DRAFT FOR PUBLIC COMMENT

CONTRACT#: BEAD #Insert Contract Number
SUBGRANTEE: Insert Subgrantee Name

AGREEMENT

This AGREEMENT, entered into on the Execution Date, by and between the Virginia Department of Housing and Community Development hereinafter referred to as "DHCD" and the Insert Subgrantee Name hereinafter referred to as "SUBGRANTEE."

WITNESSETH

WHEREAS, pursuant to the Infrastructure Investments and Jobs Act ("IIJA"), Public Law 117-58, the National Telecommunications and Information Administration ("NTIA"), U.S. Department of Commerce, issued a Notice of Funding Opportunity inviting applications for grants for its Broadband Equity, Access, and Deployment ("BEAD NOFO") Program;

WHEREAS, pursuant to the BEAD NOFO, DHCD applied for and was awarded a grant for the BEAD Program;

WHEREAS, pursuant to the BEAD NOFO requirements, DHCD submitted an Initial Proposal in two volumes to the NTIA, which were subsequently approved;

WHEREAS, DHCD's administration of the BEAD program is subject to additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information ("Assistant Secretary") and NTIA may provide;

WHEREAS, pursuant to the Initial Proposal (Volume 1) and after following the challenge process described therein, DHCD finalized and approved a list of unserved and underserved locations, and unserved community anchor institutions eligible for BEAD funding;

WHEREAS, pursuant to the BEAD Restructuring Policy Notice, DHCD submitted and received approval of its Initial Proposal Correction Letter;

WHEREAS, pursuant to the approved Initial Proposal, DHCD invited providers of broadband service to submit letters of intent to outline plans to provide last mile services, equipment, or other investments required to deliver last-mile service to eligible locations across the Commonwealth;

WHEREAS, SUBGRANTEE submitted a qualifying letter of intent;

WHEREAS, DHCD invited broadband providers that had submitted qualifying letters of intent to submit applications for BEAD subgrants;

WHEREAS, DHCD completed the "Benefit of the Bargain Round" requirement for subgrantee selection specified by the NTIA in the BEAD Restructuring Policy Notice dated June 6, 2025 (the "BEAD Restructuring Policy Notice");

WHEREAS, the project as described in the BEAD application submitted by the SUBGRANTEE ("Project") has achieved a sufficiently high ranking through a competitive application selection system to qualify for funds awarded through the BEAD grant-making process based on the criteria specified the NTIA-approved Initial Proposal and application guidance as modified by the BEAD Restructuring Policy Notice;

WHEREAS, DHCD and SUBGRANTEE agree that the purpose of this award is a broadband infrastructure project;

WHEREAS, the parties agree that the Project, as defined below, has a scope with measurable goals and objectives and that adequate cost, historical, or unit pricing data is available to establish that this fixed amount award based on a reasonable estimate of actual cost;

WHEREAS, it is the intent of the Parties that this Agreement in all other respects is a "subaward" as that term is defined in 2 CFR § 200.201 and that SUBGRANTEE is a "subrecipient" as that term is defined in 2 CFR § 200.201 and as evaluated under 2 CFR § 200.331; and

Now THEREFORE, the above-mentioned parties hereto do mutually agree as follows:

1. **Award**. DHCD agrees to award the SUBGRANTEE a grant through the BEAD in the amount of Insert Grant Amount written out long form (Number in parenthesis) (the "Award") to provide last mile services to the locations specified in Exhibit A. Distribution of Award funding to SUBGRANTEE for all broadband infrastructure projects shall be made on a reimbursable basis and DHCD may withhold funds if SUBGRANTEE fails to take the actions the funds are meant to subsidize. This grant will be a fixed amount subaward as that term as defined in 2 CFR § 200.201 and used in 2 C.F.R. § 200.333. The Parties agree that the major purpose of this "fixed amount subaward" is a broadband infrastructure project and will be administered by DHCD pursuant to the Uniform Guidance Policy Notice issued by NTIA on December 26, 2023 (the "UGPN").[1]

   [Alternative for non-fixed amount subawards]

[1] *See* NTIA's Policy Notice *available at* https://broadbandusa.ntia.gov/sites/default/files/2023-12/BEAD_Policy_Notice_of_Uniform_Guidance_Part_200_Exceptions_Related_Issues.pdf at 5 (allowing "fixed amount subawards where the major purpose of the subaward is a broadband infrastructure project(s)… regardless of whether the value of the sub-award exceeds $250,000, and notwithstanding whether the subaward includes a non-Federal match from the subrecipient that is being used to satisfy the Eligible Entity's statutory match requirement.")

DHCD agrees to award the SUBGRANTEE a grant through BEAD in the amount of [or in an amount to be determined based on approved reimbursement requests from SUBGRANTEE in an amount not to exceed] Insert Grant Amount written out long form (Number in parenthesis) (the "Award") to provide broadband internet service to the locations specified in Exhibit A. Distribution of Award funding to SUBGRANTEE for all broadband infrastructure projects shall be made on a reimbursable basis and DHCD may withhold funds if SUBGRANTEE fails to take the actions the funds are meant to subsidize. SUBGRANTEE has requested this contract not be structured as a fixed amount subaward. Accordingly, requests for cost reimbursement will be submitted pursuant to Exhibit C-1.

[END ALTERNATIVE LANGUAGE]

2. **Project**. The SUBGRANTEE will commence and carry out a broadband infrastructure project to make broadband service available to certain locations specified in Exhibit A ("the Project") to provide access to broadband services to certain Project location(s) described in Exhibit A and attachments thereto (the "Project Area").

3. **BEAD Program Requirements**.

a. SUBGRANTEE, including lower tier subgrantees or subcontractors, must comply with all applicable state, federal, and local laws and regulations, and all applicable terms and conditions of this Award. This includes, but is not limited to, compliance with obligations set forth in 2 C.F.R. Part 200 and the Department of Commerce Financial Assistance Standard Terms and Conditions.

b. SUBGRANTEE must perform its obligations under this Agreement in a manner that complies, and enables DHCD to comply, with all requirements contained in 47 U.S.C. § 1702, the BEAD Restructuring Policy Notice,[2] the BEAD NOFO, Department of Commerce Financial Assistance Standard Terms and Conditions (Nov. 12, 2020),[3] the General Terms and Conditions for the BEAD Program,[4] the Specific Award Conditions applicable to DHCD's BEAD award (51-20-B132),[5] DHCD's BEAD Final Proposal[6] (collectively, the "BEAD Program Requirements.") In the event of any conflict between the terms of this Agreement and BEAD Program Requirements, the BEAD Program Requirements control.

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[2] *Available* at https://www.ntia.gov/sites/default/files/2025-06/bead-restructuring-policy-notice.pdf
[3] *Available* at https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF_0.pdf
[4] *Available* at https://broadbandusa.ntia.gov/sites/default/files/2024-05/BEAD_IPFR_GTC_04_2024.pdf
[5] Is this document publicly available?
[6] [Link to approved Final Proposal].

c. In any case where language among two or more authorities described in the BEAD Program Requirements appear inconsistent, the relevant authorities should be read and interpreted in a manner which emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, the Parties agree to prioritize following the language contained in these authorities in the following order (from highest to lowest priority): 47 U.S.C. § 1702; the award's Specific Award Conditions; BEAD Restructuring Policy Notice, the General Terms and Conditions for the BEAD Program; the BEAD NOFO; the Department of Commerce Standard Terms and Conditions; DHCD’s BEAD Final Proposal.

d. SUBGRANTEE is responsible for ensuring that all contracts, including those necessary for design and construction of facilities, are implemented in compliance with the BEAD Program Requirements and this Agreement.

4. Technical Assistance. DHCD agrees to provide the SUBGRANTEE with technical assistance in establishing and implementing the administration of this project and in complying with the BEAD Program Requirements and this Agreement. Such technical assistance is limited to providing information on BEAD Program Compliance and this Agreement and does not imply an obligation by DHCD to assist in the completion of work described in Exhibit A.

5. Contract Performance Period. This contract shall commence on the date that Subgrantee executes this agreement (“the Start Deployment Date”) and SUBGRANTEE agrees that the project must be completed no later than <Insert Timeline Committed to in Awarded Application> (“Contract Period Performance Date”), unless extended at DHCD’s sole discretion. There are certain ongoing Special Conditions that require additional action by the SUBGRANTEE after Final Closeout of the Project, as described in Section 23, below. SUBGRANTEE acknowledges that failure to complete the Project by the Contract Period Performance Date or failure to comply with post-Final Closeout requirements may result in Enforcement Actions, including, but not limited to clawback provisions described in Section 14. This Agreement shall remain in effect until ten years after the year in which that subgrant has been closed out in accordance with 2 CFR § 200.344 (the “Federal Interest Period”), unless terminated in accordance with other provisions herein, and the ongoing obligations specified in Section 23 shall continue during the entire Federal Interest Period, including after closeout.

6. Payment and Use of Funds. The activities furnished by the SUBGRANTEE shall include, but are not necessarily limited to, those outlined in Exhibit A, made a part of this agreement by this reference.

a. The activities shall be provided in a manner satisfactory to DHCD and in accordance with all applicable state, federal, and local laws. As compensation for the activities under this agreement, DHCD agrees to pay the SUBGRANTEE a total grant award not to exceed Insert Grant Amount (Number), subject to the Contingency and Retainage sections of this Agreement.

b. This is a fixed-amount subaward and payments will be made to SUBGRANTEE upon completion of certain project "Milestones" described in Exhibit B, made part of this agreement by this reference.

c. Upon completion of Milestones described in Exhibit B, SUBGRANTEE may make a request for payment pursuant to Exhibit C, made part of this agreement by this reference.

[ALTERNATIVE FOR NON-FIXED AMOUNT SUBAWARD]

This is a non-fixed amount subaward and therefore requests for payment will be submitted by SUBGRANTEE based on actual costs incurred. SUBGRANTEE acknowledges that DHCD is not obligated to reimburse SUBGRANTEE for expenses above the award amount specified in Section 1 of this Agreement but that SUBGRANTEE may request Contingency Funding pursuant to Section 10, below. SUBGRANTEE may submit requests for payment on a quarterly basis [Milestones?] based on actual costs. SUBGRANTEE shall only be reimbursed for eligible expenses under the BEAD Program Requirements. SUBGRANTEE acknowledges that reimbursement is subject to the match obligations specified in Exhibit B payments are to be processed in accordance with Exhibit C, including Exhibit C-1. SUBGRANTEE acknowledges that DHCD shall not process requests for reimbursement while SUBGRANTEE is deficient on its reporting requirements under Exhibit D, made part of this agreement by this reference.

[END ALTERNATIVE LANGUAGE]

d. SUBGRANTEE may submit subgrant payment requests only for the reimbursement of eligible costs in connection with the broadband infrastructure projects described in Exhibit A. Pursuant to the BEAD NOFO, eligible uses of funding in connection with broadband infrastructure projects include the following:

i. Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.

ii. Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements.

iii. Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.

iv. Engineering design, permitting, and work related to environmental, historical and cultural reviews.

v. Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).

vi. Network software upgrades, including, but not limited to, cybersecurity solutions.

vii. Training for cybersecurity professionals who will be working on BEAD-funded networks.

viii. Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training.

e. Ineligible uses of subgrant payments include but are not limited to the following:

i. Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the Subgrantee, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;

ii. Gifts to employees; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;

iii. Expenses associated with: tangible property not logically related or necessary to the broadband infrastructure project; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the project area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other objects which possess aesthetic value;

iv. Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships or conferences or community events not logically related or necessary for the intended use of the subgrant; nonproduct-related corporate image advertising; and

v. Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

vi. Any other costs not enumerated herein that are unallowable under applicable federal cost principles.

f. BEAD Program Requirements Regarding Unauthorized Use of Funds: SUBGRANTEE acknowledges that the BEAD Program Requirements specify that use of BEAD Program funds for certain activities is not authorized. Unauthorized use of BEAD funding is subject to Enforcement Action pursuant to Section 14.e, below, including clawback of BEAD funding. The following costs are specifically identified as prohibited under the BEAD Program:

i. SUBGRANTEE, or anyone receiving BEAD funds provided by SUBGRANTEE (including subcontractors) may not use grant funds received under the BEAD Program to purchase or support any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608));

ii. A profit, fee, or other incremental charge above actual cost incurred by SUBGRANTEE is not an allowable cost under this Program;

iii. SUBGRANTEE may not use grant funds to support or oppose collective bargaining.

iv. As noted in the BEAD NOFO, the IIJA expressly prohibits subgrantees from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China unless a waiver of this requirement is received from the Assistant Secretary. SUBGRANTEE must obtain permission from DHCD before seeking to obtain such a waiver.

v. SUBGRANTEE may not use grant funds for the payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement.

g. Pursuant to the UGPN, DHCD was authorized to begin pre-contract requirements and circulating subgrantee agreements with provisionally awarded subgrantees prior to Final Proposal Approval. SUBGRANTEE may only claim reimbursement for pre-contract activities if such activities had written prior authorization ("PA") from DHCD. All such PAs associated with the Project are described in Exhibit G (and attached thereto), which is hereby incorporated by reference.

h. DHCD will use reasonable best efforts to issue payments due to SUBGRANTEE within thirty (30) days following approval of payment requests. Payments are subject to the availability of funds.

7. Termination.

a. Termination by DHCD

i. SUBGRANTEE acknowledges that (i) the source of BEAD Program funds is the IIJA, as implemented by the BEAD NOFO, as modified by the BEAD Restructuring Policy Notice; and (ii) DHCD may terminate this Agreement, for convenience, in the event that DHCD is no longer authorized as an agency to administer BEAD Program funds or if the funds allocated to DHCD or otherwise are no longer available.

ii. Notwithstanding any provision of this Agreement to the contrary, DHCD, in its discretion, need not provide prior notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the Commonwealth of Virginia; or if SUBGRANTEE is debarred pursuant to Va. Code §§ 2.2-4308.2 or 2.2-4321, or is debarred pursuant to the Code of Federal Regulations, DHCD, in its discretion, need not provide prior notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment takes effect.

iii. DHCD may also terminate this Agreement pursuant to an Enforcement Action as described in Section 14, below.

iv. Nothing enumerated in this paragraph shall alter or abridge the rights and remedies available to DHCD as an agency of the Commonwealth of Virginia, and the rights and remedies enumerated herein shall be considered additional to any other remedy available to DHCD at law or in equity.

b. Termination by SUBGRANTEE.

i. SUBGRANTEE may request to terminate this Agreement but, as a term of such termination, SUBGRANTEE must repay any amounts paid by DHCD to SUBGRANTEE pursuant to the Project and this Agreement, plus interest from the date of disbursement by DHCD to the date of repayment, at the judgment rate of interest.

ii. SUBGRANTEE acknowledges that the BEAD Program requires DHCD to extend service to eligible locations throughout the Commonwealth and that SUBGRANTEE's termination of this Agreement would compel DHCD to seek alternative means to facilitate broadband service to awarded locations in the Project Area. SUBGRANTEE further acknowledges that termination of this Agreement could cause DHCD to incur additional costs above the Award Amount to facilitate broadband service to the Project Area ("Incremental Termination Costs"). Accordingly, to terminate this Agreement, SUBGRANTEE must agree to reimburse DHCD for any such Incremental Termination Costs actually incurred by DHCD. SUBGRANTEE agrees that this subsection shall survive Termination of this Agreement.

8. **Matching Requirements**. Exhibit B specifies the match requirements that are required from SUBGRANTEE. Matching funds should generally be proportionally spent throughout the Contract Performance Period in proportion to grant funds. DHCD will require evidence of match expenditures whenever a request for payment is made by SUBGRANTEE.

a. Matching funds may be provided in the form of either cash or in-kind contributions, so long as contributions are made consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 C.F.R. Part 200. SUBGRANTEE acknowledges that in-kind matches shall be compared with current industry quotes. Employee time utilized as in-kind match must be pro-rated to reflect percentage of employee time spent on BEAD program work.

b. SUBGRANTEE shall retain records detailing the source, amount, quantity, time, and/or delivery of each match source throughout the grant period of performance, even for in-kind matches. Per 2 C.F.R. § 200.334, SUBGRANTEE must retain all Federal award records during the Federal Interest Period.

9. **Monitoring, Reporting, Inspection, and Compliance.**

a. SUBGRANTEE will carry out the Project and all associated work carrying out activities in a competent manner and in compliance with all applicable state, federal, territorial, and local laws and BEAD Program Requirements. To ensure compliance, projects will be subject to inspection by state and federal entities, including, but not limited to DHCD, NTIA, and the U.S. Department of Commerce Office of Inspector General.

b. SUBGRANTEE will comply with state and federal BEAD monitoring and reporting requirements, including mandatory transparency, accountability, and oversight measures, including, but not limited to the items listed in Exhibit D, which is hereby incorporated by reference.

c. SUBGRANTEE shall promptly respond to additional requests for Project-related information, even if not specified in Exhibit D.

d. DHCD shall have the right to revise its monitoring approach at its sole discretion, including frequency, method, or content of reports. SUBGRANTEE agrees that

DHCD may modify and issue an amended Exhibit D at its sole discretion at any time.

e. SUBGRANTEE acknowledges that DHCD has the right to monitor this subaward at its discretion and not only at milestones described in Exhibit B.

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

g. DHCD shall have the right to inspect and/or test SUBGRANTEE work, materials and equipment (including speed and latency tests) at any time during the period of performance without giving prior notice.

h. If, based on inspections by any State or Federal agency, SUBGRANTEE is found to be out of compliance with BEAD Program Requirements or this Agreement, then the SUBGRANTEE may be required to file a Corrective Action Plan pursuant to Section 13 and that such Corrective Action Plans may be considered "Specific conditions" per 2 C.F.R. § 200.208.

10. Contingency. Pursuant to application guidance issued by DHCD, SUBGRANTEE's application included a 10% contingency, which is distinct from the Retainage described in Section 15**Error! Reference source not found.**, below. Contingency funds, if approved, are not drawn from retainage; nor are retainage funds drawn from contingency funds. The purpose of such contingency funding is to cover unexpected costs that were not anticipated by SUBGRANTEE at the time of application. To access such contingency funding, SUBGRANTEE must submit a "Contingency Funding Request" as described in Exhibit C prior to incurring expenditures proposed to be covered by the 10% contingency and with ample time in advance to not alter project progress.

[For non-fixed amount awards: SUBGRANTEE acknowledges that requests for reimbursement of actual costs shall normally be limited to Award Amount and that SUBGRANTEE requests for Contingency Funding shall be reviewed by DHCD and may be approved or disapproved solely at DHCD's discretion.]

11. Affordability and Low-Cost Service Option Obligations. Pursuant to BEAD Program Requirements, SUBGRANTEE is required to offer to eligible customers the "Low-Cost Service Option." SUBGRANTEE may satisfy the Low-Cost Service Option requirement by proposing to offer their existing low-cost plan to eligible subscribers. SUBGRANTEE's Low-Cost Service Option is specified in its application, which is attached to this Agreement as Exhibit E, and is hereby incorporated to this Agreement by reference. SUBGRANTEE agrees that the low-cost service option price specified in Exhibit E was established solely by SUBGRANTEE.

SUBGRANTEE's Low-Cost Service Option shall have the following characteristics:

a. Starting on the [Execution Date], SUBGRANTEE shall make the Low-Cost Service Option available for the price specified in Exhibit E to customers in the Project Area. To determine subscriber eligibility for the Low-Cost Service Option, SUBGRANTEE shall use the same eligibility criteria as the FCC's Lifeline Program.

b. The requirements of this Section 11 are subject to monitoring and inspection by DHCD and NTIA for the Federal Interest Period. DHCD shall retain the right to request data related to SUBGRANTEE's Low-Cost Service Option for the period of performance of the Project, which shall coincide with the Federal Interest Period.

c. Failure to meet these standards may require SUBGRANTEE to file a Corrective Action Plan pursuant to Section 13 or result in an Enforcement Action pursuant to Section 14.

12. Prohibition on Line Extension charges / Special Construction Costs. As a term of this Agreement, SUBGRANTEE may not charge "special construction charges" or line extension charges to customers taking service at the BEAD-funded locations specified in Exhibit A for a period of twelve months after such service is made available to said location because such costs were incorporated in SUBGRANTEE's bid and, consequentially, in the Award Amount specified above. SUBGRANTEE is not permitted to charge any fees to subscribers at those locations for line extensions, except for the regular connection fees associated with any connection made on the network. The requirements of this Section **Error! Reference source not found.**is subject to monitoring and inspection for the Federal Interest Period pursuant to Section 23, below.

13. Corrective Action Plans and Other Remediation.

a. If DHCD determines that the Project is not progressing in accordance with this Agreement or if DHCD determines that a Project is otherwise not complying with BEAD Program Requirements or this Agreement, it may require SUBGRANTEE to file a "Corrective Action Plan" to remediate the Project. SUBGRANTEE failure to comply with such a Corrective Action Plan may result in an Enforcement Action, pursuant to Section 14 below, including a possible clawback of BEAD funding.

b. DHCD shall normally offer SUBGRANTEE the opportunity to remediate a Project deficiency through a Corrective Action Plan but, in the event of a material breach by SUBGRANTEE, DHCD may, at its discretion, immediately initiate an Enforcement Action pursuant to Section 14, including a clawback of funding, without first requiring a Corrective Action Plan from SUBGRANTEE. Moreover, the parties agree that the filing of a Corrective Action Plan by SUBGRANTEE shall not act as a bar to DHCD initiating an Enforcement Action.

c. If DHCD determines at any time before the Contract Period Performance Date that the SUBGRANTEE is unlikely to meet its contractual obligations, DHCD shall promptly notify SUBGRANTEE and may require the submission of a Corrective Action Plan. Such a determination by DHCD will be based on circumstances such as (but not limited to) filing by or on behalf of SUBGRANTEE under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of SUBGRANTEE, an abandonment of the project by SUBGRANTEE or other similar significant event that demonstrates SUBGRANTEE or its subcontractors will be unable or is unwilling to satisfy the targets for the grant awarded through the BEAD grant-making process. Moreover, the parties agree that the filing of a Corrective Action Plan by SUBGRANTEE shall not act as a bar to DHCD initiating an Enforcement Action.

d. DHCD may, in its sole discretion, require the submission of a Corrective Action Plan if, at any time, it appears that SUBGRANTEE in unlikely to meet the deliverables specified for an upcoming Milestone. If, at the time of any Milestone specified in Exhibit B, SUBGRANTEE has not met at least ninety (90) percent of each of the deliverables specified for that Milestone, then DHCD shall promptly notify the SUBGRANTEE and require the submission of a Corrective Action Plan.

e. DHCD shall have the right to inspect and evaluate SUBGRANTEE's work (including internet service speed and latency tests), either directly or through a third party. If DHCD determines that SUBGRANTEE is not serving locations claimed in the Milestone Report, or if SUBGRANTEE's service to such locations fails to satisfy BEAD Program Requirements or the terms of this Agreement, DHCD may require SUBGRANTEE to complete and file a Corrective Action Plan before processing any further payments related to the Project pursuant to Exhibit C.

f. If DHCD, either directly or through a third-party, finds that the Project does not meet the original design of, or does not provide the contractually defined, measurable speeds, latency, rates, and services set forth in, Exhibit A, then SUBGRANTEE shall be found to be non-compliant, and may be required to submit a Corrective Action Plan to remediate as needed.

g. If, at any time before the Final Closeout of this project, DHCD identifies that any aspect of the SUBGRANTEE's work does not comply with the BEAD Program Requirements or this Agreement, then DHCD may require the SUBGRANTEE to submit a Corrective Action Plan to remediate as needed.

h. If SUBGRANTEE fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act, and as described in Section 11 of this Agreement, then DHCD may take corrective action, including recoupment of funds from the SUBGRANTEE.

i. If SUBGRANTEE fails to comply with a filed Corrective Action Plan, then DHCD may issue SUBGRANTEE a "Corrective Action Failure Notice" and allow SUBGRANTEE thirty (30) days to bring itself into compliance with the Corrective Action Plan's requirements the ("Corrective Action Cure Period"). If after the Corrective Action Cure Period, SUBGRANTEE is still not in compliance with its Corrective Action Plan, then DHCD may bring an Enforcement Action in accordance with Section 14 of this document . A Corrective Action Cure Period is not required for Enforcement Actions specified in Section 14.d or 14.e, below, or in the event of a material breach by SUBGRANTEE of the BEAD Program Requirements or this Agreement.

j. DHCD shall monitor SUBGRANTEE progress in complying with Corrective Action Plan through conference calls, desk review, and other means. Corrective Action Plans may specify additional SUBGRANTEE reporting requirements, to be set at DHCD's discretion on a case-by-case basis.

14. Enforcement Actions.

DHCD and NTIA may enforce applicable rules and laws by imposing penalties for nonperformance, breach of this Agreement, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of grant funds. Such "Enforcement Actions" include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation/repayment/clawback of funds, and debarment of organizations and/or personnel.

a. *Repayment of BEAD funding*: If SUBGRANTEE fails to comply with this Agreement or the BEAD Program Requirements, DHCD may recoup/clawback funds previously distributed pursuant to this Agreement by issuing a "Notice to Recoup Funds."

b. *Repayment Dates*: Repayment shall be due from SUBGRANTEE within thirty (30) days of the issuance of a Notice to Recoup Funds. DHCD reserves the right to require the SUBGRANTEE to recoup funds from any subcontractors at the SUBGRANTEE'S expense and return those funds to DHCD. SUBGRANTEE shall have ultimate responsibility for the repayment of any sums hereunder but will be given time to pursue repayment from subcontractors before repaying

DHCD. DHCD will allow continued pursuit of repayment by the SUBGRANTEE with required monthly reports demonstrating full pursuit of repayment. If repayment is not received by the SUBGRANTEE after one (1) year of the date that a Notice to Recoup Funds is issued, the funds must be returned promptly to DHCD from the SUBGRANTEE. Failure of SUBGRANTEE to recoup BEAD monies from a subcontractor shall not relieve SUBGRANTEE of its obligation to repay BEAD monies when called upon by DHCD.

c. *Failure to Repay*: If any repayment due pursuant to this Section 14 is not made by SUBGRANTEE when due, DHCD may determine that further collection action is required, and DHCD may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In any matter referred to the OAG for collection, the SUBGRANTEE shall be liable to pay interest, administrative charges, collection costs, attorneys' fees, expert fees, consultant fees, and other applicable fees to the Commonwealth of Virginia and that interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the date on which the repayment is due until paid.

d. *Fraud, Bribery, or other Criminal Activity*. If there is reason to believe that fraud, bribery, or other criminal activity is associated with any aspect of the Project, then DHCD may refer such matters to state and/or Federal law enforcement as appropriate. In accordance with 2 CFR 200.113, SUBGRANTEE must disclose, in a timely manner, in writing to DHCD all violations of state or Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. SUBGRANTEE is also required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR Part 180, 31 USC 3321, and 41 USC 2313).

e. *Unauthorized Use of Funds*. To the extent that DHCD, the NTIA Assistant Secretary, or the Inspector General of the Commerce Department determines that a SUBGRANTEE has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, 2 C.F.R. Part 200, the terms and conditions of the award, or other applicable law, DHCD or the Assistant Secretary shall, if appropriate, recover the amount of funds that were so expended.

15. **Retainage, Completion and Conditional Closeout**. DHCD shall retain ten percent (10%) of the grant award until closeout of the Project (the "Retainage"). DHCD will not accept, and SUBGRANTEE agrees not to submit, any further requests for payments after 90% of the grant funds have been drawn down by the SUBGRANTEE (with the exception of Contingency Funding Requests). DHCD will not be obligated to release any of the Retainage unless all conditions precedent to payment described in this Agreement are met and SUBGRANTEE is not in default under the terms of this Agreement. Upon the timely and proper

completion of construction by SUBGRANTEE, Final Inspection, and approval of the final closeout report by DHCD, SUBGRANTEE may submit a remittance request for remaining grant funds, less the post-closeout Retainages described in Exhibit B, in accordance with the terms contained in Exhibit B. Following the submission to DHCD of the 6-month and 12-month post-closeout reports, SUBGRANTEE may submit remittance requests for the respective sums retained for each such report. Contingency Funds are distinct from such Retainage and successful completion of a project does not entitle SUBGRANTEE to any Contingency Funding. Contingency funds, if approved, are not drawn from Retainage; nor are Retainage funds drawn from contingency funds.

16. **Service Territory Data Submission Requirement.** The SUBGRANTEE shall provide DHCD with broadband service and coverage data and information ("Service Territory Data") in the time and formats established by DHCD in its Internet Service Provider Service Territory Data Submission Guidelines ("Data Submission Guidelines") pursuant to Section P of Item 114 of Chapter 552, 2021 Acts of Assembly, 2021 Special Session I ("Budget Amendment"). Service Territory Data shall be submitted through the Broadband Provider Data Submission Portal for the Commonwealth of Virginia established by DHCD to securely accept such data.

17. **Project Cost Data Submission Requirements**. SUBGRANTEE shall provide adequate cost, historical, and unit pricing data to DHCD as requested to establish that its projected and actual Project costs are reasonable.

18. **Subawards, Subcontracting, and Transfers of Locations.**

a. SUBGRANTEE shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without providing notice to and receiving written approval from DHCD.

b. Transfers of awarded locations from SUBGRANTEE to another internet service provider ("ISP") must comply with the DHCD Policy Notice dated December 20, 2024, regarding such transfers, which is hereby incorporated by reference.

c. If SUBGRANTEE enters into a subcontract or agrees to subaward with a third party (a "Subrecipient"), then SUBGRANTEE shall ensure that its agreement with the Subrecipient contains provisions specifying that NTIA, DHCD and the SUBGRANTEE the right to perform all monitoring in accordance with BEAD Program Requirements and this Agreement, including all audit and monitoring requirements specified in Exhibit D, shall apply to Subrecipient.

d. SUBGRANTEE agrees that if it makes an agreement with a Subrecipient, such an agreement will allow DHCD to require a Corrective Action Plan (which may be considered a "specific condition" per 2 C.F.R. § 200.208) on the sub-subaward at any time as a result of monitoring findings by NTIA, DHCD or SUBGRANTEE.

e. SUBGRANTEE must ensure that any agreements with Subrecipients include policies and procedures that allow for clawback of previously distributed BEAD monies in the event of breaches of such agreement.

f. Any subawards and subcontracts made by the SUBGRANTEE are subject to 2 CFR 200.501 and program-specific audit requirements. Accordingly, in any such subawards or subcontracts, SUBGRANTEE shall ensure that the Subrecipient complies with BEAD Audit requirements, including those specified in Section 19 of this Agreement.

19. Audit.

a. The subgrantee is subject to the DHCD Audit Policy. The full DHCD Audit Policy, including an explanation of the specific document requirements, can be found online at: https://www.dhcd.virginia.gov/sites/default/files/Docx/audit-policy/dhcd-financial-statement-audit-policy-2019.pdf. The SUBGRANTEE is required to participate in monitoring and pre-award and/or post-reward audits.

b. All audits associated with the BEAD program shall be consistent with the audit requirements of non-federal entity subgrantees (per 2 CFR 200.501). Pursuant to DHCD Audit Policy and the requirements of federal BEAD program, the SUBGRANTEE shall submit one of the following financial documents for the SUBGRANTEE's fiscal year identified below: Financial Statement**, Reviewed Financial Statement prepared by an Independent Certified Public Accountant (CPA), Audited Financial Statement prepared by an Independent CPA or an audit required by the Code of Federal Regulations (CFR), (2 CFR 200 Subpart F), audited by an Independent CPA. Please see the table below to determine which document your organization is required to submit. The threshold requirements outlined below are the *minimal* standards required by DHCD. We strongly encourage all organizations receiving funds from DHCD to undertake the highest level of financial management review to ensure practices and procedures are fully examined and evaluated.

Threshold Requirement	Document
Total annual expenditures ≤$350,000 (Regardless of source)	Financial Statement prepared by organizations**
Total annual expenditure between $350,001 and $550,000 (Regardless of source)	Reviewed Financial Statement prepared by an Independent Certified Public Accountant (CPA)
Total annual expenditures > $550,000 (Regardless of source)	Audited Financial Statement prepared by an Independent CPA
Federal expenditures ≥$1,000,000	2 CFR 200 Subpart F--Audited by an Independent CPA

**Does not require preparation by a CPA

c. SUBGRANTEE shall maintain adequate financial systems and financial records to accurately account for awarded funds. Entities shall file the required financial document in the Centralized Application and Management System (CAMS), or another grants management system as required by DHCD, within nine (9) months after the end of their fiscal year or 30 (thirty) days after it has been accepted, (Reviewed Financial Statement, Audited Financial Statement, and Single Audit Act only) whichever comes first.

d. In all instances, SUBGRANTEE must make the above-specified documents (and any other audit-related records) available for review or audit by appropriate officials from the Department of Commerce, NTIA, DHCD, and the United States Government Accountability Office (GAO). SUBGRANTEE shall maintain all data and records related to the project made the subject of this AGREEMENT ("Project") for a period of five (5) years following the Final Inspection and Closeout of the Project for the purposes of compliance with potential audits. Entities will produce all data and records related to the Project upon written request by DHCD or its successors or designees within thirty (30) days following said request.

e. Based on the results of audits, DHCD may require SUBGRANTEE to file and comply with an appropriate Corrective Action Plans. An audit may also result in an appropriate Enforcement Action, including the clawback of funds as appropriate.

20. Certifications and Representations and Warranties.

The SUBGRANTEE hereby represents and warrants that the below certifications are true and correct in all respects and that DHCD may reasonably rely upon such certifications as statements of preexisting fact:

a. All information and documentation submitted by SUBGRANTEE to DHCD in connection with or which accompanied the application out of which this Agreement arises and/or in connection with any contract or agreement that may result from an award arising out of said application are true and accurate in all material respects.

b. SUBGRANTEE is capable of meeting all BEAD Program Requirements, including that:

   i. It can conduct all activities funded by this Agreement in a competent manner in compliance with all applicable state, federal, tribal, and local laws;

   ii. It has the financial and managerial capacity to meet its commitments under this Agreement and the BEAD Program, including that it has sufficient financial resources to cover its eligible costs for the Project until such time as the DHCD authorizes disbursements pursuant to this Agreement; and, *iii.* It has the technical and operational capability to provide the services promised in this Agreement in the manner contemplated herein and that the project workforce employed by SUBGRANTEE will be an appropriately skilled and credentialed workforce pursuant to BEAD Program Requirements.

c. No principal, partner, shareholder, director, officer, member, manager or other employee of the SUBGRANTEE with managerial control or responsibility over said entity or any significant aspect of its operations in the Commonwealth of Virginia were employed (i) by the awarding agency and involved in the evaluation and scoring of applications received for consideration of award during a period of one (1) year prior to the date of the announcement of project awards, or (ii) by the Governor's administration during a period of two (2) years prior to the date of the execution of this Agreement.

d. SUBGRANTEE has a cybersecurity risk management plan (the "Cyber Plan") that:

i. is either operational (if the prospective subgrantee is providing service prior to the award of the grant) or ready to be operationalized upon providing service (if the prospective subgrantee is not yet providing service prior to the grant award);

ii. reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;

iii. will be reevaluated and updated on a periodic basis and as events warrant; and,

iv. will be submitted to DHCD prior to the allocation of funds. If SUBGRANTEE makes any substantive changes to the plan, a new version will be submitted to the DHCD within 30 days.

e. SUBGRANTEE has a supply chain risk management plan ("SCRM Plan") that:

i. is either operational (if the prospective subgrantee is already providing service at the time of the grant) or ready to be operationalized (if the prospective subgrantee is not yet providing service at the time of grant award);

ii. is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and

Organizations and specifies the supply chain risk management controls being implemented;

iii. will be reevaluated and updated on a periodic basis and as events warrant; and

iv. will be submitted to the DHCD prior to the execution of this agreement. If SUBGRANTEE makes any substantive changes to the plan, a new version will be submitted to DHCD within 30 days. DHCD shall provide a subgrantee's plan to NTIA upon their request.

f. As of the Effective Date, SUBGRANTEE has no knowledge of any other state, federal, or local funding commitments for the Project or the Service Area, and that it has not applied for – or, if applied for, will immediately withdraw – funding from any other state, federal, or local government body for the Project

g. SUBGRANTEE attests that in preparing its application for this subgrant that it:

i. Requested information from utility pole owners on the need for "make ready work" in the proposed project area, and

ii. Estimated anticipated "make ready" costs based on previous broadband deployment projects in similar geographic areas, and

iii. Analyzed the right-of-way permitting process for both public and private rights-of-way.

21. Letter of Credit / Performance Bond Requirement

SUBGRANTEE shall maintain Letter of Credit and Performance Bond Requirements in the amounts specified in Exhibit B and such requirements shall be negotiated on a case-by-case basis.

22. Additional BEAD Requirements

SUBGRANTEE shall comply with the terms specified in the BEAD Program General Terms and Conditions, which are hereby incorporated into this Agreement by reference. The below terms are intended to supplement the BEAD Program Requirements as that term is defined above in Section 3. To the extent that BEAD Program Requirements conflict with this Agreement, the BEAD Program Requirements shall control.

a. *Labor Requirements*

i. SUBGRANTEE agrees that all activities funded by this Agreement shall be performed by appropriately skilled and credentialed workforce.

ii. SUBGRANTEE shall, upon request, submit the credentials of the staff that has performed or is expected to perform the activities funded by this Agreement (including contractors and subcontractors).

iii. The Commonwealth Virginia is a right-to-work state. The only requirements of subgrantees under this section will be what is explicitly and minimally required in the BEAD NOFO, as modified by the NTIA BEAD Restructuring Policy Notice. namely:

- Compliance with Federal labor and employment laws; and
- SUBGRANTEE shall, upon request, certify compliance with Federal labor and employment laws to DHCD.

iv. In the event that a subrecipient of BEAD funding is found to not be in compliance with Federal labor and employment laws, DHCD will require that subrecipient to submit a Corrective Action Plan pursuant to Section 13 of this Agreement.

b. *Signage.*

SUBGRANTEE is encouraged to post signage and to include public acknowledgements in published and other collateral materials (e.g. press releases, marketing materials, webpages, plaques) satisfactory to the Office, NTIA and NIST that identifies grant funded activities and indicates that those activities are "funded by the Infrastructure Investment and Jobs Act." Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Subgrantee burden. SUBGRANTEE shall retain sign cost information and records of signage, including photos of signage in place. DHCD requires that a project sign be installed no later than within thirty (30) days of the execution of the contract. A picture of the installed sign must be included with the first remittance request.

c. *Public Notices and Awareness Campaigns.*

In accordance with DHCD's communications plan requirements, SUBGRANTEE shall carry out a public awareness campaign within its service area designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers. Subgrantees must utilize a variety of communications media (e.g., online, print, radio).

DHCD shall have the right to request and review subgrantee's public notices, application campaigns, and public awareness campaign materials. This right shall include the right to request and review data related to locations to which broadband service has been provided. Requests made pursuant to this section shall be made in writing and subgrantee shall comply within fifteen (15) calendar days of receipt of the request.

d. *Build America, Buy America Act Compliance.*

Subgrantee shall be required to abide by the Build America, Buy America Act ("BABA," passed as part of the IIJA and as codified at Pub. L. 117-58, 135 Stat. 429, 70901-70927. BABA established domestic content procurement preference requirements for Federal financial assistance projects for infrastructure, including the BEAD Program. The subgrantee shall comply with BABA consistent with all applicable legal authorities, such as the Infrastructure Act, 2 CFR Part 184, and any applicable waivers issued by the Department of Commerce. SUBGRANTEE's failure to comply with this term may result in Enforcement Action pursuant Section 14, above.

e. *National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) Compliance*

SUBGRANTEE shall comply with all applicable state, federal, and local environmental laws, regulations, and standards. SUBGRANTEE shall comply with the terms Specified in Section 13 of the BEAD Program General Terms and Conditions, which are incorporated into this Agreement by reference.

f. *Funded Network Data and Network Management Practices*

DHCD shall retain the right to request and review data related to SUBGRANTEE's Network data usage and network management practices upon request. SUBGRANTEE must comply with any DHCD requests to satisfy NTIA reporting requirements. Requests made pursuant to NTIA reporting requirements shall be in writing and SUBGRANTEE shall comply within fifteen (15) calendar days of receipt of the request. DHCD shall provide SUBGRANTEE with draft copies of the relevant portions of the NTIA reports before such reports are sent to NTIA. SUBGRANTEE shall provide any corrections to the data contained in such draft reports within five (5) calendar days of receipt.

g. *Cybersecurity and Supply Chain Management*

i. Updates.

SUBGRANTEE shall provide grantee copies of an updated Cyber Plan and SCRM Plan within fifteen (15) calendar days of SUBGRANTEE revising or updating the Plan. Grantee shall retain the right to require SUBGRANTEE to reevaluate and/or revise the Cyber Plan and SCRM Plan as warranted. Such a request to reevaluate and/or revise shall be in writing and state the reason for reevaluation and/or revision. SUBGRANTEE shall comply with all requests made pursuant to this section within thirty (30) calendar days.

ii. Third Party Network Facilities

To the extent that SUBGRANTEE relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), SUBGRANTEE agrees to obtain the above attestations from its network provider with respect to both cybersecurity and supply chain risk management practices (*e.g.*, the attestations specified in Section 20.d and/or 20.e.

h. *Encumbrances.*

The Federal interest in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue for **ten years after the year in which that subgrant has been closed out** in accordance with 2 CFR 200.344 (the "Federal Interest Period.") Subject to the exception in the next paragraph, SUBGRANTEE must not encumber property without prior disclosure to and approval from the DHCD, NTIA and NIST. SUBGRANTEE may not enter into any encumbrances that interfere with the construction, intended use, operation, or maintenance of grant funded property during Federal Interest Period. DHCD shall have the right to request and review information regarding encumbrances at anytime. Such requests shall be made in writing and SUBGRANTEE shall response to the request within fifteen (15) calendar days of receipt.

Notwithstanding the above paragraph, SUBGRANTEE may encumber real property and equipment acquired or improved under such subgrants only after provision of notice to DHCD, and subject to a requirement that the Department of Commerce ("DOC") and DHCD receives either a first priority security interest (preferred) or a shared first priority security interest in the real property and equipment such that, if the real property and equipment were foreclosed upon and liquidated, the DOC would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC's percentage of contribution to the project costs. For example, if the DOC had contributed 50% of the project costs, the DOC would receive, on a pari-passu basis, 50% of the current fair market value of the property when liquidated. DHCD will address the notice requirement for encumbrances in future guidance.

~~i. *Federal Interest in BEAD-Funded Property*~~

i. Useful Life and Compliance with 2 CFR 200.311, 200.313. For the purposes of this award, the useful life of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period as defined in 21.h, above. During the useful life of the BEAD-funded property, the Grantee must adhere to the requirements contained in the terms and conditions of the award, including adherence to the use, management, and disposition requirements set forth in 2 CFR 200.311 or 200.313, as applicable. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded real property and equipment in subsequent guidance.

ii. To document the Federal interest in BEAD-funded real property, DHCD may direct the SUBGRANTEE to prepare and properly record a "Covenant of Purpose, Use and Ownership" (Covenant). The Covenant differs from a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest to NTIA. Rather, pursuant to the Covenant, DHCD or SUBGRANTEE acknowledges that it holds title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and agrees, among other commitments, that it will repay the Federal interest if it disposes of or alienates an interest in the BEAD-funded property, or uses it in a manner inconsistent with the public purposes of the BEAD award, during the useful life of the BEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the BEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the BEAD-funded property during the Federal Interest Period. NTIA will provide a suggested sample form to use for the Covenant to record notice of the Federal interest in real property.

j. *UCC-1 Filing.*

Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this Award, the DHCD may direct that SUBGRANTEE properly file a UCC-1 with the appropriate State office where the equipment will be located in accordance with the Uniform Commercial Code (UCC). This security interest shall be executed no later than the closeout of the grant. The UCC filing(s) must include the below or substantively similar language providing public notice of the Federal interest in the equipment acquired with BEAD funding. Also, a clear and accurate inventory of the subject equipment must be attached to and filed with the UCC-1.

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

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

In addition, within 15 calendar days following the required UCC filing(s), the DHCD shall provide the Grants Officer with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with NTIA BEAD funding including all subgrants, along with a certification from legal counsel, licensed by the State within which the filings were made (Attorney's Certification), that the UCC filing was properly executed and filed in accordance with applicable state law. The Attorney's Certification must include the below or substantively similar language:

NIST Award Number: XX-XX-XXXX

Pursuant to 28 USC 1746, I hereby certify as follows:
I am legal counsel at ____.

I am licensed to practice law in the State of _____________ having been a license holder of said state and in good standing since ________.

Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the ____________________on __________, 202x, bearing the following filing information [insert filing data, e.g., instrument number, etc.) and consists of ____ recorded pages as certified by the Secretary of State of ____________.

I certify that this UCC-1 form(s) has/have been validly executed and properly recorded as noted above.

I certify under the penalty of perjury that the foregoing is true and correct.

Executed on this ____day of _______.

____
(Attorney name and title)
(Address and phone number)

In addition, during the estimated useful life of the [type of equipment, e.g. robotic equipment], the Grantee is hereby authorized to timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific award condition. Copies of all filed UCC continuation statements must be submitted to Grantee within five (5) calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to the Grantee, NTIA and the National Institute of Standards and Technology (NIST) Grants Officer.

k. *Exceptions and Clarifications to 2 CFR 200.313 regarding Equipment.*

Title to equipment acquired or improved under the fixed amount subgrant vests in the Subgrantee upon acquisition, subject to conditions and clarifications specified in Item 51.C of the BEAD General Terms and Conditions, which are hereby incorporated by reference and shall apply for the duration of the Federal Interest Period.

l. *Prevention of Waste, Fraud and Abuse.*

i. Waste, Fraud, and Abuse Prevention Policy Requirements

SUBGRANTEE is expected to establish and implement internal policies to disclose all violations of federal criminal law involving fraud, bribery, or gratuity violations that may potentially affect a federal award. SUBGRANTEE shall make a copy of such policy available to state or federal inspectors upon request. An adequate policy should indicate:

a. The employee(s) responsible for identifying violations that may potentially affect a federal award.
b. The employee(s) responsible for notifying the federal awarding agency or pass-through entity of violations.
c. The method in which the organization will provide written notification to the federal awarding agency or pass-through entity.
d. A definition of timely manner in which the nonfederal entity will notify the federal awarding agency or pass-through entity.
e. A list of applicable federal laws involving fraud and bribery.
f. A definition of gratuity violations.
g. Explicitly prohibit employees from soliciting or accepting "gratuities, favors, or anything of monetary value from contractors or parties to subcontracts".
h. Explain when an "unsolicited item of nominal value" may be accepted.
i. Detail the consequences for employees that violate this policy.

ii. *Training*

Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, DHCD or NTIA may direct a member or members of SUBGRANTEE's key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing SUBGRANTEE's finances and overseeing any contractors, sub-contractors or Subgrantees (for financial matters and/or general oversight related to the grant). NTIA or DHCD will provide instructions on when and how to take such training(s), and costs incurred by Subgrantee relative to the training (e.g., staff time) are eligible for reimbursement pursuant to this Agreement.

iii. *Monitoring*

Subgrantee must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;
- product substitution;
- mismarking or mislabeling on products and materials; and
- time and materials overcharging.

Should Subgrantee detect any fraud schemes or any other suspicious activity, SUBGRANTEE must contact (a) DHCD and (b) the assigned NTIA Federal

Program Officer and the Department of Commerce, Office of Inspector General Hotline, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

iv. *Mandatory Disclosures*

In accordance with 2 CFR 200.113, SUBGRANTEE shall disclose, in a timely manner, in writing to DHCD and NTIA, all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting the Project, this Agreement, or the Award. DHCD may impose any penalties for noncompliance allowed under 2 C.F.R. 180 and 31 U.S.C. § 3321, which may include, without limitation, suspension or debarment. DHCD refers the right to refer any suspected violations of federal or State criminal law to an appropriate law enforcement agency at any time and without notice.

SUBGRANTEE is required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. *(See also* 2 CFR Part 180, 31 USC 3321, and 41 USC 2313).

v. *Duty to publish Inspector General Contact Information*

SUBGRANTEE is required to publicize the telephone numbers and e-mail addresses for the Commonwealth of Virginia's Office of the State Inspector General.

<u>Office of the State Inspector General</u>

E-mail: osig@osig.virginia.gov

Telephone: 804-625-3255.

<u>OSIG State Fraud, Waste and Abuse Hotline:</u>

Address:

State Fraud, Waste and Abuse Hotline
P.O. Box 1151
Richmond, VA 23218

Toll-Free Phone Number:

800-723-1615 (No caller ID; accepts voicemail messages after business hours)

Email: COVHotline@osig.virginia.gov

Online Form:

https://www.osig.virginia.gov/program-areas/citizen-services/state-fraud-waste-and-abuse-hotline/complaint-form/

SUBGRANTEE acknowledges that it may be required to produce copies of material used to publicize OSIG contact information.

m. *Whistleblower Protection*. The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into this Agreement. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 USC 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information). SUBGRANTEE must inform their employees in writing of the rights and remedies provided under 41 USC 4712, in the predominant native language of the workforce.

n. *Non-Discrimination***.** By participating in the BEAD Program and receiving this subaward, the SUBGRANTEE agrees to meet the legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring that entities receiving federal financial assistance from Treasury do not deny benefits or services, or otherwise discriminate on the , on the ground of actual or perceived race, color, national origin, sex, gender identity, sexual orientation, age, disability, or handicap, in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. SUBGRANTEE acknowledges that failure to adhere to these requirements may result in cancellation of any award and/or recoupment of funds already disbursed.

o. *Continuity of Service*. SUBGRANTEE agrees that if, at any time, it is no longer able to provide broadband service to the end user locations covered by this Agreement on a retail basis, then remedial action shall be taken to ensure continuity of service. In consultation with NTIA, DHCD shall require the subgrantee to sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program. The Eligible Entity may pursue either remedial action so long as such action results in continued retail service to end users in the grant area.

23. Post-Closeout Subgrantee Obligations During the Federal Interest Period

SUBGRANTEE explicitly acknowledges that the obligations described in this Section 23 survive beyond the Period of Performance and the closeout of this Award and remain in effect during the entirety of the Federal Interest Period, as defined above.

a. Property Standards

For the purposes of this Agreement, the useful life of Project Property shall coincide with the Federal Interest Period. Title to Project Property vests in Subgrantee upon acquisition, subject requirements of Section 22.i, which themselves remain in effect for the duration of the Federal Interest Period.

b. Service Availability

Subgrantee shall be capable of performing a standard installation of Qualifying Broadband Service to an End User within 10 business days after the date on which a service request is submitted.

c. Line Extension charges / Special Construction Costs

SUBGRANTEE may not charge "special construction charges" or line extension charges to customers taking service at the BEAD-funded locations specified in Exhibit A for a period of twelve months after such service is made available to said location. SUBGRANTEE is not permitted to charge any fees to subscribers at those locations for line extensions, except for the regular connection fees associated with any connection made on the network.

d. Reporting

Unless directed otherwise by DHCD, SUBGRANTEE shall comply with post-closeout reporting requirements specified in Exhibit D throughout the Federal Interest Period. DHCD may amend such post-closeout reporting requirements at any time and at its sole discretion, including after closeout.

24. Miscellaneous.

a. *Entire Agreement; Amendments*: This AGREEMENT constitutes the entire agreement among the parties hereto as to the Project and any associated BEAD Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The SUBGRANTEE may not assign its rights and obligations under this Agreement without the prior written consent of DHCD.

b. *Governing Law; Venue*: This AGREEMENT is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, Virginia and such litigation shall be brought only in such court.

c. *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

d. *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

e. *Attorneys' Fees:* Except as provided in Section 9, attorneys' fees shall be paid by the party incurring such fees.

f. *Force Majeure:* Neither DHCD nor SUBGRANTEE shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of unforeseeable causes beyond the parties' reasonable control. Such causes may include acts of God or of a public enemy, strikes, embargoes or blockades, fires, floods, earthquakes, riots, epidemics, quarantine restrictions, and other similar events beyond the reasonable control of the parties. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement. Typical weather patterns are foreseeable and shall not constitute unforeseeable cause pursuant to this paragraph. DHCD shall determine whether a delay or failure results from an act of God or force majeure based on its review of all facts and circumstances.

25. Low Earth Orbit Satellite Service [IF APPLICABLE]

a. Pursuant to NTIA and DHCD policy, DHCD has determined that one or more location(s) specified in Exhibit A is eligible for an Alternative Technology Project and that, accordingly, SUBGRANTEE may provide service to certain locations specified in Exhibit A and its attachments using Low Earth Orbit ("LEO") Satellite Service.

b. The parties agree that the terms of Exhibit F shall apply to those locations served by LEO Satellite Service.

c. The Parties agree that the Letter of Credit and Performance Bond Requirements detailed in Exhibit B reflect the reduced credit support modifications described in Paragraph 6 of Exhibit F.

VIRGINIA DHCD

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

SIGNATURE PAGE

In witness whereof, the parties hereto have executed or caused to be executed by their duly authorized official this AGREEMENT in duplicate, each copy of which will be deemed an original.

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

BY: ______________________________________ DATE: __________________
Tamarah Holmes, Ph.D, Director, Office of Broadband

City of Richmond,
Commonwealth of Virginia

I do certify that Tamarah Holmes, Ph.D., personally appeared before me and made oath that she is the Director, Office of Broadband at the Department of Housing and Community Development and that she is duly authorized to execute the foregoing document.

My commission expires: __________________________.

Given under my hand this _______day of Date.

__________________________________ ___________________
Notary Public Registration Number

SUBGRANTEE

BY: ______________________________________ DATE: __________________
Chief Executive Officer, Title

Locality
Commonwealth of Virginia

I do certify that Chief Executive Officer personally appeared before me and made oath that he/she is the Title, Virginia and that he is duly authorized to execute the foregoing document.

My commission expires: __________________________.

Given under my hand this ______day of Date.

__________________________________ ___________________
Notary Public Registration Number

Exhibit A

SCOPE OF WORK

GRANTEE Name: Insert Grantee Name
Contract Period: Insert Contract Period
Contract Number: Insert Contract Number

1. **Grant Requirements.** The GRANTEE will commence, carry out and complete the following activities:

   Project Area 1: Exhibit A, Attachment A-1

   TITLE: Insert Project Title
   GRANT ACTIVITIES: Insert Grant Activities
   OUTCOMES / MILESTONES: See Exhibit B, Attachment B-1

   Project Area 2: Exhibit A, Attachment A-2

   TITLE: Insert Project Title
   GRANT ACTIVITIES: Insert Grant Activities
   OUTCOMES / MILESTONES: See Exhibit B, Attachment B-2

2. **Reporting Requirements.** GRANTEE agrees to provide the following reports to DHCD:

   a. All monitoring, compliance, and inspection reports specified in Exhibit , including semi-annual reporting requirements.
   b. Monthly progress reports by the 1**0th** of each month using the template in CAMS.
   c. Final project progress report within 30 days of project completion date using the template in CAMS.
   d. Post-closeout report on subscribers using the template in CAMS at six (6) months and 12 months from project closeout date.

3. **Compliance Monitoring.** DHCD will conduct Internal, Interim and Final Compliance Reviews. The SUBGRANTEE will make all records available upon request by DHCD. SUBGRANTEE shall comply with periodic inspection requirements specified in the Agreement and Exhibit D thereto.

4. **Quality of Work.** The Project may be monitored through on-site visits by DHCD. Upon completion of the Project and to assist the DHCD in its determination that the quality of work is satisfactory, SUBGRANTEE will provide speed and latency validation data to a DHCD representative to ensure broadband speeds meet

BEAD criteria. DHCD may, at its sole discretion, require that SUBGRANTEE provide third-party certification of such data.

5. **Final Inspection and Acceptance.** A final inspection for each broadband infrastructure project and other construction activities shall be conducted when all construction has been completed, the engineer has conducted its own final inspection, and any deficiencies have been corrected. Representatives of the DHCD, the engineer, and the SUBGRANTEE and/or subcontractor(s) will attend the DHCD's final inspection for each project. NTIA must be given reasonable advance notice of each final inspection so that a representative of NTIA may participate. Requirements for final inspections are specified in Subsection a of this appendix, below.

6. **Record Keeping Requirements.** The SUBGRANTEE shall retain financial records, supporting documents, reports, and all other records pertinent to the BEAD award for a period of no less than **five years** from the end of the period of federal interest. When applicable, all contractors or SUBGRANTEE shall comply with the Virginia Public Procurement Act § 2.2-4300 et seq. of the Code of Virginia, which requires that all original bids together with all documents pertaining to the award of a contract shall be retained in accordance with a retention period of at least five years.

7. **Administrative Requirements.** Unless otherwise directed by DHCD, the SUBGRANTEE must use the Centralized Application and Management System (CAMS), or another grants management platform as prescribed by DHCD, to provide all documentation including, but not limited to:
   a. After the AGREEMENT has been executed, the GRANTEE must submit the project budget into CAMS.
   b. All correspondence, including contract amendment and budget revision request documents, must be uploaded into "Reports and Communication" in CAMS as *correspondence* documents.
   c. All DOCUMENTS required by this contract must be uploaded into "Reports and Communication" in CAMS as *contract* documents.
   d. All remittance requests must be submitted through "Remittance" in CAMS. If documents are submitted in "Reports and Communication" at the same time as a remittance request, the explanation text box at the bottom of the Remittances screen must note this fact.

8. **Changes to Reporting Systems**. DHCD shall retain sole discretion to set or amend Project reporting and monitoring requirements and SUBGRANTEE agrees to comply with such requirements. SUBGRANTEE agrees to comply with any new grant managemental systems or programs implemented by DHCD to supplement or replace CAMS.

9. **Requirements During Construction**. Prior to construction, GRANTEE shall meet with DHCD for a pre-construction conference to review requirements of the

GRANTEE during the construction phase of the project. During construction, SUBGRANTEE responsible for:

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

a. **Final Inspection and Testing Requirements before Closeout.** Before closeout, SUBGRANTEE responsible for providing the following in the format provided by DHCD:Project Summary
b. Accomplishments Summary
c. Total Number of Contracted Passings
d. Total Number of Achieved Passings
e. Amount Contracted (BEAD Award)
f. Amount Contracted (Private Match)
g. Final Expenditure (BEAD Award)
h. Final Expenditure (Private Match)
i. Match Funding Documentation (If Cost-Reimbursement Award)
j. Itemized Cost Documentation (If Cost-Reimbursement Award)
k. Project Area Shapefile
l. Speed Test Results, in accordance with requirements established by DHCD
m. Comments/Feedback/Success Stories
n. Additional Information

Attachment A-1

Attachment A-2

Exhibit B

PERFORMANCE MILESTONE, COST MATCH TIMELINE

GRANTEE Name: Insert Grantee Name
Contract Period: Insert Contract Period
Contract Number: Insert Contract Number

[TO BE NEGOTIATED ON A CASE BY CASE BASIS]
[THIS MUST INCLUDE ANY LOC / PERFORMANCE BOND REQUIREMENTS]

Attachment B-1

VIRGINIA DHCD

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Attachment B-2

VIRGINIA
DHCD

VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT

Exhibit C

METHOD OF PAYMENT AND CLOSEOUT PROCEDURES

GRANTEE Name: Insert Grantee Name
Contract Period: Insert Contract Period
Contract Number: Insert Contract Number

DHCD will provide Insert Grant Amount (Number) in funds awarded through the BEAD grant-making process for the reimbursement of eligible expenses required to complete project activities described in **Exhibit A.**

Before submitting any remittances/invoices, the SUBGRANTEE shall verify that the completion of key project deliverables are in accord with the approved milestone timeline in **Exhibit B**, made part of this agreement by this reference and certify as such by submitting a "Milestone Report." [For non-fixed amount awards: SUBGRANTEE may also subject periodic pay request based on actual costs pursuant to **Exhibit C-1**.]

Milestone Reports. Milestone Reports shall be provided at intervals specified in Exhibit B, but DHCD may require additional Milestone Reports at its sole discretion to monitor Project progress. Milestone Reports, to be submitted through CAMS, shall include the number of service locations and a report on any matching funds then expended by the provider in connection with the project, as well as other reasonable milestone reporting requirements specified by DHCD.

Matching Funds. A total of **Insert Match Funds (Number)** in matching funds is committed to this project by the SUBGRANTEE. These funds shall be expended prior to, or in proportion to funds awarded through the BEAD grant-making process as outlined in application, attached hereto as Exhibit E. Documentation on the expenditure of these funds shall be maintained by the SUBGRANTEE and reported to DHCD with each monthly report and within the final progress report.

Payment of Grant Funds. DHCD agrees to make payment to the SUBGRANTEE upon receipt in CAMS of a properly completed Milestone Report. DHCD retains the right to withhold Milestone payments until after inspection of SUBGRANTEE's work reported in such Milestone Report and testing of the reported data.

[ALTERNATIVE FOR NON-FIXED PAYMENTS]

Periodic Payment Requests Based on Actual Costs. SUBGRANTEE has requested that costs be imbursed based on DHCD's review of actual costs. SUBGRANTEE may therefore, no more than quarterly, submit requests for reimbursement based on actual project costs up to the amount of the total Award. Such payment requests must be submitted in accordance with **Exhibit C-1**. SUBGRANTEE must complete and submit the BEAD Cost Performance Index (CPI) form with every payment request. DHCD reserves the right to deny any payment requests or request further explanation from projects with a CPI value of less than .9. SUBGRANTEE agrees to provide documentation to support all actual project costs and that acknowledged that DHCD may request additional documentation at its sole discretion.

Contingency Funding Request. SUBGRANTEE's application included a 10% contingency in all application budgets, which was included in the funding requested and is distinct from the retainage. The purpose of such contingency funding is to allow providers to seek reimbursement for actual expenses that were incurred in excess of what was projected at the time of application. In order to access contingency funds, SUBGRANTEE must provide documentation to DHCD in a form and manner acceptable to DHCD that addresses the following: (i) the actual expenses that SUBGRANTEE seeks reimbursement for; (ii) the amount associated such expenses included in the SUBGRANTEE application; (iii) an explanation as to how SUBGRANTEE estimated such expenses for its application; and (iv) an explanation as to why actual expenses exceeded the amounts included in SUBGRANTEE application.

If SUBGRANTEE seeks to access Contingency Funds based on changes in estimated "make ready costs," from its application, the SUBGRANTEE it must, at a minimum, explain (i) what steps it took to request information from utility pole owners on the need for "make ready" work in the proposed project areas in preparing its application; ii) explain how it considered previous broadband deployment projects in similar geographic areas when developing its estimate of "make ready" costs in its application; and iii) explain, in detail, what is prompting a change in make ready costs; iv) explain, in detail, what steps SUBGRANTEE took to mitigate the risk of make ready cost increases in its agreements with pole owners; v) explain, in detail, what steps SUBGRANTEE has taken to lower make ready costs going forward, including consideration of underground options.

Payment of Closeout Retainage. Expressly conditioned upon the timely and proper final completion of construction, the completion of a Final Inspection pursuant to Exhibit A, DHCD's receipt of the final closeout report and all Project Area Data for the Project in a form and manner acceptable to DHCD, and submission of all requiring supporting documentation described in Exhibit A in a form and manner acceptable to DHCD, DHCD agrees to release the remaining retainage, less the post-closeout retainages described in the table below.

Payment of Post-Closeout Retainage. DHCD agrees to release the 6-month post-closeout retainage described in the table below conditioned upon its timely and proper receipt of the 6 month post-closeout report in a form and manner acceptable to DHCD. DHCD agrees to release the 12-month post-closeout retainage described in the table below conditioned upon its timely and proper receipt of the 12-month post-closeout report in a form and manner acceptable to DHCD.

Total BEAD Award	Retainage Release upon submission of below post-closeout report	
	6 month	12 month

	post-closeout	post-closeout
<$1 million	$3,000	$2,000
≥$1 million, <$5 million	$6,000	$4,000
≥$5 million, <$10 million	$30,000	$20,000
≥$10 million, <$35 million	$60,000	$40,000
≥ $35 million	$120,000	$80,000

Budget Revisions/Amendments. The SUBGRANTEE shall not obligate, encumber, spend or otherwise utilize grant funds awarded through the BEAD grant-making process for any activity or purpose not included or not in conformance with the budget as apportioned and as submitted to DHCD unless the GRANTEE has received explicit approval by WRITTEN NOTICE from DHCD to undertake such actions.

Data Condition: Further, and notwithstanding anything to the contrary contained herein, payment to the GRANTEE shall be expressly conditioned and contingent upon the proper and timely receipt by DHCD of the Service Territory Data as required in this Agreement.

Exhibit C-1

REIMBURSEMENT REQUESTS FOR NON-FIXED AMOUNT SUBAWARDS

SUBGRANTEE has requested, and DHCD has agreed, that payments to this Agreement will be based on DHCD's review of evidence submitted of actual costs instead of a fixed amount subaward.

NTIA, as the federal agency responsible for administering the BEAD program, has provided guidance on the implementation of exceptions, adjustments, and clarifications to certain provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Uniform Guidance"), codified at 2 CFR Part 200, and the application of related provisions of the Uniform Guidance to the BEAD Program (the "UGPN").[7] In general, the *Uniform Guidance* provides that subrecipients must follow the Federal cost principles in determining which costs incurred under a subaward are allowable.

Pursuant to the BEAD NOFO, eligible uses of funding in connection with broadband infrastructure projects include the following:

1. Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.
2. Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements.
3. Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.
4. Engineering design, permitting, and work related to environmental, historical and cultural reviews.
5. Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).
6. Network software upgrades, including, but not limited to, cybersecurity solutions.
7. Training for cybersecurity professionals who will be working on BEAD-funded networks.
8. Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training.

[7] https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Notice_of_Part_200_Exceptions_Related_Issues.pdf

When requesting reimbursement, SUBGRANTEE shall attest and provide sufficient documentation to demonstrate actual project costs for the above-listed items.

Actual cost data will be submitted using either:

1) Generally Accepted Accounting Principles or other standard accounting practices; or
2) A report showing actual costs eligible for reimbursement detailing costs across certain key spending areas:
   - professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.);
   - construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.);
   - outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.);
   - network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.);
   - operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.);
   - customer premise equipment; contingency funds; and all other expenses.

When requesting reimbursement, SUBGRANTEE shall also submit:

1) A report detailing the locations in the Project area where qualifying broadband is available; and
2) A report showing the amount of Matching Funds expended in connection with the provision of qualifying broadband to the locations addressed by the request for disbursement.

Requests for reimbursements must comply with the *Uniform Guidance*, codified at 2 CFR Part 200, and UGPN issued by NTIA.

All payment requests are subject to the 10% retainage requirement specified in Section 15 of the Agreement. Accordingly, DHCD shall retain 10% of the amounts requested for reimbursement until final inspection and closeout. DHCD shall not authorize reimbursement for more than 90% of the Award amount specified in Section 1 of the Agreement before closeout, with the exception that DHCD may, in its discretion, authorize use of Contingency Funding pursuant to Section 10. Such contingency funding is distinct from the retainage.

CASHFLOW

SUBGRANTEES receiving cost reimbursable awards must submit cashflows on a quarterly basis to predict spending for the upcoming cycle. Such cashflow data shall include:

[CASHFLOW DATA REQUIREMENTS TO BE DETERMINED]

Exhibit D

PROJECT MONITORING, REPORTING, DATA SUBMISSION AND INSPECTION REQUIREMENTS

GRANTEE Name: Insert Grantee Name
Contract Period: Insert Contract Period
Contract Number: Insert Contract Number

The SUBGRANTEE will be required to submit various reports, both routine and upon request. These reports will help the Office of Broadband monitor the project's progress and to identify when technical assistance might be needed.

DHCD shall have the right to revise its monitoring approach at its sole discretion, including frequency, method, or content of reports.

SUBGRANTEE agrees that DHCD may modify and issue an amended Exhibit D at its sole discretion at any time.

1. ROUTINE MONITORING, REPORTING AND DATA SUBMISSION

Progress reports will be required at designated times and are intended to provide necessary information regarding the progress, obligations, and expenditures that have occurred to date. Their main purpose is to ensure that the subgrantee as well as the Office of Broadband are aware of the programmatic and financial status of the project and that sufficient financial resources are on hand to complete the project's activities.

Progress reports include:

- Broadband Monthly Report
  - A monthly report summarizing the status of the project will be required to be submitted every 30 days.
  - Such monthly reports shall include updates on "make-ready" and permitting work associated with the project, including project progress, and explaining any changes to project make-ready costs since application
- Semiannual Reports (see Paragraph 3 below).
  - A semiannual report summarizing overall project status will be required, to be submitted on the ___ day of ______; and the ___ day of __________.

  - The purpose of such reports is to memorialize project status to federal entities. SUBGRANTEE agrees to provide, at a minimum, any data required by the NTIA and other federal agencies as needed.

- Closeout Report

  - Once construction is complete the subgrantee will be required to submit the closeout report which will confirm that all contractual obligations have been met

- Post Conditional Closeout Reports

  - These reports will be required at both the 6 month and 12-month post-closeout marks. These reports will require number of subscribers and speed tests.

If SUBGRANTEE fails to meet a reporting deadline it will be flagged as out of compliance and, until corrected, no remittance requests or any other requests will be approved.

2. COMPLIANCE REVIEW AND INSPECTION

a. At minimum, DHCD shall conduct semiannual inspections of SUBGRANTEE work and progress.

b. In addition to progress reports, the Office of Broadband will monitor projects through the use of compliance reviews. These reviews will ensure the project complies with applicable state and federal guidance and regulations.

c. Compliance reviews include:

i. Speed and Latency testing. DHCD has the right to request speed and latency data from SUBGRANTEE at any point during the period of performance.

ii. Site Visits. The Office of Broadband will conduct site visits every other quarter with the purpose of verifying and documenting project construction and progression.

iii. Desk Reviews. The Office of Broadband will conduct a desk review of the project on alternating quarters as the site visit.

iv. Internal Compliance Reviews. This review will help to ensure that the subgrantee is compliant with 2 CFR 200 regulations as well as maintaining internal control, practicing acceptable financial management procedures, and that the project management plan in current.

v. Final Financial Review. Upon project closeout, the Office of Broadband will conduct a Final Financial Review (FFR) of the project to ensure that the project's finances are in order.

d. DHCD shall retain the right to collect any information from SUBGRANTEE (or Subrecipients, as that term is used in Section 18 of the Agreement) related to budgets, expenses, receipts, and financial reports at whatever frequency is appropriate.

e. SUBGRANTEE shall retain all project related records until five (5) years after the closeout of the project in order to allow time for inspection and audit, as needed.

3. SEMIANNUAL PROJECT REPORTING REQUIREMENTS

Section VII.E.2 of the BEAD NOFO requires that the recipient of a subgrant submit, at least semiannually, a report to describe each type of project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. Such broadband infrastructure reports must, as a minimum:

a. Include a list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;

b. Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);

c. Identify whether each address or location is residential, commercial, or a community anchor institution;

d. Describe the types of facilities that have been constructed and installed;

e. Describe the peak and off-peak actual speeds of the broadband service being offered;

f. Describe the maximum advertised speed of the broadband service being offered;

g. Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;

h. List all interconnection agreements that were requested, and their current status;

i. Include any other data that would be required to comply with the data and mapping collection standards of the Federal Communications Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;

j. Comply with any other reasonable reporting requirements determined by DHCD to meet the reporting requirements established by the Assistant Secretary; and certify that the information in the report is accurate

4. PROJECT COST DATA

DHCD's authority to issue fixed amount subgrants pursuant to these exceptions is conditioned upon a requirement that the DHCD monitor the reasonableness of SUBGRANTEE costs.

DHCD therefore reserves the right to requires SUBGRANTEES to submit evidence of costs.

Measures to validate that fixed amount subgrants reasonably approximate the actual cost of broadband infrastructure projects would include, but are not limited to, requiring Subgrantees to periodically report their expenses using Generally Accepted Accounting Principles or other standard accounting practices, or monitoring the relative proportion of costs across key spending areas:

- professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.);
- construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.);
- outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.);
- network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.);
- operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.);
- customer premise equipment; contingency funds; and all other expenses.

5. OTHER BEAD PROGRAM REQUIREMENT DATA

a. Upon request, SUBGRANTEE shall submit the credentials of the staff expected to perform the activities funded by this Agreement (including contractors and subcontractors) or provide plans to acquire and utilize an appropriately credentialed and skilled workforce pursuant to BEAD Program Requirements.

b. DHCD retains the right to request data from SUBGRANTEE at any time during the period of performance, including for:
   i. Data that aligns to the FP and the SAR 2.0 to include workforce data, network availability, deployment progress, disbursements, etc.
   ii. Project employee timesheets to be retained for data related to financial reporting and expenditures.

iii. Establish policies and procedures for subgrantee financial reporting and accounting.

iv. Data that tracks project employee time by specific project.

Exhibit E

SUBGRANTEE APPLICATION

Exhibit F

ADDENDUM APPLICABLE TO SUBGRANTEES UTILIZING LOW EARTH ORBIT (LEO) SATELLITE SERVICE

GRANTEE Name: Insert Grantee Name
Contract Period: Insert Contract Period
Contract Number: Insert Contract Number

1. **Eligibility to provide service to certain locations usings Alternative Broadband Technology**

Pursuant to NTIA and DHCD policy, the Parties agree that SUBGRANTEE may provide service to certain locations specified in Exhibit A and its attachment using LEO Satellite Service. Pursuant to this LEO Capacity Subgrant, SUBGRANTEE shall reserve sufficient capacity to deliver broadband service that meets the BEAD performance and technical requirements to each broadband serviceable location ("BSL") in the project area and shall include the conditions set forth below.

2. **Provision of Service**

SUBGRANTEE must begin providing broadband service to each location that desires broadband service no later than four years from the date of the subgrant. "Providing service" begins after the recipient certifies to the DHCD that the recipient can initiate broadband service within 10 business days of a request to any covered BSL in the project area described in Exhibit A, with no charges or delays attributable to extension of the service.

During the Period of Performance, defined below, SUBGRANTEE shall continue to offer access to broadband service to each BSL served by the Project. If a customer receiving the LEO service provider must continue to offer service to the BSL, but not necessarily the previous subscriber, under the terms of the subgrant if subsequent occupants request service.

3. **Period of Performance**

SUBGRANTEE agrees to a 10-year Period of Performance, which starts when SUBGRANTEE certifies to DHCD that LEO broadband service is available to every location in Exhibit A.

4. **Reimbursement and Remittance**

DHCD will provide [Insert Grant Amount (Number)] in funds awarded through the BEAD grant-making process for the reimbursement of eligible expenses required to complete project activities described in **Exhibit A** for a SUBGRANTEE which utilizes LEO satellite service (a "LEO SUBGRANTEE") through the processes outlined herein.

Fifty percent (50%) of the funds awarded through the BEAD grantmaking process will be advanced to LEO SUBGRANTEE upon certifying that service is available to each location in the project area. The remaining fifty percent (50%) of BEAD grant funding shall be distributed in equal installments over the subsequent ten (10) year Contract Performance Period. These installment remittances shall be made by the end of each quarter, following the submission of the LEO Quarterly Report. Remittance is contingent upon receipt of the LEO Quarterly Report.

5. LEO Quarterly Report

The LEO Quarterly Report shall, at a minimum, contain:

[REQUIREMENTS TO BE SPECIFIED]

LEO SUBGRANTEE shall file the LEO Quarterly Report with DHCD for ten (10) years from the date upon which the LEO SUBGRANTEE certifies to DHCD that broadband is available to every location covered by the project.

6. Letter of Credit

LEO SUBGRANTEE shall maintain Letter of Credit and Performance Bond Requirements in Exhibit B. These requirements are subject to the following modifications:

A. LEO SUBGRANTEE may reduce its Letter of Credit or Performance Bond by 50% of the original amount upon certifying that service is available to each location in the project area.
B. LEO SUBGRANTEE may reduce its Letter of Credit or Performance Bond by a further 25% of its original amount after the subscription rate reaches at least 25% of all locations in the project area.
C. LEO SUBGRANTEE may close out its Letter of Credit or Performance Bond once the subscription rate reaches 50% of all locations within the project area.
D. Regardless of the subscription rate, the Letter of Credit or Performance Bond may be terminated four (4) years after the LEO SUBGRANTEE certifies that it can initiate broadband service within ten (10) business days of a request to any covered Broadband Serviceable Location in the project area.

7. Exception to Federal Interest in equipment or property

Because of the nature of LEO service, DHCD cannot identify a portion of the LEO network that is dedicated to certain locations in their jurisdiction. Therefore, NTIA will not take a Federal interest in equipment or property acquired or improved with a LEO

Capacity Subgrant.

Exhibit G

SUMMARY OF PRIOR AUTHORIZATION EXPENSES