Projects Fund (ARPA) Broadband Infrastructure Grant Application”) inviting eligible entities to apply for grants from the CPF funds described above beginning May 22, 2023; and

**WHEREAS** Grantee submitted a satisfactory grant application APP-005949 (“Application”) to IBAB on or before the deadline of July 3, 2023; and

**WHEREAS** IBAB reviewed Grantee’s Application and approved funding of Grantee’s Project in an amount up to \$7,509,334.00 for eligible activities related to the Project; and

**WHEREAS** on behalf of the State, the Department administers Idaho’s CPF Broadband Infrastructure Grant Program (“Program”); and

**WHEREAS**, the terms and conditions of this Agreement shall survive the Performance Period and shall continue in full force and effect until Grant Recipient has completed and is in compliance with all the requirements of this Agreement; and

**WHEREAS**, this Agreement is exclusive of and is distinguished from all previous agreements between Grant Recipient and the Department and contains the entire understanding between the Parties;

**NOW, THEREFORE**, in consideration of the mutual promises and dependent authorizations, the Parties agree as follows:

This **Agreement**, including its Attachments and any amendments, shall constitute the entire agreement between the parties and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the Department. The application does not form a part of this Agreement. In the event of a conflict between the provisions of this Agreement and the application, the provisions of this Agreement shall take precedence. Attachments B, C, and D may be



## TERMS AND CONDITIONS APPLICABLE TO GRANT AGREEMENT

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

**Affiliate** means an entity that controls, is controlled by, or is under common control with Grant Recipient. For purposes of the foregoing, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract interest, financial interest, or otherwise.

**Agency or Department** means the Idaho Department of Commerce.

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

**Broadband Service** for the purpose of Capital Projects Fund Broadband Infrastructure is service that meets the following criteria:

- Is a wireline or fixed wireless service that reliably provides two-way data transmission with speeds of at least 100 Megabits per second (Mbps) for download transmission and 100 Mbps for upload transmission.
- For locations where a symmetrical 100/100 Mbps service is not feasible, Broadband Service may include service that reliably provides speeds of at least 100 Mbps download and 20 Mbps upload and is scalable to 100 Mbps download and 100 Mbps upload.
- Broadband Service does not include a commercial mobile radio (cellular) service or internet service from a satellite connection.

**Cooperative** means an entity incorporated under Title 30, Chapter 30, Idaho Code.

**Custom Work Product**, for purposes of the Copyright Act of 1976, 17 U.S.C. §§ 101-1332, shall mean all work items newly created on a "work made for hire" basis by Grant Recipient expressly on behalf of the Department under this Agreement scope of work.

**Deliverables** shall mean deliverables as set forth in Section 37. Participants shall ensure that Deliverables do not contain any Custom Work Product or Grant Recipient Property.

**Effective Date** of this Agreement is the date it is executed on behalf of the Department.

**Eligible Costs** mean those costs incurred and previously paid or will be paid by Grant Recipient during the Performance Period that are not covered by any other federal or state funding, can be audited by the Department, are directly attributable to activities identified in Attachment B - Project Scope and Milestones, and are identified in Attachment C - Project Budget, subject to any Amendments to this Agreement.

**Grant Application** means the Project-specific request submitted by Grant Recipient in response to the application instructions issued by the Department.

**Grant Award** means IBAB's award of funds, as it applies to the Grant Application, for the Project identified in Attachment B – Project Scope and Milestones, including any specified other terms and conditions that apply to a specific awarded Grant Application.

- The Grant Award supersedes any representations, commitments, conditions, or agreements made orally or in writing prior to the issuance of the Grant Award.

- The Grant Award may specify an award amount and other terms and conditions that are different from, or in addition to, those proposed in the Grant Application, including modifications proposed by a Grant Recipient during a comment period or the Performance Period.

**Grantee or Grant Recipient** means an entity that has entered into a Grant Agreement with the Department.

**Grant Recipient Contractor** means any of Grant Recipient's authorized subcontractors, affiliates, subsidiaries, subgrantees, subrecipients, or any other third party acting on behalf of or at the direction of Grant Recipient, directly or indirectly, in performing or providing the Project under this Agreement.

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

**Grant Recipient Property** shall mean all pre-existing material and material created as part of the Project that are not Deliverables nor with funds received under the Agreement, including, but not limited to, any intellectual, tangible, and intangible property, data, products, software, materials and methodologies proprietary to Grant Recipient or provided by Grant Recipient, and any trade secrets, know-how, methodologies and processes related to Grant Recipient's products or services.

**Location** means a structure where Broadband Service could be installed (i.e., a Broadband Serviceable Location (BSL)) as represented in the National Broadband Map. A location that is not in the Broadband Serviceable Location Fabric is a Location if a fabric challenge is pending with the Federal Communications Department or the applicant provides evidence of the location through latitude and longitude data. Unbuilt parcels, adjacent outbuildings, and other non-BSL structures are not counted as Locations for the purposes of this grant, although applicants are encouraged to consider these types of locations in their project design, and deployment of infrastructure to pass these parcels and structures may be a cost eligible for funding if it is consistent with the goals of the Capital Projects Fund Broadband Infrastructure Grant Program.

- Residential Location has the meaning given by the U.S. Department of Treasury, consistent with FCC guidance.
- Business Location has the meaning given by the U.S. Department of Treasury, consistent with FCC guidance.
- Community Anchor Institution Location has the meaning given by the U.S. Department of Treasury, consistent with FCC guidance.

**Matching Funds** means additional funds or in-kind services provided by the applicant or partner organization that do not utilize grant funding. The additional funds may be a financial transaction, purchasing items or services, or in-kind services in lieu of an actual invoiced cost. In-kind match funding can also include the valuation of goods and services provided within the grant program.

**Performance Period** means the period from May 22, 2023 until December 30, 2026, including any extension through an amendment.

**Project** means the project or activities described in Attachment B – Project Scope and Milestones.

**Request for Payment** means a complete request submitted, by Grant Recipient, in the format and the timeframe specified by the Department for payment of funds from a Grant Award.

**Total Award** means the total dollar amount approved for the Grant Award by IBAB.

**State** means the State of Idaho and includes the Department.

2. **Interpretation.** The Department retains jurisdiction over the interpretation of this Agreement, including these Terms and Conditions Applicable to Grant Awards (Terms and Conditions) and any other Attachments to this Agreement. Regardless of which of the Parties is responsible for the drafting of the Agreement between the Parties, all terms will be construed in favor of the Department. By executing this Agreement, the signatories in no way bind the Department other than for purposes of funding the Grant Awards as authorized by IBAB.
3. **Reimbursement and Payments.** The following conditions apply to Requests for Payments.
  - 3.1 No Grant Award funds will be issued without a Request for Funds ("RFF"). The Grant Award is exclusive funding and will be used only for the Project.
  - 3.2 The Grant Recipient must not apply Grant Award funds to activities authorized under other grant awards or other grant proceedings unless authorized to do so by the Department in Attachment B – Project Scope and Milestones, or in an amendment.
  - 3.3 Grant funds shall be disbursed as milestone payments. Milestone payments must be associated with project progress points identified in Attachment B – Project Scope and Milestones. Grantees are required to submit documentation verifying terms of the Grant Agreement to the Department and verify that milestones have been completed before the Idaho Department of Commerce will release funds to the subgrantee as outlined in Section 3.7 and the following sub sections.
  - 3.4 An RFF must be submitted by the Grantee's assigned Grant Administrator's account through the Department's online grant portal ("Portal"), located at: <http://idahocommerce.force.com/grants>.
  - 3.5 Upon submission of an RFF and Grant Recipient's compliance with the requirements of this Grant Agreement and any directions provided by the Department, the Department will process and disburse funds in accordance with Idaho Code section 67-2302 to the Grant Recipient for Eligible Costs in a total amount not to exceed the Total Award.
  - 3.6 Only Eligible Costs may be reimbursed. A Grant Recipient seeking payment of an expense not authorized by this Agreement may request from the Department: (1) an amendment to Attachment B – Project Scope and Milestones, to add to or revise the list of expenses eligible for reimbursement; or (2) an amendment to Attachment C – Project Budget. Amendments must be requested pursuant to Section 20 of these Terms and Conditions.
  - 3.7 With each RFF, Grant Recipient must include a copy of an invoice or other written support for each Eligible Cost item for which reimbursement is requested. The Grantee shall be responsible for any discrepancy or error in billing or documentation.
    - 3.7.1 RFFs must include an itemized invoice to the Department on Grantee letterhead. The invoice must include Grantee certification that all work that is billed to the Department is complete at the time of billing and that the Grantee owes its contractors or subcontractors for the work.
    - 3.7.2 The RFF shall include sufficient supporting documentation clearly showing the expended costs, including but not limited to payments to contractors, vendor invoices, statements, checks, and if applicable, photographs of the work at various stages of completion to verify that milestones have been completed.

- 3.7.3 The Grantee shall provide matching funds in the amount stated in Attachment B – Project Scope and Milestones for Project costs. By accepting the Grant, the Grantee certifies that the matching funds of the Project costs are not encumbered in any way that would prevent its use for the project and will be available as needed for the project. Matching funds can be associated with milestone payment requests, but must be met in full prior to full payment or reimbursement of granted funds.
- 3.7.4 The invoice or other written support, specified by the Department, will document the actual purchase price of the Eligible Cost item. Reimbursement will only be granted up to and including the actual paid purchase price of the item. A Request for Payment must be accompanied by written support of Eligible Costs, including internal accounting records or contracts, as appropriate or when requested by the Department. A Request for Payment must provide an independent and auditable basis for the actual purchase price of each Eligible Cost item.
- 3.7.5 For Eligible Cost items that do not have a transaction invoice, such as employee labor expenses, Grant Recipient must provide documentation showing the total hours contributed by employee class (e.g., engineer, construction worker, instructor, IT support, or assistive technology expert) that worked on the project, the date(s) that the work was done, and the total labor expense reported. Labor expenses are limited to actual payroll and fringe benefit costs. Upon the request of the Department, Grant Recipient must also provide a list of actual hours worked, the specific wage for each employee that worked on a Project, and any payroll documentation or other similar evidence that the Department might request.
- 3.7.6 For Eligible Cost items that do not have a transaction invoice or record and do not fall under the labor expenses addressed in Section 3.7.5 above, Grant Recipient must, with prior authorization from the Department, submit a narrative description of the Eligible Cost along with any relevant documentation in lieu of an invoice.
- 3.7.7 For Eligible Cost items incurred by Grant Recipient Contractors, an executed contract that includes pricing and scope of work must be provided to the Department upon request. The Department may refuse payment or reimbursement for contractual costs incurred without an executed contract.
- 3.7.8 The Department may delay reimbursement of a Request for Payment until sufficient documentation of costs, project status, geospatial data, or other project information as determined by the Department, is provided by Grant Recipient.
- 3.7.9 Grant Recipient must submit a final Request for Payment to the Department within thirty (30) days Performance Period conclusion.
- 3.8 Reimbursement or payment to Grant Recipient will not exceed the Total Award unless expressly approved by the Department in an Amendment, which can be requested pursuant to Section 20 of these Terms and Conditions.
  - 3.8.1 Reimbursement or payment to Grant Recipient will not exceed 90 percent of the amount of the Total Award prior to the submittal of required reports and information to the Department.
- 3.9 Subject to the giving of written notice and a thirty (30) day opportunity to cure period, Grant Recipient will reimburse the Department for any disbursed Grant Award funds that are

determined by the Department to have been ineligible, misused, or misappropriated, or not incurred during the performance period. If after delivery of notice and lapsing of the cure period, the Department determines that Grant Recipient is still in breach of any provision of the Grant Award, including the Grant Agreement, the Department may require and be entitled to suspend any or all future Grant Award funds until the breach is cured. Any reimbursement of funds that is required by the Department, with or without termination of this Agreement, will be due within forty-five (45) days after Department provides written notice to Grant Recipient. The Department also reserves the right to recover such funds by any other legal means, including litigation. Grant Recipient must indemnify and hold harmless the Department for all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurred in recovering such funds, irrespective of whether the funds are recovered. If the Grant Recipient is unable to reimburse the Department as provided in this subsection, the Department may initiate steps to take ownership of the broadband infrastructure built with the Grant Award.

3.9.1 Grant Recipient must promptly refer to the Department any credible evidence that a Grant Recipient Contractor or Grant Recipient Personnel or other person has either: 1) submitted a false claim for grant funds as that term is used under any false claims act or other similar law, whether state or federal; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds.

4. **Eligible and Ineligible Expenses.** In order to be authorized, allowable, and eligible for reimbursement, expenses related to the Project must be 1) authorized and eligible for reimbursement pursuant to ARPA and related federal and state law and guidelines, and 2) for new, non-depreciated items directly related to the qualifying project. Such expenses may include, for example, the construction of outside-plant deployment necessary to deliver broadband service in the Project area, electronic equipment necessary to deliver broadband service in the Project area, and other costs that are directly necessary to provide broadband service to the end user in the Project area.

#### 5. **Audit Requirement.**

5.1 All governmental and non-profit Grant Recipients (non-federal entities) that are required to comply with the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, must ensure that funds awarded by the Department are included in the audit report. A nonfederal entity that expends \$750,000 or more during the non-federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions 2 CFR parts 200.500 through 200.521. A non-federal entity must submit audit reports to the Department within 180 days of the close of the entity's fiscal year, unless waived by the Department.

5.2 Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, risk assessments, monitoring during the agreement, post award audits, and any other methods deemed necessary by the Department.

5.3 Grant Recipient must submit an agreed upon procedures audit upon request from the Department. This audit will consist of procedures and questions requested by the Department.

5.4 Additionally, Grant Recipient must submit responses and corrective actions to be taken by management regarding any findings or comments issued by the auditor. If Grant Recipient has had an audit at any point outside of the Department Grant Award, Grant Recipient must share the

results of that audit with the Department to the email address [grants@commerce.idaho.gov](mailto:grants@commerce.idaho.gov), along with any corrective actions to be taken, and any findings or comments issued by the auditor.

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

6.1 If any of the above records and files are held in an automated format, Grant Recipient must provide copies of these records and files in the automated format, or such computer file as may be requested by the Department.

6.2 Grant Recipient must retain such records and files for at least five years following final payment of the Grant Award.

6.3 Grant Recipient is responsible for any charges for copies provided by Grant Recipient to the Department of books, documents, papers, records, computer files or computer printouts.

6.4 The minimum acceptable financial records for a Grant Award consist of:

6.4.1 Documentation of employee time and compensation.

6.4.2 Documentation of all equipment, materials, contracted labor, supplies and travel expenses, including purchasing (procurement) records and procedures.

6.4.3 Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope, as may be amended.

6.4.4 Documentation and justification of the methodology used in any in-kind contributions.

6.4.5 Rationale supporting allocation of space charges.

6.4.6 Documentation of agreement services and materials.

6.4.7 Any other records that support charges to a Grant Award.

6.5 Grant Recipient must maintain reasonably prudent, as determined by the Department, segregation of Project accounting records from accounting records relating to other projects or programs.

6.6 There will be no Custom Work Product created under this Agreement.

7. **Ownership and Licensing of Intellectual Property and Broadband Infrastructure.** The Department shall own all right, title and interest in the Deliverables in their entirety, provided under this SOW. Grant Recipient shall acquire and retain ownership in the broadband infrastructure funded by the Grant Award

and all Grant Recipient Property (as defined above). Grant Recipient understands that all Grant Recipient Property provided under this Agreement is subject to disclosure as set forth above in Section 12 of this Agreement, "Public Records".

8. **Compliance with Law.** Grant Recipient and its agents and representatives, including all Grant Recipient Contractors and Grant Recipient Personnel, must at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that in any manner affect or apply to the Project, including, without limitation ARPA, applicable Treasury guidance, all rules and regulations promulgated to implement ARPA and the Capital Projects Fund, and any other federal or state laws applicable to this Agreement. In addition, Grant Recipient agrees to comply with all federal requirements listed in Attachment A – Federal Funding Compliance Requirements and all other applicable federal laws. Grant Recipient shall provide such compliance provisions to other parties in any agreements relating to the Terms and Conditions of this Agreement. Grant Recipient must maintain oversight to ensure that its Grant Recipient Contractors perform in accordance with the terms, conditions, and specifications of their subcontract agreement and all applicable Grant Agreements, state law, and federal law requirements.

Grant Recipient's failure to comply with the provisions of this Section shall be regarded as a material breach of this Agreement and the Department may request any additional information or documentation to demonstrate compliance in the form of an audit or otherwise. Subject to the giving of written notice and thirty (30) day opportunity to cure period of this Agreement, the Department may also cancel, terminate, and suspend, in whole or in part, this Agreement without penalty or legal liability. In addition, the Department or its designee may declare Grant Recipient ineligible for future grant awards with the Department or Grant Recipient may be subject to other sanctions as provided by law, rule, or order. Grant Recipient is bound by all Department orders that in any manner affect the Grant Award.

9. **Required Attestation.** The following requirements shall apply to Grant Recipient, including all Grant Recipient Contractors and Grant Recipient Personnel. Grant Recipient shall require and cause any Grant Recipient Contractor and Grant Recipient Personnel used by Grant Recipient in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following requirements listed below. Within fifteen (15) working days after this Agreement is executed, Grant Recipient must submit an attestation to the Department, attesting compliance with Sections 9.1, 9.2, and 9.3 of the Agreement, in the format specified by the Department.

- 9.1 **Dig Once Policy.** Grant Recipient and its Grant Recipient Contractors and Grant Recipient Personnel agree to comply with Idaho's Dig Once Policy, as set forth in Chapter 5, Title 40, Idaho Code.

- 9.2 **Authorization to Transact Business.** Grant Recipient attests that it and its Grant Recipient Contractors, Affiliates, and if applicable, Grant Recipient Personnel, are authorized or registered to transact business in the state of Idaho, to the extent required by Idaho law.

- 9.3 **OSHA.** Grant Recipient and its agents and representatives, including all Grant Recipient Contractors, Affiliates, and Grant Recipient Personnel, agree to comply with all safety requirements under Idaho law and all applicable Occupational Safety and Health Administration (OSHA) standards.

10. **Insurance Requirements.** Grant Recipient shall provide and maintain in full force and effect, at all times during the term of this Agreement and at no cost to the Department, the following insurance coverage with limits as indicated, which may be revised by the Department if required by state or federal law. The certificate of insurance will be required upon request.

- 10.1 Grant Recipient shall maintain Worker's Compensation as required by Idaho Statutes, for all employees engaged in work.
- 10.2 Grant Recipient shall maintain commercial liability, bodily injury and property damage insurance against all claim(s) which might occur in carrying out this Agreement. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations.
- 10.3 Grant Recipient shall maintain motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this Agreement. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

11. **Indemnification.** Grant Recipient assumes all liability for any and all injuries, damages, or claims in any way associated with the Grant Award and/or the Project, except to the extent of the State's or Department's negligence or willful misconduct. Subject to the foregoing, Grant Recipient must indemnify and hold harmless the State and Department and all of their officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from or in any way associated with the Grant Award and/or the Project, including reasonable attorneys' fees and costs for enforcement. Grant Recipient must indemnify and hold harmless the State and Department and all of their officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between itself and Grant Recipient Contractors and Grant Recipient Personnel to perform services or otherwise supply products or services.

Grant Recipient must also hold the Department harmless for any audit disallowance irrespective of whether the audit is ordered by federal or state agencies or by the courts related to a Grant Award. If an audit is required by federal law and if Grant Recipient is also the recipient of Department funds under the same or a separate contract program, then the Department-funded programs must also be included in the scope of the federally required audit.

Upon receipt of the State's/Department's tender of indemnity and defense, Grant Recipient shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State subject to the exceptions below. Grant Recipient's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State or Department under the Grant, unless such is attributable to the negligence or willful misconduct of the State or Department.

Any legal defense provided by Grant Recipient to the State/Department under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State/Department is necessary. Any attorney appointed to represent the State/Department must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1). The State must approve all settlement offers and agreements made on its behalf and has the option to attend any settlement or alternative dispute resolution proceedings.

12. **Public Records.** As a public entity, the Department is subject to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, and all documents and other materials made or received by the Department and/or its employees are subject to public disclosure. Grant Recipient should not submit any information to the

Department that it does not want publicly disclosed and should assume that all submissions are subject to public disclosure without any prior notice, even if marked confidential. If Grant Recipient wishes to have the Department treat certain information or documentation as confidential, before submission of such information, Grant Recipient must submit a written request to the Department General Counsel specifying the type of information that Grant Recipient wishes to be treated as confidential along with a detailed explanation of the statutory exemption(s) from the Public Records Act.

13. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to achieve the primary purpose of this Agreement and the public purposes to be served by the making of the Grant Award. If any provision in this Agreement is found to be ambiguous, then an interpretation consistent with the primary purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.
14. **Sovereign Immunity.** The Department and Grant Recipient do not waive any immunity defenses (including sovereign immunity, governmental immunity, immunity based on U.S. Constitutional amendment XI, or otherwise) or any other defenses available to either by entering into this Agreement, and specifically retain and reserve all immunity defenses.
15. **Attorney's Fees and Expenses.** In the event Grant Recipient or the Department defaults on any of its obligations under this Agreement, the prevailing party shall be reimbursed for all costs and expenses incurred by it in enforcing this Agreement or any of its rights and remedies with respect thereto.
16. **Tax Delinquency.** Grant Recipients that have delinquent Idaho tax liability may have their payments offset by the State of Idaho.
17. **Conflicts of Interest.** Grant Recipients must maintain written standards of conduct covering conflicts of interest in terms of the selections, award, and administration of contracts as provided below.
  - 17.1 No Grant Recipient employee, officer, or agent may participate in the selection, award, or administration of a contract supported by this Grant Award if he or she has a real or apparent conflict of interest with the entity that would receive the contract. The officers, employees, and agents of Grant Recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from Grant Recipient Contractors or parties to subcontracts. However, Grant Recipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value.
  - 17.2 If Grant Recipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, Grant Recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, Grant Recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
18. **Suspension.** For cause, and upon giving written notice to Grant Recipient and the thirty (30) day opportunity to cure period provided in this Agreement, the Department may suspend reimbursements or payments. Any costs directly attributable to activities incurred upon such notice will cease to be Eligible Costs unless otherwise authorized by the Department.
19. **Waiver.** Failure or delay on the part of the Department to exercise any power under this Agreement will not constitute a waiver thereof.

20. **Amendment.** This Agreement may be amended at any time by written mutual consent of the Parties. Amendments must be documented in writing, dated, and signed by the Parties.
- 20.1 Grant Recipient must notify the Department of any proposed significant changes in Attachment B – Project Scope and Milestones or Attachment C – Project Budget as soon as practicable and may only make such significant changes if the Department signs an amendment authorizing and memorializing such significant change. Significant changes include:
  - 20.2 Any change in the list of expenses, contributions or in-kind, as described in Attachment C – Project Budget.
  - 20.3 Any change in the Project or activities, as described in Attachment B – Project Scope and Milestones.
  - 20.4 Any transfer of funds among cost categories that exceed or are expected to exceed twenty (20) percent of the approved total project Budget.
  - 20.5 Any significant changes to the anticipated project timeline.
  - 20.6 Any requests to extend the Performance Period beyond December 31, 2026. Any request for extension of the Performance Period requires approval by the Department and the U.S. Department of Treasury.
21. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Idaho and the United States. The Agreement shall be governed by and construed under the laws of the state of Idaho and the parties hereto consent to the jurisdiction and exclusive venue of the state and/or federal courts in Ada County, Idaho in the event of any dispute with respect to the Agreement.
22. **Assignment and Delegation.** Except as provided in this section or otherwise set forth in this Agreement, Grant Recipient shall not assign its rights hereunder without prior written consent of the Department.
23. **Independent Contractor.** Grant Recipient, including its Grant Recipient Contractors and Grant Recipient Personnel, must not represent themselves as employees or agents of the Department or State of Idaho. Grant Recipient, including Grant Recipient Personnel, are not considered employees of the Department or State of Idaho for any purpose, including for federal or state tax purposes.
24. **Obligations of Joint Entities.** If Grant Recipient is a joint entity, consisting of more than one individual, partnership, corporation, or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
25. **Change in Funding/Right to Review and Amend.** Grant Recipient must notify the Department within 10 days of any change in project funding from local, state, tribal, or federal sources that would overlap with the approved project areas, duplicate, or supplement the cost of construction of any project locations, modify the financing structure, or materially change the scope of the project that the Department has approved. The Department reserves the right to review, amend, or terminate the Agreement should any duplicative funding occur after the giving of written notice and thirty (30) day opportunity to cure period provided in this Agreement.
26. **Publicity.** During the Term and at all times after the termination or expiration of this Agreement, Grant Recipient shall not make any media release or other public announcement related to the Project(s) without prior written notification and opportunity for participation/involvement of the Department except those that occur in the ordinary course of business. Except as otherwise required herein, Grant Recipient shall

acquire no right to use, and shall not use, without the Department's or the State of Idaho's prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the Department or the State of Idaho, its related entities, employees, assigns, successors, or licensees: (1) in any advertising, publicity, press release, customer list, presentation or promotion; or (2) to express or imply any endorsement of the Project(s).

27. **Force Majeure.** Neither Party shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance including the Term may be extended to account for delays excused by this Section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. This Agreement shall be completed with such adjustments as are reasonably required by the existence of Force Majeure.
28. **Termination and Cancellation.** Grant Recipient understands and agrees that the Department may subsequently determine that Grant Recipient is not in compliance with the terms of this Agreement. In that event, the Department may terminate the Grant Award subject to giving written notice and the thirty (30) day opportunity to cure period provided in this Agreement. Upon termination, Grant Recipient shall return all Grant Award funds for milestones which have not been completed and for which Grant Award funds have been previously disbursed, within thirty (30) days of the written notice of termination, and the Department shall exercise the remedies described in this Agreement, including taking ownership of the broadband infrastructure constructed with the Grant Award.
- 28.1 If Grant Recipient wishes to cancel the Project, Grant Recipient may submit a written request to the Department requesting that the Department approve the termination of the Grant Award. If the Department grants the request, Grant Recipient shall return all Grant Award funds, for milestones which have not been completed and for which Grant Award funds have been previously disbursed, within thirty (30) calendar days of the Department's approval of the termination.
29. **Contact Information.** Grant Recipient agrees to periodically review and update contact information and consents to the primary contact listed below as the entity held solely responsible for receipt of, and response to, Department communications regarding the Grant.
30. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing to the Department address below and/or a copy delivered electronically to the Department email address specified below and to the Grant Recipient Grant Administrator named in Attachment D:

**To the Department:**

Name: Ewa Szewczyk

Title: Grants & Contracts Manager

Email: grants@commerce.idaho.gov

Phone: 208-287-0784

**To the Grant Recipient:**

Name: Lorri Robb

Title: Deputy Clerk

Email: lrobb@co.gooding.id.us

Phone: 208-934-4841

31. **Certification Concerning Boycott of Israel.** Pursuant to Idaho Code section 67-2346, if payments under the Grant exceed one hundred thousand dollars (\$100,000) and Grant Recipient employs ten or more persons, Grant Recipient certifies that it is not currently engaged in, and will not for the duration of the Grant engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.
32. **Ownership or Operation by China.** Pursuant to Idaho Code section 67-2359, Grant Recipient certifies that it is not currently owned or operated by the government of China and will not for the duration of the Grant be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.
33. **Headings.** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.
34. **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
35. **Entire Agreement.** This Agreement sets forth the entire agreement of the parties with respect to the Grant and supersedes all prior discussions, negotiations, understandings, or agreements relating to such matters, all of which are merged herein.
36. **Counterparts.** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
37. **Reporting Requirements.**
  - 37.1 **Project Status Reports.** Grant Recipient must submit Project Status Reports to the Department as provided below.
  - 37.2 **Format.** Periodic Project Status reports are required. The types of information required are listed on Attachment E – Project Reporting to this Agreement.
  - 37.3 **Schedule.** Project Status Reports are due periodically as specified in Attachment E – Project Reporting.
    - 37.3.1 Interim Project Status Reports must be prepared and submitted on the schedule determined by the U.S. Department of Treasury.
    - 37.3.2 A Final Project Status Report is due at the same time that a Grant Recipient submits a final Request for Payment, the final Request for Payment and the final Project Status Report are due no later than thirty (30) days after the end of the performance period.

37.3.3 Post Project Status Reports are due annually during December of the calendar year following Grant Recipient's filing of the Final Project Status Report. Grant Recipient must file for two years, i.e., two annual Post Project Status Reports.

37.4 **Filing Procedure.** All Project Status Reports must be submitted to the Department in the manner and format specified by the Department.

37.5 **Failure to File or Timely File.** Subject to giving written notice and the thirty (30) day opportunity to cure period provided in this Agreement, failure to file or timely file reports may result in termination of the Grant Award and claw back of Grant Award funds for milestones which have not been completed and for which Grant Award funds have been previously disbursed.

38. **Geospatial Data Reporting.** Grant Recipient must submit to the Department, and update upon request, geospatial data regarding the extent of its project construction. Geospatial data submissions include both an Initial Geospatial Dataset and a Final Geospatial Dataset due at completion of the project.

38.1 **Initial Geospatial Dataset.** An Initial Geospatial Dataset is submitted as part of the application process and may require updates upon request of the Department. An Initial Geospatial Dataset must show the following elements of the awarded project: (a) the wireline route, and/or the location of tower placements and modelled wireless coverage; and (b) the locations proposed to be passed and serviceable by the project, including the latitude and longitude of the related structure receiving broadband service.

38.2 **Final Geospatial Dataset.** Upon completion of the project, a Final Geospatial Dataset and a list of BSL IDs are due at the same time a Grant Recipient submits a final Request for Payment. A Final Geospatial Dataset must show the following elements of the completed project: (a) the wireline route, and/or the location of tower placements and modelled wireless coverage; and (b) the locations passed and serviceable (not necessarily subscribed) by the completed project, including the latitude and longitude of the related structure receiving broadband service. The BSL IDs and geospatial data shall be filed in the manner instructed by the Department.

38.3 **Format.** Geospatial data must be submitted as instructed by the Department.

38.4 **Modification.** The Department reserves the right to waive or modify geospatial data reporting requirements consistent with evolving standards and programmatic needs.

38.5 **Failure to File or Timely File.** Subject to giving written notice and the thirty (30) day opportunity to cure period provided in this Agreement, failure to submit or timely submit geospatial data may result in termination of the Grant Award and claw back of Grant Award funds for milestones which have not been completed and for which Grant Award funds have been previously disbursed.

## ATTACHMENT A – FEDERAL FUNDING COMPLIANCE REQUIREMENTS

This Attachment A sets forth federal funding requirements applicable, without limitation, to federal funds under the Coronavirus Capital Projects Fund pursuant to 42 U.S.C. § 802, as added by section 9901 of the American Rescue Plan Act of 2021 (“ARPA”) (“Capital Projects Fund”). Grant Recipient agrees to comply with the requirements of section 604 of the Social Security Act (the Capital Projects Fund Statute), as added by section 9901 of the American Rescue Plan Act of 2021, and the guidance issued by the U.S. Department of Treasury regarding the foregoing. The “Grant Recipient” and the “Department” for purposes of this Attachment A mean the parties identified in the Agreement, each party may also be referred to herein individually as a “Party” or collectively as the “Parties.”

References in this Attachment A to the “Agreement” mean the grant Agreement between the Department and Grant Recipient. Grant Recipient agrees to comply with all other applicable federal statutes, regulations, and executive orders, including but not limited to, applicable statutes and regulations prohibiting discrimination in programs receiving federal financial assistance and all applicable federal environmental laws and regulations and any other applicable laws not described in Attachment A. Grant Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this Agreement. The Department reserves the right to amend Attachment A at any time by written mutual consent of the Parties as described in Section 17 of the Terms and Conditions Applicable to Grant Awards. In particular, changes or revisions in applicable federal laws may necessitate amendments to Attachment A. Capitalized terms not defined herein shall have the meanings provided in the Agreement and the Applicable Law.

Capital Project Fund requirements are incorporated by reference as if fully set forth herein and are deemed to be contractual obligations of Grant Recipient. The Treasury Guidance and related Frequently Asked Questions clarify and provide guidance as to the applicable C.F.R. provisions relating to internal controls, subrecipient monitoring and management, and audit requirements that apply to the Department and thereby subrecipients or contractors receiving such funds through this Agreement. These requirements are therefore considered legally binding and enforceable under this Agreement. After the giving of thirty (30) days written notice and the opportunity to cure, the Department reserves the right to pursue any legal remedy at its disposal including, but not limited to, disallowance of costs, withholding of funds, or recoupment as may be necessary for milestones which have not been completed and for which Grant Award funds have been previously disbursed to ensure compliance with CPF requirements and the Terms and Conditions in this Agreement. Grant Recipient’s obligations in regard to CPF requirements include but are not necessarily limited to:

- American Rescue Plan Act of 2021;
- 31 C.F.R. Part 35;
- The Capital Projects Fund guidance, including any updates or changes thereto (“**Treasury Guidance**”);
- The Capital Projects Fund Frequently Asked Questions, including any updates or changes thereto (“**Treasury FAQ**”), which at the time of the publication of this Agreement was last updated as of July 19, 2021;
- Any other specific grant award requirements set forth in any grant Agreement or other similar document between the State of Idaho and federal government governing the use of ARPA funds or applicable to Projects receiving ARPA funds.

Federal regulations applicable to this Agreement include, without limitation, the following:

1. 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. Grant

Recipient must normally (i) Be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Proof of SAM registration and corresponding account information must be provided by Grant Recipient before any payments will be made under the Agreement.

2. 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.
3. Internal Controls and Single Audit Act, Sub Part F. Funds allocated in connection with the Agreement are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. §§ 200.303 and 330-332. In addition to the auditing requirement described in Section 4.0 of the Terms and Conditions Applicable to Grant Awards, Grant Recipient agrees to comply with C.F.R. 200, Subpart F – Audit Requirements and to ensure the cooperation of Grant Recipient’s agents and representatives, including Grant Recipient Contractors and Grant Recipient Personnel, in efforts by the Department to audit, monitor, and review Grant Recipient’s performance under this Agreement.

These audit requirements do not generally apply to for-profit business; however, the Department remains responsible for ensuring compliance with the Agreement and ARPA requirements through the implementation of audit and monitoring controls pursuant to 2 C.F.R. 200.501(h). The requirements of this Section shall apply to Grant Recipient and Grant Recipient Contractors. Grant Recipient shall require and cause any Grant Recipient Contractor or subgrant recipient or subrecipient used by Grant Recipient in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

4. Restriction on Leveraging Funding. No portion of the funds received under the Agreement may be used for the purpose of obtaining additional federal funds under any other law of the United States, except if authorized under that law.
5. Recovery of Funds. If a State or federal audit takes exception to the Project(s) provided under the Agreement for which federal funds have been paid or reimbursed, or if federal funds are deferred and/or disallowed as a result of any audits (or expended in violation of the laws applicable to the expenditure of such funds, including ARPA Requirements), after the giving of thirty (30) days written notice and the opportunity to cure, Grant Recipient will be liable to the Department and the State or Idaho (or any other applicable governmental entity, including the United States Department of Treasury) for the full amount of any such payment, reimbursement, or any claim disallowed (or the amount of funds expended in violation of applicable laws or requirements) and for all related penalties incurred. After the giving of thirty (30) days written notice and the opportunity to cure, if the Department or any federal governmental entity concludes that Grant Recipient has been paid for any cost that is unallowable, unlocatable, or unreasonable under the Agreement, Grant Recipient will be liable to the Department and the State of Idaho (or any other applicable governmental entity, including the United States Department of Treasury) for such cost. After the giving of thirty (30) days written notice and the opportunity to cure, Grant Recipient shall pay to the Department or State of Idaho (or any other applicable governmental entity, including the United States Department of Treasury) all amounts for which Grant Recipient is liable under this section. After the giving of thirty (30) days written notice and the opportunity to cure, the Department may withhold any payment under the Agreement if Grant Recipient fails to timely make any payment required by this Section. The requirements of this Section

shall apply to Grant Recipient and Grant Recipient Contractors. Grant Recipient shall require and cause any Grant Recipient Contractor or subgrantee or subrecipient used by Grant Recipient in connection with the Agreement to agree to and be subject to and bound by such terms and provisions.

6. 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.
7. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-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.
8. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII, is hereby incorporated by reference.
9. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
10. New Restrictions on Lobbying, 31 C.F.R. Part 21.
11. Generally applicable federal environmental laws and regulations, see Treasury's Capital Projects Fund Environmental Checklist.

In addition, Grant Recipient agrees:

1. Pursuant to 2 C.F.R. § 200.323, Grant Recipient represents and warrants that, in its performance under the Agreement, Grant Recipient shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
  2. If this is a contract or subgrant in excess of \$150,000, Grant Recipient must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387) and agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with the federal funds. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
12. Protections for Whistleblowers.
1. In accordance with 41 U.S.C. § 4712, Grant Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing 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.
  2. The list of persons and entities referenced in the paragraph above includes the following:

- a. A member of Congress or a representative of a committee of Congress;
  - b. An Inspector General;
  - c. The Government Accountability Office;
  - d. A Treasury employee responsible for contract or grant oversight or management;
  - e. An authorized official of the Department of Justice or other law enforcement agency;
  - f. A court or grand jury; or
  - g. A management official or other employee of Agency or DOA, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
3. Grant Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
13. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Grant Recipient 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.
  14. **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Grant Recipient should encourage its employees, grantees, and contractors to adopt and enforce policies that ban text messaging while driving, and Grant Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
  15. **Assurances of Compliance with Civil Rights Requirements.**
    1. As a condition of receipt of federal financial assistance under this Agreement, Grant Recipient ensures its current and future compliance with the following:
      - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*), as amended, which prohibits exclusion from participation, denial of benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin, 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.
      - b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
      - c. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by Eligible Entity and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
      - d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
      - e. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20,

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

- f. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., which provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and
- g. Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

2. In addition, Grant Recipient ensures that it will account for and satisfy the following authorities:

- a. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (65 Fed. Reg. 50121), which seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency (LEP). Grant Recipient understands that denying a person access to its programs, services, and activities because LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of Treasury's implementing regulations.

16. If the amount of the award under this Agreement is greater than \$100,000.00 the undersigned official(s) certifies that to the best of his or her knowledge and belief, that:

- 1. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

17. All contracts made by the Grant Recipient under a federal award, as applicable, must contain the contract provisions required under 2 C.F.R. Part 200, Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Specifically, the Grant Recipient must ensure that all contracts in excess of \$10,000 address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.
18. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R. § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
19. Domestic Preference for Procurements. Grant Recipient will provide a preference for the procurement or use of goods, products, or materials produced in the United States as described in 2 C.F.R. § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).

MB \*Initialing indicates this attachment has been reviewed.

## ATTACHMENT B – PROJECT SCOPE AND MILESTONES

### Statement of Work

Pursuant to the terms and conditions of the Agreement and this Statement of Work (SOW), the Department and Grant Recipient agree as follows:

- 1. Performance of Work and Deliverables.** Grant Recipient shall perform the agreed upon work in accordance with the Agreement and the specifications set forth below.

#### Project Scope:

This project lays a comprehensive fiber optic foundation to feed a symmetrical county wide last mile fixed wireless system to provide comprehensive coverage to areas which are outside of the population density and for which the need is greatest.

<b>Project Name:</b>	
Gooding County Wireless Fiber and Middle Mile Fiber	
<b>Technology Type Planned:</b>	Fiber
<b>Middle Mile Component:</b>	Yes
<b>Total Project Cost:</b>	\$8,467,989.00
<b>Awarded for Project:</b>	\$7,509,334.00
<b>Match Pledged:</b>	\$958,655.00
<b>Cost Per Premise*:</b>	\$2,915.11
<b>Total Project Area Locations:</b>	66159
<b>Grant Eligible Locations**:</b>	2576
<b>Grant Eligible Underserved Locations:</b>	2542
<b>Grant Eligible Unserved Locations:</b>	34
<b>Total Planned Actual Connections***:</b>	2576
<b>Planned Actual Underserved Connections:</b>	2542
<b>Planned Actual Unserved Connections:</b>	34

\*Cost Per Premise = Grant Award Amount / (Grant eligible underserved + grant eligible unserved)

\*\*All grant eligible serviceable locations that will be impacted by the project (including households, businesses, farms, and community anchor institutions).

\*\*\*Actual connection addresses are locations this project will provide last mile connectivity to once the project is complete.

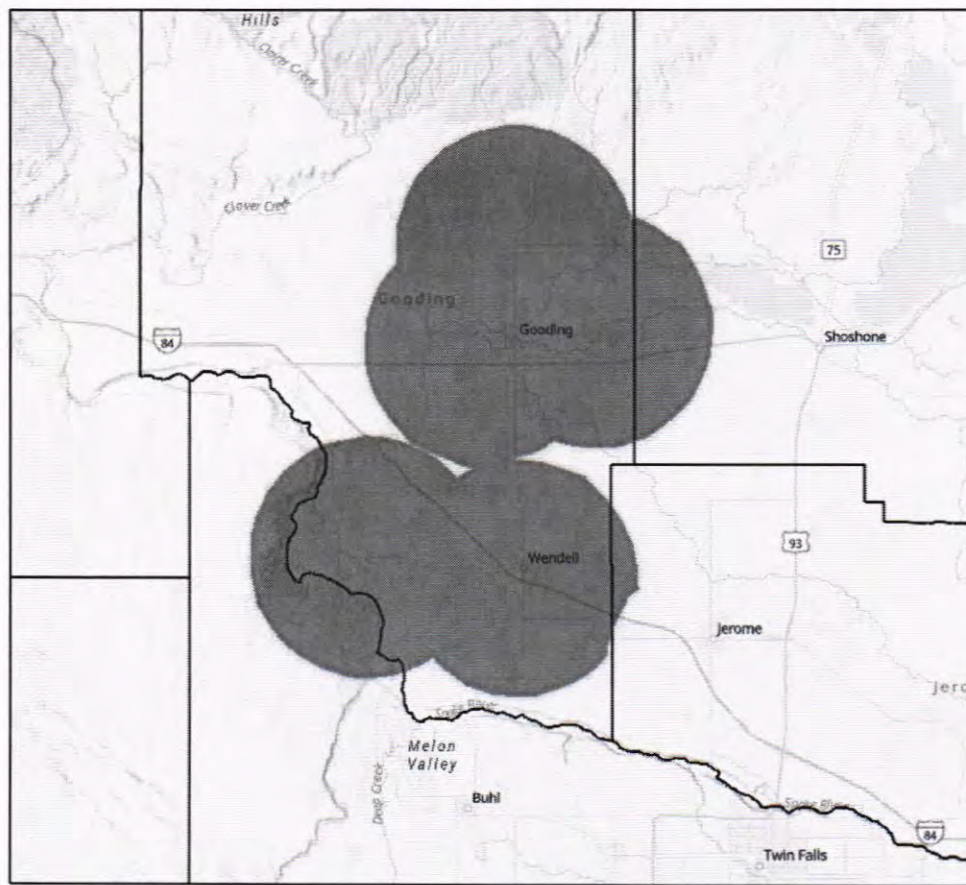
#### Project Milestones:

Grant funds will be deployed as milestone payments. Milestone payments may be requested as milestones are achieved and supporting documentation of work completed can be provided. Milestones require an equal or higher amount in incurred and paid infrastructure costs (refer to Section 3 for reimbursement requirements).

PHASES AND DESCRIPTIONS	START DATE	ESTIMATED COMPLETION DATE	% OF PROJECT	DRAW FOR PROJECT PHASE
PHASE 1: Grant Planning Award and Project Standup	5/23/2023	2/15/2024	20%	\$1,501,866.80

PHASE 2: Finalized Planning, Engineering, Permitting	2/16/2024	4/1/2024	25%	\$1,877,333.50
PHASE 3: Mobilization, Site Preparation, Initial Construction for Mainline Fiber and Towers	4/2/2024	11/1/2024	25%	\$1,877,333.50
PHASE 4: Continue Construction of Mainline Splicing and Tower Installation(s)	11/2/2024	9/1/2025	15%	\$1,126,400.10
PHASE 5: Testing and Quality Assurance for main systems and construction	9/2/2025	12/31/2025	5%	\$375,466.70
PHASE 6: Deployment and Service Activation for Grant Eligible Locations	1/1/2026	10/31/2026	5%	\$375,466.70
PHASE 7: Project Closeout and Final	11/1/2026	12/1/2026	5%	\$375,466.70

**Project Map:**



**Deliverables:**

Grant Recipient shall submit quarterly status reports (see Attachment E – Project Reporting) to the Department. See <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund/recipient-compliance-and-reporting-responsibilities>. Quarterly project reports and expenditure reports must include, but are not be limited to:

- Project description.
- Project location(s).
- Project start and end date.
- Project status.
- Project expenditures.
- Number and location of households, businesses, and anchor institutions served.
- Miles of fiber installed and purchased.
- Number of fiber reels and strand count and length for each reel.
- Whether each location served is residential, commercial, or a community anchor institution.
- Pricing offered (speed tiers to be offered, including the speed/pricing of its affordability offering).
- Executive summary including high-level overview of grantee’s actual uses of funding and progress made.
- Short narrative describing intended and actual uses of funds.
- Community engagement activities.

Upon achieving final completion of construction of the project, Grant Recipient shall submit a final project report with appropriate supporting documentation for Department’s review and approval. The final project report shall include a certification signed by a senior executive of Grant Recipient and a list of all addresses passed by the broadband infrastructure constructed by Participant (see additional final report requirements below). The Department reserves the right to request additional information necessary to support data required for reporting by the Department.

**Eligible and Ineligible Expenses**

In order to be authorized, allowable, and eligible for reimbursement, expenses related to the Project must be 1) authorized and eligible for reimbursement pursuant to ARPA and related federal and state law and guidelines, and 2) for new, non-depreciated items directly related to the qualifying project. Such expenses may include the construction of outside-plant deployment necessary to deliver broadband service in the Project area, electronic equipment necessary to deliver broadband service in the Project area, and other costs that are directly necessary to provide broadband service to the end user in the Project area.

**2. Ownership of Intellectual Property, Real Property and Equipment**

**(a) Definitions**

**Deliverables:** The term “Deliverables” shall mean deliverables as set forth in Section 1 of this SOW. Participant shall ensure that Deliverables do not contain any Custom Work Product or Grant Recipient Property.

**Grant Recipient Property:** The term “Grant Recipient Property” shall mean all pre-existing material and material created as part of the Project that are not Deliverables or with funds received

under the Agreement, including, but not limited to, any intellectual, tangible, and intangible property, data, products, software, materials and methodologies proprietary to Grant Recipient or provided by Grant Recipient, and any trade secrets, know-how, methodologies and processes related to Grant Recipient's products or services.

**Custom Work Product:** The term "Custom Work Product", for purposes of the Copyright Act of 1976, 17 U.S.C. §§ 101-1332, shall mean all work items newly created on a "work made for hire" basis by Grant Recipient expressly on behalf of the Department under this SOW. There will be no Custom Work Product created under this SOW.

**b) Ownership and Licensing of Intellectual Property**

The Department shall own all right, title and interest in the Deliverables in their entirety, provided under this SOW. Grant Recipient shall retain ownership in all Grant Recipient Property as defined above. Grant Recipient understands that all Grant Recipient Property provided under this Agreement is subject to disclosure as set forth above in Section 12 of this Agreement, "Public Records".

**3. Amendments, Exhibits and Attachments**

All conditions, covenants, duties and obligations contained in this SOW and its exhibits and attachments may be amended only through a written amendment signed by Grant Recipient and the Department.

ES  
ES

MB

\*Initialing indicates this attachment has been reviewed.

**ATTACHMENT C – PROJECT BUDGET**

<b>COST CLASSIFICATION</b>	<b>TOTAL PROJECT COSTS</b>	<b>PROJECT MATCH</b>	<b>TOTAL GRANT COSTS</b>
Administrative and Legal Expenses	\$30,000.00		\$30,000.00
Performance Management, Monitoring and Reporting	\$329,000.00		\$329,000.00
Project Development Costs	\$6,162,091.00	\$523,600.00	\$5,663,491.00
Land, Structures, Rights-of-way, Appraisals, Etc.	\$468,000.00	\$374,000.00	\$94,000.00
Relocation Expenses and Payments	\$46,200.00		\$46,200.00
Architectural and Engineering Fees	\$437,555.00	\$61,055.00	\$376,500.00
Other Architectural and Engineering Fees	\$10,400.00		\$10,400.00
Project Inspection Fees	\$225,000.00		\$225,000.00
Site Work			
Demolition and Removal			
Construction			
Equipment	\$509,743.00		\$509,743.00
Miscellaneous	\$115,000.00		\$115,000.00
Contingencies ( <i>funds set aside to cover unexpected costs</i> )	\$85,000.00		\$85,000.00
Grant Administration ( <i>max of \$25,000 grant dollars</i> )	\$25,000.00		\$25,000.00
<b>TOTALS</b>	<b>\$8,467,989.00</b>	<b>\$958,655.00</b>	<b>\$7,509,334.00</b>

ES  
ES

RB

\*Initialing indicates this attachment has been reviewed.

## ATTACHMENT D – PROJECT CONTACTS

### GRANT ADMINISTRATOR

*Individual to contact concerning administrative matters (i.e., grant reporting, grant portal submissions, grant funding draws, etc.).*

**First and Last Name:** Lorri Robb

**Title:** County Grant Administrator

**Email:** [lrobb@co.gooding.id.us](mailto:lrobb@co.gooding.id.us)

**Phone(s):** 208-934-4841

\*Addition of outside Grant Administrator to be determine by procurement or RFP during Phase 1 if required.

### PROJECT LEAD/POINT OF CONTACT

*Individual managing grant project.*

**First and Last Name:** Mark Bolduc

**Title:** Chair – County Commissioners

**Email:** [mbolduc@co.gooding.id.us](mailto:mbolduc@co.gooding.id.us)

**Phone(s):** 208-531-6199

\*Addition of outside Project/Construction Manager with Network Operations to be determine by procurement or RFP during Phase 1.

### AUTHORIZED REPRESENTATIVE

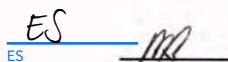
*Individual with signing authority. Agreements and amendments will be sent to this individual for review and signature.*

**First and Last Name:** Mark Bolduc

**Title:** Chair – County Commissioners

**Email:** [mbolduc@co.gooding.id.us](mailto:mbolduc@co.gooding.id.us)

**Phone(s):** 208-531-6199

 \*Initialing indicates this attachment has been reviewed.

## ATTACHMENT E – PROJECT REPORTING

Reporting will be due according to the schedule below, which may be modified by the Department based on requirements and/or modifications from the U.S. Department of the Treasury.


### Report Timelines

Report Type	Performance Period	Grantee Due Date (no later than)	Federal Due Date
Performance Report*	July 1, 2023 - June 30, 2024	July 15, 2024	July 31, 2024
Performance Report*	July 1, 2024 - June 30, 2025	July 15, 2025	July 31, 2025
Performance Report*	July 1, 2025 - June 30, 2026	July 15, 2026	July 31, 2026
Performance Report – Close Out*	July 1, 2026 - December 31, 2026	March 15, 2027	March 31, 2027
Post Project Status Reports**	July 1, 2027 - December 31, 2027	March 15, 2028	March 31, 2028
Post Project Status Reports**	July 1, 2028 - December 31, 2028	March 15, 2029	March 31, 2029

\*Performance Report and Close Out **must** include all information required by treasury in the [CPF Performance Reporting Requirements](#). Please review the link below for the template to provide information to the IOB.

[Broadband Infrastructure Project Template](#)

\*\*Post Project Status Reports must include all information required by treasury Reporting Requirements including, but not limited to, continued compliance, issues associated with ongoing infrastructure, and successes as it relates to coverage and pricing in the project area.

 \_\_\_\_\_ \*Initialing indicates this attachment has been reviewed.