City of Sherwood Oregon
Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2025-010

AUTHORIZING THE CITY MANAGER TO SIGN THE BROADBAND DEPLOYMENT PROGRAM GRANT AGREEMENT

WHEREAS, the City of Sherwood has been awarded a Broadband Deployment Program grant from the Oregon Broadband Office for providing broadband expansion in the rural areas south of Sherwood; and

WHEREAS, this project will provide broadband services to the unserved and underserved residents and businesses in the project area; and

WHEREAS, this project will connect with existing Sherwood Broadband infrastructure in the area and will enhance services to both new and existing customers; and

WHEREAS, this project has a completion deadline of September 30, 2026.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute a grant agreement with Oregon Broadband Office in a form substantially similar to the attached Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 21st of January 2025.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

SAMPLE GRANT AGREEMENT –PROVISIONS SUBJECT TO CHANGE

STATE OF OREGON
ARPA CAPITAL PROJECTS FUND – BROADBAND DEPLOYMENT PROGRAM
GRANT AGREEMENT

Contract Number: «ProjectNumber»
Project Name: «ProjectName»

This grant agreement ("Contract") is between the State of Oregon, acting through its Oregon Business Development Department's ("OBDD") Oregon Broadband Office ("OBO") (collectively, the "State"), and «Recipient» ("Recipient"). This Contract becomes effective only when fully signed and approved as required by applicable law ("Effective Date").

For the purposes of this Contract, notwithstanding the above terminology and the terminology used throughout the Contract, Recipient is a subrecipient for federal award purposes and OBDD is a recipient. For federal law purposes, "subrecipient" means an entity receiving federal funds through a recipient (i.e. here, OBDD) to support the performance of a federal project or program (i.e. here, ARPA Capital Projects Fund) for which the federal funds were awarded. Subrecipient (Recipient) is subject to the terms and conditions of the federal award (available at [TBD weblink]) to the recipient (OBDD), including program compliance requirements.

This Contract includes the following, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- This Contract less exhibits
- Exhibit A - Project Description and Reporting Requirements
  - Appendix 1- Project Service Locations by FCC Fabric ID
  - Appendix 2- Work Plan with Milestones and Cost Estimates
  - Appendix 3- Project Grant Budget
- Exhibit B- Certificate Regarding Lobbying

The information in Exhibit C (Federal Award Information) is required by 2 C.F.R. § 200.332 and is attached to this Contract for informational purposes only.

Pursuant to Oregon Laws 2023, chapter 338, Sections 1 and 1a and Oregon Laws 2023, chapter 605, Section 79 (collectively, the "Act"), OBDD is authorized to distribute funds received by the State of Oregon from the federal American Rescue Plan Act Coronavirus Capital Projects Fund ("ARPA CPF" codified as 42 U.S.C. § 804) in the form of loans or grants for the purpose of supporting broadband access, affordability and adoption. Pursuant to the Act, OBDD established the ARPA Capital Projects Fund Broadband Deployment Program ("BDP") to provide financial assistance that utilizes the ARPA CPF moneys specifically for broadband infrastructure grants, including the infrastructure project more particularly described in Exhibit A (the "Project").

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Equipment means the cable, fiber, materials, components, and supplies used to construct, maintain or operate a broadband network.

Facilities means a place or building used to construct, maintain or operate a broadband network.

Federal Award Agency means the U.S. Department of the Treasury ("Treasury").

Financing Proceeds means Grant disbursements.

Fixed Amount Subaward means a type of grant under which the Pass-Through Entity provides a specific level of support. (For additional information on Fixed Amount Subawards, see 2 C.F.R. Section 200.201 and the "SLFRF and CPF Supplementary Broadband Guidance" issued by Treasury on May 17, 2023.)

Grant Amount: $«Grant»

[*Insert with Contracts with required Match:* **Match Amount:** $ ____. The Match Amount is the amount that Recipient shall contribute from its own fiscal resources or money from sources other than this Grant Contract to pay towards costs of the Project.]

Pass-Through Entity means a non-federal entity that provides a Subaward to a subrecipient to carry out part of federal program. The Oregon Department of Adminstrative Services (DAS) is the Pass-Through Entity for this Contract; the Oregon Business Development Department entered into an intergovernmental agreement with DAS to make Subawards to carry out the federal ARPA CPF. Note: Recipient is a subrecipient for the purposes of this defined federal term.

Project Completion Deadline: 30 September 2026.

Subaward means an award by the State to Recipient that is funded in whole or in part by a federal program award (i.e. an ARPA CPF award). The terms and conditions of the ARPA CPF award to the State flow down to the Subaward unless the terms and conditions of the federal ARPA CPF award specifically indicate otherwise in accordance with 2 C.F.R. § 200.101. The term does not include payments to a contractor or payments to an individual that is a beneficiary of the federal program award.

Substantial Completion means that the Project can fulfill the primary operations that it was designed to perform, delivering services to end-users. At Substantial Completion, service operations and management systems infrastructure must be operational to the end-users for the Project Service Locations.

Uniform Guidance means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal program awards, which is codified in Part 200 of Title 2 of the Code of Federal Regulations (C.F.R.).

SECTION 2 - FINANCIAL ASSISTANCE

A. OBDD shall provide Recipient, and Recipient shall accept from OBDD, a grant (the "Grant") in an aggregate amount not to exceed the Grant Amount. OBDD shall disburse the Grant according to the disbursement procedures described in Section 3.

B. Conditions Precedent. The State's obligations are subject to the receipt of the following items, in form and substance satisfactory to the State and its Counsel:

(1) This Contract duly signed by an authorized officer of Recipient; and

(2) Such other certificates, documents, opinions and information as OBO may reasonably require [, including but not limited to the following requirements: (*insert* conditions of award item from Recipient's Notice of Intent to Award, etc.)].

C. Financing Availability. OBDD's obligation to make, and Recipient's right to request disbursements under this Contract terminates on **01 December 2026**.

D. Eligible Use.

(1) The Financing Proceeds may be used solely for actual, reasonable and necessary costs to complete the activities described in Exhibit A ("Project") and for costs that are in accordance with the Grant Budget (Appendix 3). For avoidance of doubt, Recipient shall use all Financing Proceeds in accordance with the federal American Rescue Plan Act Coronavirus Capital Projects Fund (codified as 42 U.S.C. § 804), including all implementing guidance promulgated by the U.S. Department of the Treasury and Oregon law, as applicable.

(2) Recipient shall not use Financing Proceeds for costs in excess of one hundred percent (100%) of the total Project costs.

(3) Financing Proceeds cannot be used for costs that will be reimbursed by other federal, state, or local government funding streams.

E. Ineligible Use. Recipient shall not use the Financing Proceeds to:

(1) Retire any debt or to lobby, influence or attempt to influence, any federal, state or local government official.
(2) Pay for this Contract's administrative costs or other indirect Project costs.
(3) Pay for costs incurred prior to the date of the Notice of Intent to Award to Recipient except that the Grant money may be used for Project Equipment costs incurred on or after February 8, 2022 (the "Federal Award Date"). Such Project Equipment costs are limited to Recipient's actual costs (i.e. not market rate costs) that are in the Project Budget.
(4) Pay for costs incurred after the Project Completion Deadline.
(5) Buy materials and resell them to the Project at a profit (as a component of Recipient's Match Amount, or as an expenditure paid for with Grant funds).
(6) Pay for surplus materials not used in the Project. If Recipient purchases in bulk, the reimbursable amount of material used is limited to the actual amount used in the Project.
(7) Personal expenses not directly related to the Project's construction (examples: food and beverage, training, equipment maintenance).
(8) Operational costs, including but not limited to employee salary and wages, insurance expenditures, bookkeeping costs, etc.
(9) Expenses related to the provision of "over-the-top services" such as telephone or video services which are not necessary for the delivery of broadband service. Battery backup devices that support broadband during power outages are an allowed expense.
(10) Fundraising activities.
(11) Political endorsements, donations, or advertisements.
(12) Computers or office equipment.
(13) Vehicles as defined in ORS 801.590.

F. Eligible Use or Payment Disputes. If Recipient disputes any eligible use determination, calculation, or amount of any disbursement, Recipient shall notify OBO in writing of its dispute within thirty (30) days following the earlier of Recipient's receipt of the payment or notification of the determination or calculation of the payment by the State. OBO will review the information presented by Recipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from OBO's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after OBO has concluded its review. The Department will make final determinations on cost eligibility and disbursements at its sole discretion.

G. Misexpended or Unexpended Grant Money. Any Grant money disbursed to Recipient, or any interest earned by Recipient on the Financing Proceeds, that is not used for Project costs according to this Contract or that remain after the earlier of the date the Project is completed, the date this Contract is terminated, or December 31, 2026, shall be immediately returned to OBDD, unless otherwise directed by the State.

SECTION 3 – DISBURSEMENTS & DISBURSEMENT PROCEDURES

A. Fixed Amount Subaward. This Contract is issued as a Fixed Amount Subaward per 2 C.F.R. § 200.201 and pursuant to the SLFRF and CPF Supplementary Broadband Guidance. The State will pay Recipient the Grant Amount in accordance with conditions set forth in this Contract and the schedule set forth in Appendix 2 to Exhibit A.

B. Disbursement Requests and Disbursements.

(1) Notwithstanding Section 3A. above, OBDD's payment of the Grant Amount through individual disbursements to Recipient will be limited to actual costs after OBO's review of Recipient's evidence of costs. Recipient must submit each disbursement request for payment of Grant funds on an OBDD-provided or OBDD-approved disbursement request form ("Disbursement Request"). Recipient must submit Disbursement Requests for costs incurred in accordance with each of the following: Exhibit A (describing the Project), Appendix 2 (providing timeline for disbursements based on milestones), Appendix 3 (providing permitted budget items), and Section 3C.(4) below.

(2) OBDD will make disbursements to Recipient for eligible Project costs upon OBO's finding that the conditions in this Section 3 are met. Incorporation of Appendix 3 into this Contract is not confirmation by OBO that specific expenditures by Recipient qualify as eligible Project costs. OBO reserves the right to examine or refuse to remit payment for costs which do not qualify as eligible Project costs. OBO may periodically review evidence of costs contemporaneously or retroactively. OBO may reject or adjust any current or previously submitted Disbursement Request not supported by evidence satisfactory to the State.

(3) Retainage. OBDD will withhold five percent (5%) retainage from each payment made to Recipient and shall release and disburse the cumulative retainage to Recipient after the following conditions are met:

(a) By the Project Completion Deadline, OBO receives certification in writing from Recipient that the Project has reached Substantial Completion; and

(b) Recipient timely completes the closeout requirements described in Section 5O.(6) of this Contract to the satisfaction of OBO.

OBDD may not pay, and Recipient will forfeit the retainage if Recipient does not meet the conditions of this Section 3B.(3).

C. Conditions to Disbursements. OBDD has no obligation to disburse Grant funds unless:

(1) There is no Event of Default. This includes Recipient being current on all required reporting requirements described in Exhibit A and elsewhere in this Contract.

(2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.

(3) The State, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.

(4) OBO (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBO may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Project costs, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Coronavirus State Fiscal Recovery Fund and any implementing administrative rules and guidance.

(5) OBO finds that Recipient has made adequate progress on the work plan and milestones outlined in Appendix 2.

(6) All other conditions precedent under this Contract are met.

D. Disbursement Request Deadline. Recipient must submit its **final Disbursement Request to the State not later than 01 December 2026**.

SECTION 4 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to the State:

A. Organization and Authority.

(1) Recipient is a [Municipality, Corporation, Limited Liability Company, etc.] validly organized and existing under the laws of the State of Oregon.

(2) Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.

(3) [*Required for government recipients:* This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body if required by its organizational documents or applicable law.] [Reserved.]

(4) This Contract has been duly executed by Recipient, and when executed by the State, is legal, valid and binding, and enforceable in accordance with their terms.

B. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement or instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

C. Full Disclosure. Recipient has disclosed in writing to the State all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Contract. Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract, including Exhibit A and the Appendices, is true and accurate in all respects.

D. Pending Litigation. Recipient has disclosed in writing to the State all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Contract.

E. Governmental Consent. Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the undertaking and Substantial Completion of the Project.

F. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue under ORS 305.620.

SECTION 5 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify OBO of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.

B. Compliance with Laws.

(1) Compliance with Federal Coronavirus Capital Project Fund Program.

(a) Recipient will comply with the terms, conditions and requirements of the federal Coronavirus Capital Project Fund program established by section 604 of the Social Security Act, as added by section 9901 of the America Rescue Plan Act of 2021 and codified as 42 U.S.C. § 804 (the "CPF Statute"), including all implementing regulations (31 C.F.R. § 35.1 et seq.) and other guidance promulgated by the U.S. Department of the Treasury, including but not limited to the Guidance for the Coronavirus Capital Projects Fund for States, Territories and Freely Associated States issued by the Treasury on September 20, 2021 and the SLFRF and CPF Supplementary Broadband Guidance issued by the Treasury on May 17, 2023 (collectively, "Guidance"). Recipient acknowledges that Treasury may amend or update the Guidance from time to time and Recipient agrees to comply with such updated Guidance.

(b) Recipient will comply with the Uniform Guidance unless provided otherwise by the U.S. Department of the Treasury. See Guidance for provisions of the Uniform Guidance that Treasury has determined are inapplicable for Fixed Amount Subawards for broadband infrastructure projects. The Guidance provides clarifications and guidance for example on property, program income, cost principles, procurement, audit, and monitoring requirements related to broadband infrastructure projects that are Fixed Amount Subawards.

(c) Pursuant to § 200.201(b)(3) of the Uniform Guidance, Recipient must certify in writing to OBO by the Project Completion Deadline that the Project has reached Substantial Completion.

(2) Compliance with State Broadband Deployment Program (BDP). Recipient shall comply with ORS 285A.181-285A.185 and Oregon Administrative Rules chapter 123, division 047 applicable to BDP, including but not limited to the ARPA Capital Projects Funds Broadband Deployment Program Handbook adopted as such a rule.

(3) Compliance with Civil Rights Laws. Recipient shall not discriminate against any qualified employee or applicant for employment because of race, national origin, color, sex, gender identity, sexual orientation, age, religion, physical or mental disability, military status, or marital or family status. Recipient agrees to comply with all applicable federal and state statutes, rules and regulations

prohibiting discrimination in employment including but not limited to Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and Oregon Revised Statutes Chapter 659A.

(4) Compliance with Tax Laws. Recipient is responsible for compliance with all federal and state tax laws applicable to its implementation of the Project and its use of the Grant or compensation or payments paid with the Grant. Recipient will, for the term of this Contract, comply with the Oregon Tax Laws, (as defined in Section 4F.), except to the extent a governmental tax is contested in good faith and by proper proceedings.

(5) Compliance with All Other Laws. Recipient, in its performance of all obligations required by this Contract, will comply with the requirements of all other applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings. This includes but is not limited to compliance with other applicable federal statutes, regulations, and executive orders, including but not limited to applicable statutes and regulations prohibiting discrimination in programs receiving federal financial assistance and all applicable federal environmental laws and regulations.

C. Federal Audit Requirements. The Grant is federal financial assistance, and the associated CFDA/FAIN Number is [TBD]. Recipient is a subrecipient. 2 C.F.R. Part 200, Subpart F—Audit Requirements of the Uniform Guidance, implementing the Single Audit Act (2 C.F.R. § 200.501 et seq), shall apply to this Contract except as otherwise provided by Treasury in their Guidance.

(1) If Recipient receives federal funds in excess of $1,000,000 in Recipient's fiscal year and is not otherwise exempt by Treasury, Recipient is subject to audit conducted in accordance with the provisions of 2 C.F.R. part 200, Subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBO a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBO the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.

(2) If Recipient is a for-profit entity, Recipient is not subject to 2 C.F.R. part 200, Subpart F, but Recipient is subject to the terms and conditions in the award between Treasury and the State, and, pursuant to 2 C.F.R. 200.501(h), the State has an obligation to ensure compliance by Recipient. If Recipient is a for-profit entity, Recipient agrees to comply with the requirements of the award as it relates to federal audits.

(3) Recipient shall save, protect and hold harmless the State from the cost of any audits or special investigations performed by Treasury or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

D. System for Award Management (SAM) Registration and Compliance. Recipient must comply with applicable requirements regarding the federal Universal Identifier and System for Award Management ("SAM"), 2 C.F.R. Part 25, including Appendix A. SAM is currently accessible at https://www.sam.gov. Recipient shall register and maintain the currency of its information in SAM until Recipient completes it required reporting under this Contract. Recipient shall review and update SAM information at least annually. Recipient shall provide its Unique Entity ID to OBO. Recipient shall not contract with any parties listed on the government-wide exclusions in the SAM.

E. Executive Compensation Reporting in SAM.

(1) "Total Compensation" means the cash and noncash dollar value earned by an Executive during Recipient's preceding fiscal year (see 48 C.F.R. § 52.204-10, as prescribed in 48 C.F.R. § 4.1403(a)) and includes the following:

(a) Salary and bonus;

(b) Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

(c) Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

(d) Change in present value of defined benefit and actuarial pension plans;

(e) Above-market earnings on deferred compensation which is not tax-qualified; and

(f) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

(2) Recipient shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

(a) The total federal funding authorized to date under this Contract is $30,000 or more; and

(b) In the preceding fiscal year, Recipient received:

(i) 80% or more of its annual gross revenues from federal procurement agreements and subcontractors and/or federal financial assistance awards or subawards subject to the Federal Funding Accountability and Transparency Act of 2006 as amended by section 6202 of Public Law 110-252 ("Transparency Act"); and

(ii) $30,000,000 or more in annual gross revenues from federal procurement agreements and subcontractors and/or federal financial assistance awards or subawards subject to the Transparency Act; and

(iii) The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

F. Protections for Whistleblowers.

(1) In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

(2) The list of persons and entities referenced in the paragraph above includes the following:

(a) A member of Congress or a representative of a committee of Congress;

(b) An Inspector General;
(c) The Government Accountability Office;
(d) A Treasury employee responsible for contract or grant oversight or management;
(e) An authorized official of the Department of Justice or other law enforcement agency;
(f) A court or grand jury; or
(g) A management official or other employee of Participant or its subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

G. Lobbying. Recipient acknowledges and agrees that the costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 31 U.S.C. § 1352 and 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above. Recipient shall submit to OBO a Certification Regarding Lobbying, the form of which is attached as Exhibit B, and any applicable quarterly disclosure statement of covered lobbying activity. Recipient will cause any entity, firm or person receiving a contract or subcontract utilizing Financing Proceeds in excess of $100,000 to complete the same certification and any applicable disclosure statement and submit them to Recipient. Recipient shall retain such certifications and make them available for inspection and audit by OBO, the federal government or their representatives. Recipient shall forward any disclosure statements to OBO.

H. Federal Employment. OBDD's payments to Recipient under this Grant will be paid by funds received from the United States Federal Government. Recipient, by signing this Grant certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer this Contract are currently employed by an agency or department of the federal government.

I. American Made. Recipient and its subcontractor(s) will to the extent practicable, and consistent with applicable law under the federal award, provide a preference for the procurement or use of goods, products or materials produced in the United States as described in 2 C.F. R. § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).

J. Prohibited Telecommunications and Video Surveillance Services or Equipment. Recipient shall not use Financing Proceeds to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the Peoples's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

K. Conflicts of Interest. Recipient acknowledges that all Public Officials, as defined by ORS 244.020, are subject to the requirements of Oregon's ethics laws as provided in ORS Chapter 244. Recipient shall refrain from any practices, activities or relationships that reasonably create or appear to create a "potential conflict of interest" or "actual conflict of interest", as those terms are defined in ORS Chapter 244, with the full performance of Recipient's obligations under this Contract. If a conflict or the appearance of a conflict arises regarding this Contract, or if Recipient is uncertain whether a conflict or the appearance of a conflict has arisen, Recipient shall submit to OBO a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow OBO's direction in regard to the actual or potential conflict constitutes an Event of Default of the Contract. Recipient shall disclose in writing to OBO any potential or actual conflict of interest affecting the Grant funds in accordance with 2 C.F.R. § 200.12.

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

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

N. Debarment and Suspension. This Contract is subject to 2 C.F.R. Part 180 and the U.S. Treasury's implementing regulation at 31 C.F.R. Part 19. These provisions prohibit Recipient from entering into contracts with suspended or debarred parties.

O. Project Completion Obligations. Recipient shall:

(1) Provide the following administrator for the Project: [*insert name*] ("Responsible Administrator") with the following contact information: [*insert phone, email, and address*]

If the Responsible Administrator is an agent of Recipient, Recipient must have signature authority to bind Recipient. The Responsible Administrator is considered essential to the completion of the Project as key personnel. Recipient shall immediately notify OBO if the Responsible Administrator ceases to provide services under this Contract. Recipient may replace the Responsible Administrator only after obtaining OBO's prior written approval, which shall be at OBO's reasonable discretion, as the State executed this Agreement in part in reliance on Recipient's representations regarding key personnel. Recipient's request for such approval shall specify, in writing, why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Any time key personnel cease to provide services under this Agreement, Recipient shall notify OBO in writing and the State, in its sole discretion, may direct Recipient to suspend Work until such time as replacements are approved.

(2) Permit OBO to conduct inspection of the Project at any time and conduct testing for compliance with Service Quality Requirements described in Exhibit A.

(3) Make adequate progress on the Project's work plan and milestones as outlined in Appendix 2 of Exhibit A in order to complete the Project [or sub-Projects as defined in Appendix 2] by the Project Completion Deadline, including meeting all hard deadlines provided within Appendix 2.

(4) Complete the Project as described in Exhibit A using its own fiscal resources or money from other sources to pay for any Project costs in excess of the total amount of financial assistance provided pursuant to this Contract.

[*Include in Contracts with Match Amount Requirements:* Recipient shall contribute not less than the Match Amount towards the total cost of the Project as set forth in Exhibit A, Appendix 3, "Project Grant Budget". Recipient shall document compliance with the Match Amount obligation by submitting documentation of costs and payments for OBO review and approval. The documentation shall be submitted along with Recipient's Disbursement Requests.

OBDD will reimburse [*insert number*]% of eligible costs submitted in each Disbursement Request and Recipient will pay the remainder as matching funds until the Match Amount is fully contributed. OBDD's payment will be further reduced by the applicable retainage amount per Section 3.]

(5) Reach Substantial Completion of the Project no later than the Project Completion Deadline, unless otherwise permitted by OBO in writing.

(6) No later than 90 days following the earlier of the Project completion date or the Project Completion Deadline, complete the following closeout requirements: (a) provide OBO with a final project completion report on a form provided by OBO; and (b) provide OBO with Project test results (at minimum from terminal ends of service routes) demonstrating satisfaction of the Service Quality Requirements provided for in Exhibit A. Recipient's obligations under this Contract shall not terminate until all closeout requirements are completed to the satisfaction of OBO. OBO may inspect the Project and conduct Project testing for compliance with the Service Quality Requirements as it deems necessary.

(7) Obtain and maintain as-built drawings for the Project, including but not limited to all Facilities constructed as part of the Project.

(8) Participate in federal programs that provide low-income consumers with subsidies on broadband internet access services. Specifically, Recipient will allow subscribers in their service area to utilize the Federal Communications Commission's Emergency Broadband Benefit program (if available) or the Affordable Connectivity Program (ACP). Recipient will participate in ACP for the duration of the ACP or until the date the Project is no longer in use. [*Insert in contracts with rate used in application:* In addition, Recipient will offer broadband services at [$ *insert amount*] per month for five years after the certified Project completion date to the Project Service Locations.]

(9) Provide pricing data to OBO as part of Project performance and monitoring for such Broadband Infrastructure Project for a period of five (5) years after Substantial Completion of the Project.

P. Prevailing Wage Requirements.

(1) Recipient shall comply with state prevailing wage law as set forth in ORS 279C.800 through 279C.870, and the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) (collectively, state "PWR"). This includes but is not limited to imposing an obligation that when PWR applies to the Project, contractors and subcontractors on the Project must pay the prevailing rate of wage for workers in each trade or occupation in each locality as determined by the Commissioner of the Bureau of Labor and Industries ("BOLI") under ORS 279C.815.

(2) When the federal Davis-Bacon Act applies to the Project, contractors and subcontractors on the Project must pay the prevailing rate of wage as determined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141 *et seq*.).

(3) Notwithstanding (1) and (2) above, when both PWR and the federal Davis-Bacon Act apply to the Project, contractors and subcontractors on the Project must pay a rate of wage that meets or exceeds the greater of the rate provided in (3)(a) or (3)(b) above.

(4) When PWR applies, Recipient and its contractors and subcontractors shall not contract with any contractor on BOLI's current List of Contractors Ineligible to Receive Public Works Contracts.

(5) When PWR applies, Recipient shall be responsible for both providing the notice to the BOLI Commissioner required by ORS 279C.835 and the payment of any prevailing wage fee(s) required under ORS 279C.825 and BOLI's rules, including OAR 839-025-0200 to OAR 839-025-0230. For avoidance of any doubt, Recipient contractually agrees to pay applicable prevailing wage fees for the Project rather than OBDD, the public agency providing Financing Proceeds under this

Contract.

(6) Pursuant to ORS 279C.817, Recipient and any contractors or subcontractors may request that the BOLI Commissioner make a determination about whether the Project is a public works on which payment of the prevailing rate of wage is required under ORS 279C.840 (i.e. whether PWR applies).

(7) Davis-Bacon Act Requirements. To the extent applicable, a Recipient that is awarded an amount of $5,000,000 or more under this Contract must provide a certification that all laborers and mechanics employed by it and/or its contractors and/or subcontractors in performance of the award are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. In lieu of a certification, Recipient may provide a project employment and local impact report detailing the number of contractors and subcontractors working on the Project, the number of employees on the Project hired directly and hired through a third party, the wages and benefits of workers on the Project by classification, and whether those wages are at rates less than those prevailing. Recipient must maintain sufficient records to substantiate this information upon request.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

Q. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for any construction design for the Project. Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction. When applicable, Recipient may be subject to performance and payment bonding requirements pursuant to 2 C.F.R. § 200.326.

R. Use, Maintenance, and Insurance of Project; Federal Interest Period; Encumbrances.

(1) Recipient agrees that any Equipment, Facilities, supplies or real property purchased, or in the case of real property, improved, using the Financing Proceeds, will be used for the purpose and in the manner described in this Contract, subject to the Guidance, and the requirements of 2 C.F.R. § 200.311 (Real Property), 2 C.F.R. § 200.313 (Equipment), 2 C.F.R. § 200.314 (Supplies), and 2 C.F.R. § 200.315 (Intangible Property), as applicable, and any other restriction Treasury may impose. [*Insert additional sentence referencing an additional Exhibit detailing uses/purposes of Financing Proceeds as needed, and also may need to incorporate parts of Recipient's Application to further define purposes.*]

(2) While title to real property or Equipment acquired or improved under the Grant (i.e. the broadband infrastructure installed pursuant to this Contract) ("Project Property") vests in Recipient, the federal government maintains a federal interest in the Project Property through 31 December 2034, (the "Federal Interest Period"). For the duration of the Federal Interest Period, Recipient, and successors or transferees of Recipient:

(a) must use the Project Property for the authorized purposes of the project in the same manner as they use comparable real property and Equipment within their networks in the ordinary course of their business, subject to the rights to disposition provided below;

(b) must continue to provide broadband service to the service areas and at the standard initially agreed upon by OBO and Recipient;

(c) must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services, as provided by Section 5O.(8) above;

(d) must comply with the requirements of section 200.310 of the Uniform Guidance (Insurance), including but not limited to: comprehensive general liability insurance (bodily injury and property damage); professional liability insurance; and [*insert additional insurance requirements*-- TBD] which may be satisfied by adequate self-insurance., [*Additional details with minimum insurance coverage amounts- TBD*].

(e) must comply with the use and management requirements for equipment in §§ 200.313(c)(4) and 313(d) of the Uniform Guidance, which may be satisfied by applying Recipient's government or commercial practices for meeting such requirements in the normal course of business (e.g., commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable Federal Interest Period;

(f) must maintain records of real property that include an indication of the applicable Federal Interest Period;

(g) may dispose of Project Property in the ordinary course of business when no longer needed to operate the network, such as in order to upgrade Equipment and improve Facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same Contract requirements as other Project Property;

(h) may otherwise sell or transfer Project Property only after provision of notice to OBDD and Treasury that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the federal property interest and Federal Interest Period; and

(i) must notify OBDD and Treasury upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to Recipient or its affiliates.

(3) Encumbrances on Project Property.

(a) Pursuant to 2 C.F.R. § 200.316 and in recognition that BDP and ARPA CPF are being executed for the benefit of the public being served by the broadband infrastructure, for the duration of the Federal Interest Period, Recipient must hold Project Property in trust for the beneficiaries of the ARPA CPF broadband infrastructure project.

(b) Recipient may encumber Project Property only if Treasury receives a shared first lien position in the Project Property such that, if the Project Property were foreclosed upon and liquidated, Treasury would receive the portion of the fair market value of the property that is equal to Treasury's percentage contribution to the Project costs. For example, in the case in which Treasury had contributed 50% of the Project costs, Treasury would receive 50% of the fair market value of the Project Property when liquidated. Recipient shall use standard forms of liens, covenants, and intercreditor agreements provided or approved by Treasury to implement this requirement.

(c) Recipient must comply with 2 C.F.R. § 200.312, to the extent any federally-owned real property or equipment is used by Recipient.

(d) If Recipient is unable to comply with the requirements provided in the Guidance, Recipient must request disposition instructions from Treasury pursuant to 2 C.F.R. § 200.311(c) or 200.313(e), as applicable.

S. Books and Records; Inspections; Monitoring; Information. Recipient shall keep accurate books and records (electronic and otherwise) sufficient to evidence compliance with ARPA CPF, the Guidance, and this Contract. Recipient shall maintain the books and records according to generally accepted accounting principles [*for government entities only:* established by the Government Accounting Standards Board in effect at the time. Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient]. Recipient shall permit the State, the federal government and their duly authorized representatives, and any party designated by the State: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. Recipient shall be responsible for monitoring any subcontract it enters into with this Contract's federal Grant funding. Recipient understands and agrees that OBO and authorized representatives may evaluate Recipient's ability to complete the activities funded under this Contract through ongoing monitoring. Recipient shall supply any related reports and information as OBO may reasonably require, including cooperation with OBO to provide all necessary financial information and records to comply with ARPA CPF reporting requirements, including but not limited to the reporting requirements detailed in Exhibit A.

T. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant for a minimum of ten years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Completion Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.

U. Notice of Event of Default. Recipient shall give OBDD prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.

V. *Select one [FOR private entities, and out of state governmental entities:* Indemnity; Release.

(1) To the extent authorized by law, Recipient shall defend, indemnify, save and hold harmless and release the State of Oregon, OBDD, OBO and their officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards, including but not limited to costs, expenses, and reasonable attorneys' fees incurred (collectively, "Claims"), related to any actual or alleged act or omission by Recipient, or its officers, employees, agents or contractors, in connection with this Contract, the Project, PWR or Davis-Bacon Act requirements, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the U.S. Department of Labor, the Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Project or the actions or omissions of Recipient, or its officers, employees, contractors, or agents.

(2) Notwithstanding the foregoing, neither Recipient nor any attorney engaged by Recipient may defend any Claim in the name of the State of Oregon, nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Recipient settle any Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, Recipient will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. The provisions of this section are not to be construed as a waiver by the State of Oregon, OBDD, or OBO of any immunity, defense or limitation on

damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon. If attorney fees are awarded to Recipient, such attorney fees shall not exceed the rate charged to OBDD by its attorneys.]

[*FOR Oregon Governmental Entities:*

(1) Contributory Liability and Contractor Indemnification- Tort Claims.

(a) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third-Party Tort Claim") against a party to this Contract (the "Notified Party") with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third-Party Tort Claim. Either party is entitled to participate in the defense of a Third-Party Tort Claim, and to defend a Third-Party Tort Claim with counsel of its own choosing. The foregoing provisions are conditions precedent for either party's liability to the other in regard to the Third-Party Claim.

If the parties are jointly liable (or would be if joined in the Third-Party Tort Claim), the parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each party's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Contract.

(b) Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Contractor Tort Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Contractor Tort Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Contractor Tort Claims. This Section shall survive termination of this Contract.

(2) Indemnity; Release- Claims Other Than Torts.

(a) Except for Third-Party Tort Claims and Contractor Tort Claims as provided in Section 5V.(1) above, to the extent authorized by law, Recipient shall defend, indemnify, save and hold harmless and release the State, OBDD, OBO and their officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including but not limited to costs, expenses, and reasonable attorneys' fees incurred (collectively, "Non-Tort Claims"), related to any actual or allected act or omission by Recipient, or its officers, employees, contractors, or agents in connection with this Contract, the Project, PWR or Davis-Bacon Act requirements, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the U.S. Department of Labor, the

Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Project or the actions or omissions of Recipient, or its officers, employees, contractors, or agents.

(b) Notwithstanding the foregoing, neither Recipient nor any attorney engaged by Recipient may defend any Non-Tort Claim in the name of the State of Oregon, nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Recipient settle any Non-Tort Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, Recipient will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. The provisions of this section are not to be construed as a waiver by the State of Oregon, OBDD, or OBO of any immunity, defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon. If attorney fees are awarded to Recipient, such attorney fees shall not exceed the rate charged to OBDD by its attorneys.]

W. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses..." OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor's Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: https://oregon4biz.diversitysoftware.com/FrontEnd/SearchCertifiedDirectory.asp?XID=2315&TN=oregon4biz.

SECTION 6 - DEFAULT

Any of the following constitutes an "Event of Default":

A. False or Misleading Statement.

(1) Any material false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant.

(2) In addition, making false statements or claims in connection with this Grant is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

B. Failure to Perform. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this Section 6, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 7 – REMEDIES

A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:

(1) Terminating OBDD's commitment and obligation to make the Grant or disbursements of Financing Proceeds under the Contract.

(2) Barring Recipient from receiving future OBO awards.

(3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract.

(4) Requiring repayment of all or a portion of the Grant and interest on all or any portion of the Grant earned by Recipient on those Grant funds.

(5) Terminating the Contract.

B. Application of Moneys. Any moneys collected by OBDD pursuant to Section 8.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, as applicable, to repay any Financing Proceeds owed; then, to pay other amounts due and payable under this Contract, if any.

C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in Section 6B. of this Contract.

D. Default by OBDD or OBO. In the event OBDD or OBO defaults on any obligation in this Contract, Recipient's sole remedy will be for disbursement of Financing Proceeds for costs of the Project, not to exceed the Grant Amount, less any claims the State has against Recipient.

SECTION 8 - TERMINATION

In addition to terminating this Contract upon an Event of Default as provided in Section 7, OBDD may terminate this Contract upon 30 days written notice to Recipient under any of the following circumstances:

A. If OBDD anticipates a shortfall in applicable revenues or OBDD fails to receive sufficient funding, appropriations or other expenditure authorizations to allow OBDD, in its reasonable discretion, to continue making payments under this Contract.

B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

C. If OBDD, in its discretion, desires to terminate the Contract for convenience. In the event of such termination not the fault of Recipient, Recipient may be reimbursed for costs and non-cancellable commitments incurred in connection with the Contract, up to the date of termination.

This Contract may be terminated at any time by mutual written consent of the parties.

SECTION 9 - MISCELLANEOUS

A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.

B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.

(1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.

(2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.

(3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.

(4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.

(5) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. Recipient agrees that:

(1) The State makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.

(2) In no event is the State or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD:	Deputy Director Oregon Business Development Department 775 Summer Street NE Suite 310 Salem, OR 97301-1280
With Copy to:	Oregon Broadband Office [TBD]
If to Recipient:	«ContactTitle» «Recipient» «RecipAddress» «RecipCityStateZip»

E. Confidentiality of Submissions.

(1) Reports, documentation and other information that Recipient submits to the State pursuant to this Contract ("Submissions"), including but not limited to the reports required in Exhibit A, are subject to the Oregon Public Records Law, ORS Chapter 192.

(2) In addition, Recipient acknowledges that any information that the State submits, including Recipient's Submissions, for its reporting and compliance obligations established by the U.S. Treasury, including the submission of quarterly project and expenditure reports, annual performance reports and information on workforce plans and practices, may be publicly disclosed.

(3) Recipient should not submit any information to the State that it does not want publicly disclosed and should assume that all Submissions are subject to public disclosure without any prior notice, even if marked confidential.

(4) Recipient may mark Submissions or portions of a Submission that Recipient believes qualify under a Public Records Law exemption or other law that exempts from disclosure the Submission or portion of the Submission. To mark a Submission or portion of a Submission believed exempt from disclosure, Recipient shall clearly identify in the body of the Submission the material that is believed exempt from disclosure with words such as "CONFIDENTIAL – DO NOT DISCLOSE" or other words to the same effect. Notwithstanding the foregoing, Recipient's failure to mark a Submission or portion of a Submission, shall not be conclusive evidence as to whether a Submission was submitted in confidence or is subject to disclosure.

(5) OBDD will disclose Submissions or portions of Submissions to the extent required by Oregon Public Records Law and to the extent disclosure is required by other law, court order or government order, including orders from the Attorney General.

F. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.

G. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

H. Amendments, Waivers.

(1) This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

(2) Notwithstanding Section 9H.(1) above, the parties agree that OBDD may extend the Project Completion Deadline by sending a written notice of amendment to Recipient ("Letter Amendment"), and Recipient will not be required to provide written consent to effect the amendment.

I. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys.

J. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion

County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

K. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

L. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

SIGNATURES TO FOLLOW BELOW

STATE OF OREGON 1859	[logo]
STATE OF OREGON acting by and through its Oregon Business Development Department	**«Recipient NAME»**
By: ______________________ Chris Cummings, Deputy Director	By: ______________________ «Person & Title»
Date: ______________________	Date: ______________________

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

[Not Required per OAR 137-045-0030]
/s/ [Approving Attorney] as per email dated [dd Mmm 202y]

EXHIBIT A
PROJECT DESCRIPTION AND REPORTING REQUIREMENTS

Project Description: Recipient will, with the assistance of a professional engineer licensed in Oregon, create, install and deploy a fully-functioning, commercially servicable broadband network that meets all of the Project Completion Standards for all the locations listed in the attached **Appendix 1** ("Project Service Locations"), which is incporporated herein by reference. The Project Service Locations provided in Appendix 1 can be described as serving the following communities: [insert general description using counties and cities or landmarks, etc.]. The broadband network infrastructure for the Project will be owned by [Recipient or *insert name(s) of other permitted owners*] at the Project's Substantial Completion. The Internet Service Provider[s] (ISP[s]) for the Project at Substantial Completion shall be [*insert name(s)*].

Project Completion Standards:

1. Recipient agrees that upon Project completion the network will serve no less than [*insert number*] Project Service Locations that are detailed in Appendix 1.
2. Recipient shall ensure that the final outcome of this Project will be increased access to high-speed broadband service which will result in improved broadband infrastructure.
3. The Project shall:
   A. Deploy [*insert description, e.g. wired, wireless, fiber, etc.*] technology to provide service to the Project Service Locations;
   B. Deploy approximately [*insert number*] new fiber miles; and
   C. Utilize the following infrastructure deployment method[s]: [*insert method, i.e. aerial, buried, or mixed*].
4. The Project shall be designed and built to provide end users at all Project Service Locations service that upon Project completion meets the following requirements (collectively, **"Service Quality Requirements"**):
   A. Reliably meets or exceeds symmetrical speeds of 100 Mbps. [*In cases where that is not practicable, because of the excessive cost of the Project, geography, or topography of the Project Service Location to be served (identified and approved by OBO), the following exception may be inserted:* Notwithstanding the previous sentence, the following Project Service Location shall reliably meet or exceed 100 Mbps download speed and at least 20 Mbps upload speed, and be scalable to symmetrical speeds of 100 Mbps: *insert fabric location IDs or provide a separate exhibit of the IDs.*]
   B. Network Capacity: Service must remain available at or near minimum speeds to all Project Service Locations, regardless of peak network load times.
   C. Latency: Service that enables access to health, education, and remote work resources with a measured latency less than 100ms.
   D. Data Caps, Throttling: Service with un-throttled, full-speed data usage allowances of at least 1 terabyte per month for all subscription plans offered to end users at Project Service Locations.
5. The Project shall be fully operational and available to customers by September 30, 2026.

Project Work:

Recipient will do each of the following:

1. Design, install, construct, test, maintain, and operate the Project's broadband network to serve the Project Service Locations;
2. Secure all necessary permits for the Project;
3. Acquire such Equipment as is necessary to install, create, and maintain the Project's broadband network;
4. Construct and install its related Facilities for the Project.
5. Acquire all necessary real property interests or access rights to real property for the purpose of installing its Equipment and Facilities.

Project Reporting Requirements:

Recipient shall submit quarterly and annual reports to OBO, using reporting templates to be provided by OBO, which must include such information as is necessary for OBO to comply with the reporting requirements established by the U.S. Treasury, primarily found in the Coronavirus Capital Projects Fund Compliance and Reporting Guidance For States, Territories, and Freely Associated States at https://home.treasury.gov/system/files/136/Revised-CPF-State-Guidance.pdf (issued March 2024).

The quarterly reports, called Project and Expenditure Reports, will provide information on the Project funded, obligations, expenditures, project status, outputs, performance indicators, and other information. The annual report, called a Performance Report, will provide information on the BDP Project funded by ARPA CPF and describe the outputs and outcomes of the BDP.

Report Name	Frequency	Due Dates for Recipient Submission to OBO
Quarterly Report	Quarterly	April 10th (for January 1-March 31 period), July 10th (for April 1- June 30 period), October 10th (for July 1- September 30), January 10th (for October 1-Decembr 31 period)
Annual Report	Annually	July 10, 2025 (for July 1, 2024 -June 30, 2025) July 10, 2026 (for July 1, 2025- June 30, 2026) February 10, 2027(for July 1, 2026 – December 31, 2026)

The reporting due dates in the Treasury Guidance apply to the State. The due dates in the above Contract table, rather than the Treasury Guidance dates, apply to Recipient as they are earlier dates and allow time for the State to submit cumulative reports to Treasury.

Quarterly Project and Expenditure Reports

Reporting requirements shall include but are not limited to providing the following:

1. Any Project Budget updates.

2. Information describing the Project (including start, completion and operation dates) and any update changes to that information.

3. Obligations and expenditures for current period and cumulatively.

4. Project status/progress.

5. Certification that prevailing wage requirements are fulfilled.

6. Project data (Including but not limited to identification of type of delivery technology; number and type of locations served – planned/actual; speed and latency data; etc.).

7. Geographic location of locations served.

Annual Performance Reports

Reporting requirements shall include but are not limited to providing the following:

1. A high-level overview of Recipient's actual uses of funding and progress made during the period covered, and an overview of key outcomes and any noteworthy challenges or opportunities identified during the period covered.

2. A short narrative describing the intended and actual use of funds, and the performance of the Project that describes the activities implemented and still planned.

3. Narratives about the people at the locations served.

4. Efforts and outcomes during the period covered to promote equity and address critical needs.

5. Workforce practices and labor standards implemented during the Project.

6. Community engagement – how feedback is received and handled during project implementation.

7. Information to show compliance with federal civil rights laws, including not denying benefits or services, or otherwise discriminating on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity).

8. Project Data, including but not limited to the following: (i) The number of homes and businesses that Recipient's grant-supported broadband network serves; (ii) The number of additional homes and businesses that Recipient expects to serve through the grant supported broadband network within the following year; (iii) The speed tiers, advertised rates, and services that Recipient offers to customers through the grant-supported broadband network, including speed tiers, rates, and other services that Recipient offers to low-income households; and (iv) Other performance metrics as requested, in writing, by OBO.

APPENDIX 1- PROJECT SERVICE LOCATIONS BY FCC FABRIC ID

[TBD—tailored list for each Recipient]

APPENDIX 2- WORK PLAN WITH MILESTONES AND COST ESTIMATES

[TBD—tailored by each Recipient's Project and negotiated with OBO]

APPENDIX 3- PROJECT GRANT BUDGET

Project Budget Line Items	ARPA CPF Funds (Grant)	[Required Cash Match Funds]
TOTAL	**$«Grant»**	**[$«OtherFunds»]**

Recipient may transfer Grant funds among line items in the Budget with written notice to and approval by OBO. Notice to OBO and approval by OBO shall be by email.

[Recipient may transfer Match Funds among line items in the Budget table as Recipient chooses.]

Recipient shall complete the Project and use its own fiscal resources or money from other sources not provided in the above table to pay for any costs of the Project in excess of the total amount described in the Budget table.

EXHIBIT B – CERTIFICATION REGARDING LOBBYING

(Awards in excess of $100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Signed ______________________________

Title ______________________________

Date ______________________________

EXHIBIT C – FEDERAL AWARD INFORMATION
REQUIRED BY 2 C.F.R. § 200.332(A)(1)

[TBD—tailored to each Recipient]