



STATE OF UTAH
The Governor's Office of Economic Opportunity
Utah Broadband Center

GRANT AGREEMENT
Broadband Access Grant

1. CONTRACTING PARTIES: This Agreement is between the State of Utah, Governor's Office of Economic Opportunity, the Utah Broadband Center, referred to collectively as the "State", and the following Grantee, listed below:

(Grantee Name)
(Address)

Contact Person:
Primary Contact Phone #:
Email:

Legal Status of Grantee: (e.g., nonprofit corporation, LLC, etc.)
Federal Tax ID:
Vendor #: (FINET Vendor Number)

Project Name:

The State and Grantee are sometimes referred to individually as "Party" or collectively as "Parties."

2. GENERAL PURPOSE OF AGREEMENT: The general purpose of this Agreement is to provide terms and conditions under which the Grantee may obtain and maintain eligibility for the State Broadband Access Grant program to provide funding for the construction and expansion of highspeed broadband service in unserved or underserved areas of the State. As required by Utah Code § 63N-17-201 (3)(a) the Utah Broadband Center shall "ensure that publicly funded broadband projects continue to be publicly accessible and provide a public benefit."

3. AUTHORITY: This Agreement is entered pursuant to the State's authority to administer funds under Utah Code §§ 63N-17-101 (Utah Broadband Center enabling act) and 63N-17-301 (Broadband Access Grant Program) and Utah Administrative Code R357-40 (Broadband Access Grant Program Rule).

4. CONTRACT PERIOD:
Beginning Effective Date: (signature date of this Agreement)
Project Completion Date: (not greater than 30 months after signature date, unless otherwise approved by the State)

5. CONTRACT AMOUNT: The State awards and the Grantee accepts a grant award of up to and /100 Dollars (\$) (the award amount or "Grant Amount").

6. ATTACHMENTS INCLUDED AND MADE PART OF THIS AGREEMENT:
Attachment A – Standard Terms and Conditions for Grants
Attachment B – Project Application (the entire Application, attachments, maps, etc.)
Attachment C – Project Scope of Work

7. DOCUMENTS INCORPORATED BY REFERENCE BUT NOT ATTACHED:

All governmental laws, regulations, or actions applicable to the grant authorized by this Agreement, including but not limited to those Utah Code sections listed above in Section 3, Authority, and in Utah Code § 63G-2-101 et seq (GRAMA).

8. AGREEMENT EXECUTION:

Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the Parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal contract binding on the Parties and enforceable in accordance with its terms. This Agreement is not fully executed until all Parties, including but not limited to the Utah Division of Finance, have signed this Agreement.

RECITALS

A. WHEREAS, in 2021, the Utah State Legislature in Utah Code § 63N-17-301 established the Broadband Access Grant Program for the construction and expansion of high-speed broadband service in unserved or underserved areas of the State;

B. WHEREAS, the Project Application in Attachment B, the terms of which are incorporated herein by reference, are agreed upon for the construction and expansion of high-speed broadband service by the Grantee in a specific geographic area(s) related to the Project, as shown in attached maps and plans;

C. WHEREAS, the State approved Grantee's Project Application on January 21, 2022 (the "Grant Award Date") subject to the execution of this Agreement and completion of the Project Scope of Work set forth in Attachment C, the terms of which are incorporated herein by reference;

AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. **Grant and Project.** Subject to the terms of this Agreement, the State hereby awards exclusively to Grantee the sum not to exceed \$ [REDACTED] (the "Grant" or "Grant Amount"). The Grant shall be used by Grantee solely to pay for Eligible Project Costs (as described herein), or reimbursement of those costs, related to the project and scope of work as set forth in the Project Application, as approved by the State, and as described in the Scope of Work (the "Project"). Grantee hereby agrees to complete the Project according to the timeline outlined in the Project Application, the Broadband Access Grant Program requirements, and in no event later than the Completion Date above and described in Section 14 below. The Grant Amount is to be used only for approved eligible costs, construction and expansion of high-speed broadband infrastructure used to provide service as specified in the Scope of Work. Grantee will obtain the Twenty-Five Percent (25%) matching contributions as required by Utah Code § 63N-17-301(vii), as described in the Project Application ("Matching Funds"), and will provide documentation of such Matching Funds by the date of execution of this Agreement.

2. **Project Scope.** The Project Scope of Work shall not be materially modified by Grantee without the prior written approval of the State, and such approval shall be reasonably granted by the State or its agent within five business days. The Project and Scope of Work are set forth more particularly in Attachments B and C. In considering modifications or time extensions, the State may consider as a

mitigating factor any milestone delays caused by supply chain issues or labor shortages not caused by the Grantee and/or outside the control of Grantee.

3. **Conditions Precedent to Disbursement of Grant.** Except as provided herein, if Grantee fails to satisfy or fulfill any of the following conditions, then the State may terminate this Agreement without any or additional payment of the Grant. The State shall not be obligated to disburse any funds under this Agreement unless and until the following conditions precedent have been met:

a. **Production and Review of Documents:** Before the disbursement of any grant funds to Grantee, the Grantee shall first submit the following information or records to the State for review and approval:

(1) **Documented Proof of Matching Funds.** Proof of Matching Funds may consist of a commitment letter from the additional funding source, such as from a political subdivision of the State (service district, local government, county or municipality), committing funds for the Project, or Grantee's financial institution statements showing the matching funds.

(2) **Professional Engineer Stamped Plans.** Grantee shall provide State with Project plans stamped/sealed by a Professional Engineer. Project plans are subject to approval by the State and its designated agent. The Project plans shall be reviewed and approved, or recommended changes shall be provided by the State or its designated agent within ten (10) business days, or such plans shall be deemed approved by the State. Before the final disbursement of the last 10% of the Grant funds (the "Grant Closeout" as set forth in Section 5, below), Grantee shall provide a second Professional Engineer stamped review, or review from a third-party verifier pre-approved by the Utah Broadband Center. This final review will confirm that the Project has been completed, the design and installation conform to all applicable federal, state, and local requirements and standard engineering practice, and that the installed infrastructure will provide the service levels stated in the application.

b. **Other Conditions.** Disbursement shall also be subject to the following other conditions:

(1) No material modifications or delays have been made to the Project or Scope of Work (or the State has been advised of the modifications or delays and has elected in writing to continue to participate in the funding of the Project);

(2) The representations made to the State in the Project Application continue to be true (or, if there have been any material changes, the State has been advised of such changes and has assented in writing to those changes).

(3) Grantees who are awarded middle-mile funds in conjunction with last-mile projects and choose to resell to ISPs, shall do so at a reasonable and affordable price comparable to market rates elsewhere for similar projects.

(4) Grantee, or its contracted internet service provider, shall participate in the Federal Affordable Connectivity Program (ACP).

(5) **Project Participants List.** Grantee provides the State with a list of all contractors or subcontractors, including engineering firms, who will provide goods or services for the Project. The Project Participant List shall include: business name, contact person, mailing address, phone, email address, with a description of goods and services to be provided. The Project Participant List is subject to revision by Grantee, and Grantee shall provide the revised list upon request from the State.

c. **Waiver.** The State in writing may waive one or more of the previous conditions to disbursement or may allow satisfaction of one or more of these conditions subsequent to disbursement.

4. **Permissible Use of Grant Funding.** The Parties agree that Grantee is the sole recipient entitled to receive disbursement of any Grant Amount awarded under this Agreement.

a. Funds awarded as part of this Agreement can only be used for Eligible Project Costs as described herein, and in Attachment C: Project Scope of Work. Any changes to the approved project must be submitted in writing and approval must be obtained prior to using funding outside of the originally approved project parameters. Funding obtained through this Agreement cannot be used to reimburse expenditures incurred prior to the Period of Performance.

b. **Source of Grant Funds.** Grant funds come from State or Federal appropriations. State shall notify Grantee of the source of funds prior to disbursement to Grantee. If the Grant funds come from Federal appropriations, then use of those funds shall be subject to Federal requirements, which requires that Grantee solicit, through a competitive bidding process, the services to complete the Project, in addition to other Federal requirements such as those set forth below, depending on the source of those funds:

(1) **Requirements for Grant Funds from ARPA.** Due to the Grant funds being federal funds from the ARPA, it is the responsibility of the Grantee to adhere to all use of funding requirements as outlined in the applicable laws, including but not limited to American Rescue Plan Act of 2021 (“ARPA”), Public Law 117–2, codified at 42 U.S.C. 802 et seq., Section 603 of the Social Security Act, 31 CFR Part 35, and the U.S. Department of the Treasury’s Final Rule (31 CFR Part 35 RIN 1505-AC77) (“Treasury Final Rule”) regarding Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”), the (Broadband Access Grant Program (Utah Code 63N-17-301), and Broadband Access Grant Program Rule (Utah Administrative Code R357-40).

Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026 unless otherwise specified in this rule or program specific guidance. Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards.

Funds provided through this Agreement are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. The CFDA number assigned to the CRF is 21.027, pending completion of registration by the federal government.

Grantee acknowledges and agrees that the State is subject to reporting requirements regarding the use of the Grant funds and that the State may be subject to recoupment by/to the United States Treasury for amounts that are not expended for eligible uses. Any use of awarded funding by Grantee that is contrary to the agreed upon project parameters or federal regulations will be subject to project cancellation and recoupment of awarded funds. See Section 6, below, for additional information regarding recoupment of funds

Grantee shall not loan, grant, or collateralize the Grant funds.

(2) **Requirements for Grant Funds from ARPA.** Grantee shall require that carriers or internet service providers participate in the Affordable Connectivity Plan, to assure that a low-cost broadband internet connection option is offered at speeds of at least 100/20. Grantee shall report pricing data as part of program performance and monitoring.

5. **Period of Performance.** The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in the U.S. Department of the Treasury’s implementing regulations, and notwithstanding the Grantee may use award funds to reimburse Eligible Costs incurred during the period that begins on March 3, 2021 (which is prior to the Beginning Effective Date of this Agreement and the Period of Performance), and ends on December 31, 2024. For the sake of clarity in

the interpretation of this Section, Grantee must obligate the funds by December 31, 2024 and should expend the funds by December 31, 2026.

6. **Recoupment, Claw Back, Holdback.** To the extent that an inspection or a future audit shows: (i) that Grantee has not expended Grant funds in accordance with the Broadband Access Grant Program requirements, the terms of this Agreement, or Federal requirements, as applicable (*i.e.*, Final Treasury Rule), or (ii) the Grantee has used the Grant to pay for ineligible costs; then Grantee shall be required to repay those funds to the State. Grantee agrees to pay any associated collection fees, court, attorney's fees and costs, incurred by the State in collection efforts or caused by the Grantee's breach of this Agreement.

7. **Grant Disbursement.**

a. **Grant Disbursement Payments.** Disbursement shall occur on a reimbursement basis. Grantee shall submit its written requests for reimbursement of expenses from the Grant ("Draw Request") to the Director of the Utah Broadband Center, or to such person as the Director may delegate in writing on a quarterly basis. Grantee's Draw Requests shall identify the Eligible Project Costs for which the Grantee is seeking reimbursement. Grantee shall reasonably cooperate with the State or with such person as the State may designate in writing (*e.g.*, the Fiber Optics Manager from the Utah Department of Transportation), to allow for reasonable inspections of work in progress and completed work. Upon satisfaction of all provisions of the conditions precedent described in Section 3 of this Agreement, , the State shall have thirty (30) days to review the Draw Requests, conduct any requested inspection of Eligible Project Costs and Project work (to be inspected by the Director, or designated agent), and to approve or dispute the Draw Request. Undisputed portions of each Draw Request shall be paid by the State within thirty (30) days of approval. The State shall provide a detailed description of any disputed portion of a Draw Request and the State and the Grantee shall meet and confer to discuss the disputed portion of the Draw Request.

b. **Grant Closeout.** Disbursement of the final, increment of Ten percent (10%) of the Grant upon satisfactory completion of one hundred percent (100%) of the Project and any related Project milestones set forth in Attachment C ("**Closeout Payment**"). Together with the final Draw Request, submitted in advance, Grantee shall provide a second Professional Engineer stamped review, or review from a third-party verifier pre-approved by the Utah Broadband Center. Prior to receiving the Closeout Payment, Grantee shall provide a report showing speed test results (using speedtest.utah.gov) at various sites spread throughout the Project area conducted on the broadband lines that pass along the customer premises (tested outside of the customer's premises using Grantee's or its subcontractor's equipment, and for example, not tested within the customer's home, using the customer's equipment), for sample size of at least Five percent (5%) of the households spread throughout the Project area who have subscribed by the time of the Completion Date. This review will confirm that the Project has been completed, the design and installation conform to all applicable federal, state, and local requirements and standard engineering practice, and that the installed infrastructure will provide the service levels stated in the Project Application. Any inspection by the State under this Section 7.b shall be completed within sixty (60) days of Grantee's final Draw Request and disbursement of the Closeout Payment and the final Draw Request shall be made within ninety (90) days of the Grantee's final Draw Request.

If actual Project costs exceed the budget included with the Application, then Grantee shall still be required to finish the proposed project without an increase in the Grant. The Project must be completed before the Closeout Payment is disbursed.

8. **Documentation of Financial Transactions, Eligible and Ineligible Project Costs.** During the term of this Agreement and for six (6) years following the termination of this Agreement, Grantee shall maintain financial records documenting the use of the Grant, and Grantee's expenditure of those Grant

funds to pay the costs and expenses associated with the Project. In addition, Grantee shall submit any other documentation as reasonably requested by the State. Upon three (3) days prior written notice, Grantee shall make these records available during business hours for inspection by the State or its designated agent. Grantee shall not use the Grant to pay for ineligible costs. For purposes of disbursement of the Grant progress payments, the following subsections contain examples of eligible and ineligible Project costs:

a. **Eligible Project Costs:**

- (1) Procurement, installation, legal, administrative and compliance costs associated with the planning, engineering, procurement, construction, installation, testing and deployment of last-mile broadband infrastructure that supports broadband service at the locations and speeds identified in the application; and,
- (2) Procurement, installation, legal, administrative and compliance costs associated with planning, engineering, procurement, construction, installation, testing and deployment of middle-mile broadband infrastructure necessary for the last-mile connections; and,
- (3) Administrative, legal and compliance costs associated with this Agreement, the Grantee's Compliance with the Program, and audits of Grantee's compliance with the Broadband Program or other applicable State and Federal requirements.

Examples: Project planning, design, construction permits, construction of facilities, equipment, installation, and testing of service.

b. **Ineligible Costs:**

- (1) General broadband planning not associated with a specific last-mile build
- (2) Ongoing operational and maintenance expenses
- (3) Middle-mile infrastructure that is not directly connected to the last-mile connection.
- (4) Expenses related to the provision of separate telephone line or cable video services that are not necessary for the delivery of broadband services.

9. **Annual Reporting.**

a. **Project Milestone Progress Reports.** On the yearly anniversary of the date of this Agreement, and during the Period of Performance, but prior to the Completion Date, the Grantee shall provide an annual report to the Utah Broadband Center Director or designee, showing the use of the funds for Eligible Project Costs, the progress toward fulfilling the Project Milestones in Attachment C, with any updated estimate for the Completion Date of the Project.

b. **Post-Completion Date Reports.** After completion of the Project, and on the anniversary of the Completion Date, the Grantee shall provide annual reports to the Utah Broadband Center for three (3) years after completion of the project. The reports shall be in a format specified by the Center and shall give an accounting by the Grantee, including all of, but not limited to, the following:

- (1) The number and location of residences and businesses that will have access to the broadband service;
- (2) The speed of broadband service; Service providers shall perform a speed test at speedtest.utah.gov at the time of installation of broadband lines (for example, tests conducted on the lines in front subscriber's premises or household, using Grantee's or its subcontractor's equipment, but not using subscriber's own equipment) pre and post completion of the installation to verify speed availability
- (3) The price of broadband service to consumers/subscribers (frozen for three years); and if subject to Federal Capital Projects Fund requirements, the Grant Awardee or subcontracted Internet Service Providers (ISP) shall provide a low-cost option and participate in the Federal Affordable Connectivity Program (ACP)

- (4) The broadband service adoption rates.

10. **Compliance with Regulatory Requirements and Federal, State and Local Law or Rule.**

Grantee shall comply with all regulatory requirements, including but not limited to right-of-way access laws and regulations, nondiscrimination, worker safety, local labor preferences, environmental, building codes, local building permit rules and regulations, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. To the extent permitted by law, Grantee hereby agrees to indemnify, defend and hold harmless the State from any cost, expense, or liability for any failure to comply with any such applicable requirements.

11. **Publicity and Project Information.** It is strongly recommended that Grantee acknowledge State funding in all news releases and other publicity issued by Grantee concerning the Project. If any publicity events are planned in relationship to the Project, the State should likewise be acknowledged as a contributor in the invitation for the event. It is strongly recommended that the Grantee notify the State of any such publicity events at least thirty (30) days prior to when they occur. Likewise, Grantee should cooperate with the State in preparing public information pieces, providing slides and photos of the Project from time to time, and providing reasonable access to the Project (in Grantee's reasonable discretion), for publicity purposes to the extent allowed by the landowner. The State has the right and shall be provided the opportunity to use any and all non-confidential information gained from the Project, provided such information does not result in a commercial disadvantage to Grantee, or a commercial advantage to a competitor of Grantee.

12. **Indemnification.**

a. **If Grantee Is a Utah State Governmental Entity** (*i.e.*, political subdivision, county, city, service district, etc.). Both parties to this Contract are governmental entities as defined in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101 et. seq.). Nothing in this Contract shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this Contract be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these parties.

b. **If Grantee is not a Utah State Entity.** Grantee agrees to indemnify, save, hold harmless, and release the State of Utah and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the negligence of the Grantee's officers, agents, volunteers, or employees, but not for claims arising from the State's negligence. Any provision attempting to limit the liability of Grantee or limit the rights of the State must be in writing and attached to this Agreement or it is rendered null and void.

13. **Audits of Records.** After three (3) days prior notice by State, the Grantee shall allow the State or designated agent, State auditors and State agency staff access to all records pertaining to the Project and to this Agreement, for audit and inspection, and monitoring of performance. Such access will be during normal business hours or by appointment.

14. **Withdrawal of State Funding.** The State may withdraw or cease disbursement of grant funds and withdraw funding approval for future disbursements if Grantee has materially changed the scope, schedule or timing of the Project without providing written notice to the State. The State must give Grantee thirty (30) days prior written notice of its decision to cease fund disbursement and withdraw future funding approval. Such Notice shall: (a) describe material changes to the Project identified by the state, (b) identify action Grantee must undertake to address material change and maintain disbursement funding, (c) provide Grantee with an opportunity to respond to the notice, and (d) work with Grantee to

identify a timeline in which Grantee must complete any action to address material change. If Grantee fails to comply with this part or complete action to address material changes, then State may terminate this Agreement. The State may consider as a mitigating factor any milestone delays caused by supply chain issues or labor shortages not caused by the Grantee and/or outside the control of Grantee. The State may also withdraw funding if there have been delays in the implementation of the Project which, in the State's sole discretion, make the Project infeasible or impracticable.

15. **Grantee's Inability to Complete Project.** If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application, Grantee shall promptly advise the State and cooperate in good faith with respect to alternative solutions before any subsequent funds are disbursed by the State.

16. **Completion Date.** Grantee shall complete the construction and deployment of broadband services by the Completion Date and Project Milestones in Attachment C. Prior to the Completion Date, either party may terminate this Agreement for the reasons provided in the above Section 3 (Conditions Precedent to Disbursement of Grant) and Section 14 (Withdrawal of State Funding), by providing the other party with at least thirty (30) calendar days' advance written notice.

17. **Assignment.** Grantee shall not assign its rights or delegate its obligations under this Agreement without the express written consent of the State. Consent to assign the Grant may be withheld in the sole discretion of the State. The State may freely assign this Agreement.

18. **Future Funding.** The Grant only applies to the construction and completion of the Project specifically described in this Agreement and its Attachments. The State makes no representations regarding future funding for other projects or properties that are not expressly referenced or described in the Project Application.

19. **Breach.** In the event that Grantee breaches any of the terms or conditions of this Agreement, then upon State's discovery of the breach, the State shall provide written notice of such breach to the Grantee, and Grantee shall have thirty (30) days to remedy the breach. If the Grantee fails to remedy the breach after notice, the State shall have the following remedies:

- a. **Prior to Payment of Grant In Full.** The State reserves the right to immediately withdraw additional funding and/or terminate this Agreement.
- b. **After Payment of Grant.** After the State provides notice as required in Section 14, the State reserves the right to deem Grantee ineligible for participation in future State grants, loans or projects, if Grantee defaults in its obligations hereunder.
 - (1) **Return of Grant.** The State further reserves the right to demand return of Grant funding, which shall be remitted to the State within five (5) business days of the date of demand.
 - (2) **Enforcement and Collection.** In addition to the foregoing, the State shall be entitled to pursue any other remedy available at law or in equity, including filing a lawsuit to enforce this Agreement or collect amounts owed under this Agreement.

20. **Good Faith.** Both parties have an obligation of good faith, including the obligation to make timely communication of information which may reasonably be believed to be of interest to the other party.

21. **Independent Status of Grantee.** If the Grantee is not a political subdivision of the State, then the parties acknowledge that the State lacks the power and right to direct all of the actions of Grantee who is an independent entity, and Grantee acts in its separate capacity and not as an officer, employee, or agent of the State or of the State of Utah.

22. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect.
23. **Time is of the Essence.** Time is of the essence in this Agreement.
24. **Survival.** Subsequent to the funding of the Grant, the Completion Date, and/or after the termination of this Agreement, the Grantee shall have a number of ongoing obligations. Certain terms and provisions of this Agreement shall survive the completion of the Project, or the termination of this Agreement, for example, including but not limited to, the obligation to retain financial records in Section 6, above, or to maintain a three-year price freeze on consumer subscription rates in Attachment C, such that Grantee shall not increase subscription prices during that time period, but the Grantee may reduce subscription prices.
25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one Agreement.
26. **Third Party Beneficiary.** The State and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the State and Grantee, and that no third-party beneficiaries are intended, unless otherwise expressly stated.
27. **Construction.** Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.
28. **Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.
29. **Conflicts in Terms.** The State has previously approved the Project as set forth in Attachment B and Attachment C. Any conflicts in terms between the terms set forth in this Grant Agreement and Attachments A, B and C, shall be resolved first in favor of any controlling law or regulation, and then second in favor of this Agreement, and third in favor of the Attachment A terms and conditions, followed by Attachment B and Attachment C.
30. **Force Majeure.** Neither party shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term “uncontrollable forces” shall mean any event that results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either party under this Agreement, strikes, work slowdowns or other labor disturbances, and judicial restraint.

(This Section is intentionally left blank, the signature page follows)

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates below.

STATE:

GRANTEE:

UTAH BROADBAND CENTER

Name: Rebecca Dilg

Name:

Title: Director

Title:

Date:

Date:

Contact information for notice purposes:

Contact information for notice purposes:

Address: _____

Address: _____

Email: _____

Email: _____

**GOVERNOR'S OFFICE OF ECONOMIC
OPPORTUNITY**

Name:

Title:

Date:

**APPROVED BY:
DIVISION OF FINANCE**

Name:

Title:

Date:

ATTACHMENT A: STANDARD TERMS AND CONDITIONS FOR GRANTS

ATTACHMENT A: STANDARD TERMS AND CONDITIONS FOR GRANTS

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a. **“Agreement”** means these terms and conditions, the cover pages, and all other attachments and documents incorporated by reference.
 - b. **“Grant Money”** means money derived from State fees or tax revenues that are owned, held, or administered by the State.
 - c. **“Grantee”** means the individual or entity which is the recipient of Grant Money from the State. The term “Grantee” includes Grantee’s agents, officers, employees, and partners.
 - d. **“Non-Public Information”** means information that is deemed private, protected, controlled, or exempt from disclosure under the Government Records Access and Management Act (GRAMA) or as non-public under other applicable State and federal laws. Non-Public Information includes those records the State determines are protected after having properly received a written claim of business confidentiality as described in Utah Code § 63G-2-309. The State reserves the right to identify additional information that must be kept non-public under federal and State laws.
 - e. **“State”** means the State of Utah Department, Division, Office, Bureau, Agency, or other State entity identified on the Agreement providing the Grant Money.
 - f. **“Subcontractors”** means persons or entities under the direct or indirect control or responsibility of Grantee, including, but not limited to, Grantee’s agents, contractors hired by Grantee, consultants, employees, authorized resellers, or anyone else for whom Grantee may be liable at any tier, including a person or entity providing or performing this Agreement, including Grantee’s manufacturers, distributors, and suppliers.
2. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Agreement, Grantee and all acts performed under this Agreement will comply with all applicable federal and State constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** Grantee shall maintain or supervise the maintenance of all records, receipts and any other documentation necessary to properly account for payments made by the State to Grantee under this Agreement. This includes documentation related to Grantee’s performance of the Agreement terms, scope of work, project-specific requirements, and outcomes reported to the State by Grantee. These records shall be retained by Grantee for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Grantee agrees to allow, at no additional cost, State of Utah and federal auditors, State staff, and/or a party hired by the State, access to all records necessary to account for all Grant Money received by Grantee as a result of this Agreement and to verify that Grantee’s use of the Grant Money is appropriate and has been properly reported.
5. **CONFLICT OF INTEREST:** If Grantee is not a political subdivision of the State, then Grantee represents that none of its officers or employees are officers or employees of the State of Utah, unless full and complete disclosure has been made to the State.
6. **INDEPENDENT CAPACITY:** If Grantee is not a political subdivision of the State, then Grantee in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of Utah agency effectuating this Agreement.
7. **[Deleted] INDEMNITY**
8. **EMPLOYMENT PRACTICES:** Grantee agrees to abide by federal and State employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah’s Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the workplace.

Grantee further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Grantee's employees.

9. **AMENDMENTS:** This Agreement may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Agreement. Automatic renewals will not apply to this Agreement even if listed elsewhere in this Agreement.
10. **TERMINATION:** Unless otherwise stated in Agreement above, then according to this Attachment's terms and conditions the Agreement may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. Any material violation of the terms of the program or Agreement may give rise to for-cause termination.
11. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to Grantee, this Agreement may be terminated in whole or in part at the sole discretion of the State, if the State reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Agreement; or (ii) that a change in available funds affects the State's ability to pay under this Agreement. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
12. **INSURANCE:** Grantee shall at all times during the term of this Agreement, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than three million dollars (\$3,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate. Grantee shall provide proof of the general liability insurance policy and other required insurance policies to the State within thirty (30) days of contract award. Grantee must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance, as required, will be deemed a material breach of this Agreement. Grantee's failure to maintain this insurance requirement for the term of this Agreement will be grounds for immediate termination of this Agreement.
13. **WORKERS COMPENSATION INSURANCE:** Grantee shall maintain, during the term of this Agreement, workers' compensation insurance for all its employees, as well as any Subcontractors as required by law.
14. **PUBLIC INFORMATION:** Grantee agrees that this Agreement and invoices will be public records in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Grantee gives the State express permission to make copies of this Agreement, related documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Grantee and expressly approved by the State of Utah Division of Purchasing and General Services, all of which must be in accordance with GRAMA, Grantee also agrees that Grantee's Application will be a public document, and copies may be given to the public as permitted under GRAMA. The State is not obligated to inform Grantee of any GRAMA requests for disclosure of this Agreement, related documents, or invoices.
 - a. **Grantee** may designate certain business information as protected under GRAMA pursuant to Utah Code Section 63G-2-305 and 63G-2-309. It is Grantee's sole responsibility to comply with the requirements of GRAMA as it relates to information regarding trade secrets and information that should be protected under business confidentiality.
15. **PAYMENT:** The acceptance by Grantee of final Grant Money payment, without a written protest filed with the State within ten (10) business days of receipt of final payment, shall release the State from all claims and all liability to Grantee. No State payment is to be construed to prejudice any claims that the State may have against Grantee. State may withhold, adjust payment amount, or require repayment of any Grant Money under this Agreement that is: provided in reliance on an inaccurate or incomplete representation, unsupported by sufficient invoices or other documentation, not used by Grantee for the project identified, used for any purpose in violation of the terms of this Agreement or in violation of the law, or paid in excess of what is actually owed.
16. **REVIEWS:** The State reserves the right to perform reviews, and/or comment upon Grantee's use of the Grant Money set forth in this Agreement. Such reviews do not waive the requirement of Grantee to meet all of the terms and conditions of this Agreement.
17. **ASSIGNMENT:** Grantee may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Agreement, in whole or in part, without the prior written approval of the State.
18. **NON-PUBLIC INFORMATION:** If Non-Public Information is disclosed to Grantee, Grantee shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Agreement; (ii) keep all Non-Public Information strictly confidential; and (iii) not disclose any Non-Public Information received by it to any third parties. Grantee will promptly notify the State of any potential or actual misuse or misappropriation of Non-Public Information. Grantee shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Grantee shall indemnify, hold harmless, and defend the State, including anyone for whom the State is liable, from claims related to a breach of this duty of confidentiality,

including any notification requirements, by Grantee or anyone for whom Grantee is liable. Upon termination or expiration of this Agreement and upon request by the State, Grantee will return all copies of Non-Public Information to the State or certify, in writing, that the Non-Public Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Agreement.

19. [Deleted] PUBLICITY

20. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY: Grantee will indemnify and hold the State harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Grantee's liability, such limitations of liability will not apply to this section.

21. OWNERSHIP IN INTELLECTUAL PROPERTY: The State and Grantee each recognize that they have no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing.

22. WAIVER: A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

23. ATTORNEYS' FEES: In the event of any judicial action to enforce rights under this Agreement, the prevailing party shall be entitled its costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

24. [Deleted] ORDER OF PRECEDENCE

25. [Deleted] SURVIVAL OF TERMS

26. [Deleted] SEVERABILITY

27. [Deleted] ENTIRE AGREEMENT

(Revision date: 21 March 2019)

[Remainder of page is intentionally left blank]

Contract Number: {{CONTRACT_CONTRACT_NUMBER}}

ATTACHMENT B: PROJECT APPLICATION

ATTACHMENT C: PROJECT SCOPE OF WORK

Summary:

Project Plans (see attached Plans, stamped by a Professional Engineer)

Map of Project’s Geographic Area (see attached)

Deliverables: Grantee shall construct, install and provide high-speed broadband service with speeds set forth in the table below for customers/households in the Project Geographic Area. Broadband services shall be at a minimum: 100 Mbps download and 20 Mbps upload speeds, and shall have low latency of less than 100 ms, and packet loss of less than two percent (2%).

Customer Pricing Table (Example provided below is specific, and comes from the Grantee’s Project application):

\$ [redacted] /month - 1 Gig Download/1 Gig Upload speeds and number of passes: [redacted]

\$ [redacted] /month - 100 Mbps download and 20 Mbps upload speeds and number of passes: [redacted]

	Number of
Households	
Businesses	
Farms/Ranches	
Anchor Institutions* or Public Facilities	

Three Year Price Freeze: Before the completion of the Project, and during the three (3) years following the Project Completion Date, the consumer subscription prices for minimum broadband services (100Mbps/20Mbps), shall not exceed those listed in the table above, but the prices may be lower than those stated above. The State, on behalf of consumers, or consumers, shall have standing to file an action to enjoin Grantee from violating the terms of this section. Grantee and any provider shall not charge a connection fee to a subscriber, unless a connection fee amount was listed as part of Grantee’s Application, in which case, the connection fee shall not exceed the previously listed amount during the three (3) years following the Project Completion Date.

(Continued next page)

Project milestones [sample below, insert the actual Timeline and Project Milestones specific to the Project]:

Timeline and Project Milestones		
Name of Applicant:		
Name of Project:		
Overall Timeline for Project:	Start Date:	Complete:
Individual Milestones for Project: Include all planning, procurement, construction, installation, testing, and customer turn-up activities	Estimated Start Date (month/year)	Estimated Completion Date (month/year)
<i>Activity A Planning, permits, and environmentalals</i>		
<i>Activity B Competitive Bidding, Award Project, Procure Materials</i>		
<i>Activity C Mainline Construction Phase</i>		
<i>Activity D Service Drop to Home Construction Phase</i>		
<i>Activity E Cut-Over & Turn Up Customer Services</i>		

Post Completion Date Continuing Obligations of Grantee: Operate the Project broadband network as proposed for a minimum of five (5) years following project Completion Date.