

South Carolina Broadband Infrastructure Project

Coronavirus Aid, Relief, and Economic Security (CARES) Act funds



Funding Agreement

This Grant Agreement (“Agreement”), is effective as of the date of last signature below (“Effective Date”), by and between the State of South Carolina (the “State”), acting by and through the South Carolina Office of Regulatory Staff (“ORS”), and [____], a [____] organized under the laws of the state of _____ (“Grantee”).

- A. WHEREAS, on March 13, 2020, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the COVID-19 Outbreak; and
- B. WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law by the President of the United States on March 27th, 2020; and
- C. WHEREAS, the CARES Act established the Coronavirus Relief Fund (CRF) and the State of South Carolina received an allocation of funds from the Coronavirus Relief Fund under section 601(a) of the Social Security Act, as added by section 5001 of the CARES Act; and
- D. WHEREAS, the General Assembly of South Carolina passed Act 142, which in part requires expansion of broadband infrastructure in South Carolina, with emphasis on broadband services to rural communities and communities with a high prevalence of COVID-19 or with demographic characteristics consistent with risk factors for COVID-19; and
- E. WHEREAS, eligible uses of the CRF include expenditures to address public health and safety by improving opportunities for telemedicine, distance learning, and public safety; and
- F. WHEREAS, reimbursable expenditures for broadband infrastructure expansion must be necessary for the COVID-19 public health emergency and must increase capacity for distance learning, telework, or telehealth; and
- G. WHEREAS, the ORS is a political subdivision of the State of South Carolina and for the purposes of implementing Act 142 has been designated as the entity responsible for carrying out broadband expansion in South Carolina and ORS has been directed by Act 142 to secure a vendor for the development of a broadband statewide county-by-county mapping plan and to secure a vendor for the development of a statewide broadband infrastructure plan;
- H. WHEREAS, ORS is in need of services for the deployment and delivery of Broadband Infrastructure Projects, as part of the South Carolina Broadband Infrastructure Program (the "Program"); and
- I. WHEREAS, the purpose of the Program is to:
 - a. Address the deficit of broadband resources available to serve rural residents and businesses in the State; and
 - b. Provide financial assistance, in the form of grants, to private or public providers for improvements to broadband access, and projects aimed at overcoming infrastructure barriers to the expansion and availability of broadband resources in unserved; and
- J. WHEREAS, in reliance upon the representations and certifications contained in Grantee's South Carolina

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Broadband Infrastructure Project Application (the "Application") and subject to the execution of this Agreement and an evaluation to prevent duplication of facilities, ORS has approved an award of funds to Grantee to carry out a Broadband Infrastructure Project (the "Project"), as described in Exhibit "A," which can include multiple projects, and said funds are to be expended by Grantee in conformity with the requirements and provision of this Agreement; and

- K. WHEREAS, in compliance with Act 142, a Grantee seeking reimbursement of broadband infrastructure expenditures shall submit an application for reimbursement to the Executive Budget Office; and
- L. WHEREAS, Grantee represents that it has examined and is fully familiar with all of the provisions of this Agreement; that Grantee affirms that it does not seek to utilize these funds to overbuild an existing broadband provider and shall utilize these funds to provide or make available broadband service to students and existing homes and businesses; that it has satisfied itself as to the nature and location of the Project, the general and local conditions to be encountered in the performance of the Project, and all other matters which can in any way affect the work or the cost thereof; and
- M. WHEREAS, the Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Grantee shall render the Project to ORS.

The Parties are ORS and the Grantee and may be referred to herein individually as a "Party" or collectively as the "Parties." In consideration of the promises and mutual covenants and agreements contained herein, the Parties agree as follows:

I. PROJECT DESCRIPTION

- A. Grantee shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project. The Project is more particularly described in Exhibit "A" (the "Project Description") attached hereto and incorporated herein by reference. The Project may be completed in phases or milestones so long as each fully completed phase or milestone enables broadband service to be available to a home, business or otherwise available to the public for use during the public health emergency and supports telehealth, telework and/or distance learning.

The Project shall be subject to, and performed in accordance with, this Agreement and all applicable local, state and federal laws, rules, regulations, and requirements. Without limiting the foregoing, the responsibilities of the Grantee shall include, but are not limited to, the following:

- a. If the Project includes engineering, planning, or design activities, Grantee shall make all plans and documents.
- b. Installing and delivering broadband infrastructure and service in the areas designated in Exhibit A to students or the public and existing homes and businesses.
- c. Ensuring broadband infrastructure and associated equipment is designed to deliver broadband that meets or exceeds standards as defined by the FCC (25/3 Mbps download/upload speeds).
- d. Ensuring broadband infrastructure is completed and operable in accordance with Project Completion requirements of this Agreement.
- e. Supplying, handling, and installing all materials, supplies and equipment.
- f. Providing construction and installation of all necessary broadband infrastructure and equipment for

the Projects. Operation and maintenance of the system is the sole responsibility of the Grantee.

- g. Researching and complying with all local codes, agencies and jurisdictions that regulate and govern the Project.
- h. Setting up, identifying, coordinating, providing safe access, and obtaining all inspections for its work, as required by any authorized agency or applicable code.
- i. Ensuring compliance with all applicable local, state and federal laws, codes and regulations relative to the Projects and shall acquire all necessary permits, licenses, approvals, and agreements.
- j. Obtaining all certifications, licenses, permits, and approval necessary to operate the Project, and shall otherwise satisfy all requirements necessary to operate the Project.
- k. Providing reliable service that delivers broadband that meets or exceeds standards as defined by the FCC (25/3 Mbps download/upload speeds)
 - i. See: <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report>

B. The following documents are incorporated into and made part of this Agreement by reference:

- a. Project Description (Exhibit "A")
- b. Eligible Grant Purposes (Exhibit "B")
- c. Schedule of Compensation (Exhibit "C")
- d. Application for Payment (Exhibit "D")
- e. South Carolina Broadband Infrastructure Project Application (on file with the Parties and as amended) (Exhibit "E")
- f. Certification of Completion and Authorization for Payment to Grantee (Exhibit "F")

C. Grantee shall comply with all requirements of the Agreement. Where there is a conflict between the requirements of this Agreement, the more stringent requirements shall govern.

II. GRANT

A. Grant Amount. In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, ORS awards Grantee with funds in the amount of \$ _____ Dollars (\$_____) ("the Grant") to be used for the purposes of funding the Project described in Exhibit A hereto. Payment shall be made in accordance with the Schedule of Compensation set forth in Exhibit "C" attached hereto.

- a. Grantee agrees to use the Grant only for the approved Project and only in the approved Area. Grantee agrees that it will use the Grant and construct the Project in accordance with this Agreement.
- b. Funds authorized by ORS under this Agreement shall not be used for operating expenses, including, not limited to: leases of any kind, the provision of customer devices (handsets, laptops, tablets, etc.), bandwidth and spectrum expenses, salaries and overhead not directly related to the construction of the broadband network. Funds also may not be used for the purchase or construction of towers, land, buildings, or for building renovations, tower upgrades, or the acquisition of facilities or companies.
- c. Grantee must register with the State Fiscal Accountability Authority for a State of South Carolina

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vendor number in order for a payment to be issued. Registration can be done online at <https://procurement.sc.gov/vendor/registration>. Payment will be made by the South Carolina Department of Administration's Executive Budget Office ("EBO") by check or ACH, depending on the vendor registration.

- B. Payment. Grantee shall submit an "Application for Payment" (Exhibit D) form and invoice for the total Work completed based on milestones as identified in Exhibit C – Schedule of Compensation once each month until completion of the Project. The Application for Payment shall be submitted to EBO through ORS. By submitting an Application for Payment, Grantee certifies that it has completed the necessary work and is entitled to the appropriate Milestone payment. When ORS is satisfied that Grantee has completed the necessary work and is entitled to a corresponding Milestone payment, ORS shall forward the Application to EBO with a Certification of Completion and Authorization for Payment to Grantee (Exhibit F). Grantee must execute the Certification of Completion and Authorization for Payment.
 - a. ORS will not authorize late fees to Grantee on the compensation due Grantee under the terms of this Agreement. Grantee shall pay its subcontractor(s), if any, the appropriate share of the payment no later than the 10th day after the date Grantee receives the payment. ORS and the State have no liability for payment to any subcontractors utilized by the Grantee.
- C. Expenditure of Grant Funds. All Grant funds shall be expended, with service available to end users, by December 18, 2020 (the "Deadline"). Grantee shall expend the funds in accordance with the "Eligible Grant Purposes" set forth in Exhibit B. Grantee may not expend Grant Funds for purposes contrary to this Agreement, or for any purpose other than those described under "Eligible Grant Purposes" under Exhibit B.
 - a. All costs incurred by Grantee before the Effective Date and before approval by ORS of the release of Grant funds are incurred voluntarily, at Grantee's risk and upon its own credit and expense, and Grantee's authority to be reimbursed from the Grant funds shall be governed by the provisions of this Agreement. Upon receipt of a Notice to Proceed, eligible costs may be incurred subject to Project completion as outlined in Exhibit C.
 - b. If, upon completion of the Project, there are cost savings and/or undisbursed funds, Grantee shall notify ORS and the EBO and the savings will be returned to the EBO or a corresponding reduction to the Grant Amount will be made.
- D. Limitation on Amount. The Grant Amount is identified in Section II, Part A and as described in Exhibit A. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in these general provisions. The payment of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee and claimed as allowable expenses under this Agreement. However, under this Agreement, the State of South Carolina shall have no liabilities to the Grantee other than the Grant Amount subject to completion of a qualifying project such that the broadband service is used and useful to address the public health emergency.
- E. Matching Funds Requirements. Grantee is required to contribute a match towards the Project that is a minimum of fifty percent (50%) of the total Project cost.
- F. Disbursement of the Grant. After the Effective Date, the Executive Budget Office will disburse Grant funds to Grantee in accordance with the Schedule of Compensation and subject to completion of Exhibits D and F.
 - a. Grantee shall submit a request for payment using Exhibit D – Application for Payment. A request

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for payment shall identify the total number of locations Grantee listed in application to be served, the total number of locations that have service available, and the corresponding percent of locations served. In addition Grantee shall provide a summary of all expenses incurred throughout the project and shall have attached copies of the supporting invoices and other documentation of such expenses.

- b. The request for payment shall not exceed the percent of total number of locations with service available. ORS, in its sole discretion, may authorize the disbursement of funds on a percent completion basis calculated as: Total Number of Locations Available to Be Served divided by Total Number of Locations to be Completed in Grantee's Application.
- c. ORS has the right to withhold disbursement of Grant funds if at any time ORS determines, in its sole discretion, that Grantee is not performing or completing the Project in a manner satisfactory to ORS. ORS shall have the right at any time to request that Grantee provide additional supporting documentation with any request for payment. ORS will authorize the release of any withheld funds upon Grantee satisfactorily remedying an issue that resulted in the withholding.
- d. On or before December 18, 2020, ORS has the right to review the status of completion of the Project, including any phases or milestones completed such that broadband service is available, and may determine the percent of completion of the Project as compared to the total Project described in Grantee's approved Application in terms of number of households or businesses with available broadband service or number of locations served with available broadband service. It is acknowledged and agreed upon by Grantee that ORS has final discretion as to the determination of the percent of Project completion and that any final payment made could be less than 100% of the Grant Amount if the Project is not fully completed. For example, if the approved Application identified 2000 households/businesses could be served but if ORS, in its sole discretion, determines that only 50% of the Project is completed (1000 households/businesses have broadband service available), the Grant Amount authorized to be paid would be limited to 50%.

G. Recovery of Funds. Failure to complete the Project in full by the Deadline will result in a reduced Grant Award where the Project has been completed in phases/milestones and broadband service is only partially available as compared to the commitment made by the Grantee in its approved Application. To the extent, payments have been made pursuant to completed phases/milestones and ORS subsequently learns that broadband service is not available as certified by Grantee in Exhibit D, ORS and/or the EBO will seek recoupment of Grant funds provided by the Executive Budget Office. Notwithstanding the above, any Projects that cannot be completed in phases/milestones such that broadband service is available at the time of completion of the phase or milestone, and the Project as set forth in the approved Application is not fully completed by December 18, 2020, no Grant Award payment will be paid.

III. COMPLETION OF THE PROJECT; INSPECTION DURING CONSTRUCTION; CHANGES

- A. Project Completion. Grantee shall complete the Project no later than December 18, 2020 ("Completion Date"). A final report is due on December 19, 2020. Grantee shall complete the Project within the term of this Agreement and shall meet any other established schedules and deadlines. ORS shall have the unilateral option, at its sole discretion, to renew this Agreement for no more than one additional six-month term.

If Grantee has elected to complete the Project in phases or milestones as set forth in Exhibit C, any portion of the Project not completed by Grantee by midnight on December 18, 2020, will not be eligible for CRF

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funding as determined by ORS. If Grantee has not elected to complete the Project(s) in phases or milestones with service available at each completed phase or milestone, and the Project(s) are not completed by December 18, 2020, the State will not be liable for any payment. The Grantee agrees and acknowledges that it shall be its sole responsibility to complete the project.

- B. Coordination. Grantee shall provide ORS with scheduling information in a form acceptable to ORS, including any changes made by ORS in the scheduling of the Project. Grantee shall coordinate its work with that of all contractors, subcontractors and suppliers so as not to delay or damage successful completion of the Project.
- C. Inspection. ORS and the State of South Carolina, their agents, and their employees shall be allowed to inspect the Project during construction and upon completion.
- D. Changes. ORS must approve all changes to the Project Description or any other term of this Agreement, including modifications to the scope of work of the Project, modifications involving carrying out Project activities in a geographic area other than the Area, and modifications to the Completion Date.
- E. Time is of the Essence. Time shall be of the essence as to all dates and times of performance contained in this Agreement.

IV. FEDERAL FUNDING & STATE REQUIREMENTS

Grantee shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited in this Agreement.

- A. Debarment & Suspension. In executing this Agreement, Grantee affirms that it is not debarred nor suspended from receiving federally funded contracts. Grantee is subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension). These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs and activities.
- B. Compliance by Grantee with Laws & Regulations. In connection with the use of this Grant, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, State, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including all applicable labor laws, and workers compensation requirements and the acquisition of any and all necessary permits. If it is later determined that Grantee did not comply with all statutes, laws, regulations and orders of federal, State county or municipal authorities, ORS retains the right to any legal remedy, including but not limited to the recoupment of the Grant, and to the extent applicable, any reasonable costs and attorney fees expended by ORS in seeking any legal remedy.
 - a. Treasury guidance issued on May 28, 2020 has clarified that payments from CRF funds are subject to 2 C.F.R. 200.303 regarding internal controls, 2 C.F.R. 200.330-332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. Where applicable, these requirements are considered legally binding and enforceable under this contract. ORS reserves the right to use any legal remedy at its disposal including, but not limited to, disallowance of costs, withholding of funds or recoupment as may be necessary to satisfy the requirements of these sections.

- C. Drug and Alcohol Free Workplace. Grantee shall comply with applicable requirements in the State of South Carolina Drug Free Workplace pursuant to Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.
- D. Non-Discrimination. Grantee may not discriminate against and hereby certifies that it prohibits discrimination against and will not discriminate against any person on the basis of race, color, religion, ancestry, creed or national origin, sex, marital status, physical or mental handicap, sexual orientation, or age in any aspect of its operations. Grantee shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, including but not limited to:
 - a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. The Americans with Disabilities Act of 1990, as amended.
- E. Restrictions on Use of Funding.
 - a. It is understood and agreed between the Parties that no portion of the Grant funds paid under this Agreement may be used for the purpose of obtaining additional Federal funds under any other law of the United States, except if authorized under that law.
 - b. Pursuant to section 5001(b) of the CARES Act, payments from the CRF may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the CRF may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.
 - c. It is understood and agreed between the Parties that the Grant funds paid under this Agreement are to be used to address the **current need** for broadband service due to the public health emergency and may not be used for the purposes of building out broadband facilities in new residential subdivisions where no housing or structure exists.
 - d. It is understood and agreed between the Parties that the Grant funds are not to be used to overbuild another existing broadband provider. To the extent Grantee learns after execution of this Agreement that another provider is providing broadband service in the Project area, Grantee shall advise ORS and agrees to work with ORS to amend this Agreement to either include other unserved areas or will withdraw its request for funding. Notwithstanding the above, in areas with broadband service at less than the standards defined by the FCC (25/3 Mbps download/upload speeds), Grantee may utilize funds to advance broadband service.

V. MISCELLANEOUS

- A. Notices. All notices permitted or required under this Agreement shall be given at the following address, or at such other address as the Parties may provide in writing for this purpose:

SOUTH CAROLINA OFFICE OF REGULATORY STAFF:

1401 Main Street, Suite 825, Columbia, SC 29201

Contact for ORS/Grant Officer: Chris Rozycki

Email: broadband@ors.sc.gov

ORS Telephone Numbers: (803) 737-0919 and (803) 289-8976

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GRANTEE NAME: _____

Address: _____

Contact for Grantee: _____

Telephone Number: _____

Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, by United States Mail, addressed to the parties at the addresses first above given, unless electronic delivery is specified.

- B. **Records & Accounts:** Between the Effective Date and the date five (5) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Agreement, including, but not limited to records supporting the provision of any services required under this grant. Such accounts shall be supported by receipts, invoices, bills and other similar documents and tax or accounting records.

Between the Effective Date and the date five (5) years after the Completion Date, at any time during the Grantee’s normal business hours, and as often as ORS, the State of South Carolina or any of its authorized representatives, the U.S. Department of Treasury or OMB shall demand, the Grantee shall make available to ORS, the State of South Carolina or any of its authorized representatives, the U.S. Department of Treasury or OMB all records pertaining to matters covered by this Agreement. The Grantee shall permit ORS, the State of South Carolina or any of its authorized representatives, the U.S. Department of Treasury or OMB to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data, and other information relating to all matters covered by this Agreement. As used in this paragraph, “Grantee” includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in Section V, Paragraph A.

- C. **Personnel:** The Grant Officer shall be the representative of ORS identified hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final. To the extent that Grantee is required to provide services under this Agreement, the Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged under the Agreement to complete the Project shall be qualified to perform such Project and shall be properly licensed and authorized to perform such Project under all applicable laws. Grantee shall comply with all State and federal personnel and labor laws applicable to its employees.

- D. **Contingent Nature of Agreement:** Notwithstanding anything in this Agreement to the contrary, all obligations of ORS hereunder, including, without limitation, the obligation of reimbursement of allowable expenses, are contingent upon the availability or continued appropriation of funds, and in no event shall ORS be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, ORS shall have the right to authorize the withholding of payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such

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termination.

- E. Assignment & Subcontracting. Grantee shall not assign this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of ORS, which consent may be withheld in ORS's sole and absolute discretion. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Grantee will be held responsible for the work of all persons engaged by Grantee on the Project, and all such work shall be subject to the provisions of the Agreement.
- F. Reporting.
- a. If requested by ORS, Grantee shall prepare and submit a written construction and financial activity reports to ORS for each day on which work is performed, including weekends and holidays when worked, and submit reports to ORS as specified. The reports shall, at a minimum, include the following information:
 - i. Construction activities and locations
 - ii. Construction crew sizes of general and subcontractors
 - iii. Start or completion of activities
 - iv. Progress on construction activities (including units or portions of work completed)
 - v. Tests or inspections performed
 - vi. Deliveries of material or equipment
 - vii. Delays or potential delays
 - viii. Visitors to the site
 - ix. Weather conditions
 - x. Construction equipment used
 - xi. Personal injuries or damage to property
 - b. Grantee shall submit a final report electronically to ORS at Broadband@ors.sc.gov by December 19, 2020 at 5 PM EST, demonstrating the completion of the Project.
- G. Grantee's Relationship to ORS. In the performance of this Agreement the Grantee, its employees, and any subcontractor of the Grantee, shall act as an independent contractor in the performance of the services provided for in this Agreement and shall furnish such services in Grantee's own manner and method and in no respect shall Grantee be considered an agent or employee of the State or ORS, maintaining complete control over all of its officers, employees, agents, members, subcontractors and operations. No provisions of this Agreement shall be intended to create a partnership or joint venture between Grantee and ORS and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors, shall have authority to bind the State nor ORS nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees. Grantee further acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to ORS, Grantee, or any other party pertaining to any matter resulting from the Agreement.

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VI. EVENT OF DEFAULT; REMEDIES

- A. **Default.** Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as “Events of Default”):
- a. Breach by Grantee of any term, condition, covenant, agreement, or certification contained in this Agreement;
 - b. The expenditure of Grant funds for any use other than as provided in this Agreement or in the approved Project Description;
 - c. The failure to complete the Project as set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, in ORS’s sole determination;
 - d. Grantee’s bankruptcy, insolvency, or the dissolution or liquidation of Grantee’s business organization or assets;
 - e. Failure to submit any report required hereunder;
 - f. Failure to maintain, or permit access to, the records required hereunder;
 - g. Failure to perform any of the other covenants and conditions of this Agreement, including but not limited to failure to complete the project in whole or in part prior to the completion date;
 - h. A change in Grantee’s staffing capacity that adversely affects Grantee’s ability to carry out the Project, in the sole discretion of ORS.

ORS shall give Grantee written notice of default, and Grantee shall have thirty (30) calendar days from the date of such notice to cure the default. Upon the occurrence of a default that continues beyond the cure period, ORS shall have the right to terminate this Agreement immediately by written notice to Grantee. Notwithstanding the above, upon the occurrence of a default under this Agreement involving Grantee’s bankruptcy, insolvency, or the dissolution or liquidation of Grantee’s business organization or assets, ORS’s right to terminate this Agreement shall be immediate, without a notice and cure period.

- B. **Remedies.** Upon the occurrence of any Event of Default, or in the event of termination by ORS, ORS, or EBO may itself, in its sole discretion, take anyone, or more, or all, of the following actions:
- a. Give the Grantee a written notice specifying the Event of Default and withhold all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee;
 - b. Recoup from the Grantee, including by withholding any other payment of funds that becomes due to Grantee from the State, any payments under this Agreement that have been used in a manner contrary to the terms of this Agreement or the Coronavirus Relief Fund, H.R. 748, Section 5001;
 - c. Treat the Agreement as breached and pursue any of its remedies at law or in equity, or both;
 - d. Withhold disbursement of Grant funds and Grantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
 - e. Demand repayment from Grantee of any portion of the Grant proceeds that ORS, in its sole

discretion, determines were not expended in accordance with this Agreement, plus all costs and reasonable attorneys' fees incurred by ORS in recovery proceedings;

- f. Demand repayment of all Grant funds disbursed to Grantee, plus all costs and reasonable attorneys' fees incurred by ORS in recovery proceedings; and
- g. In addition to exercising any or all of the rights and remedies contained in this Agreement, ORS at any time may proceed to protect and enforce all rights available to ORS by suit in equity, action at law, or by any other appropriate proceedings, all of which shall survive the termination of this Agreement.

Grantee agrees to return any remaining proceeds of the Grant to EBO upon termination of the Agreement, whether due to default, completion of the Project, or for any other reason.

VII. TERMINATION

ORS may terminate this Agreement without penalty or legal liability upon written notice of Grantee's breach of any term, condition, requirement, or provision of this Agreement, if such breach is not cured within thirty (30) days of such notice. Whether Grantee has sufficiently cured the breach shall be determined in the sole discretion of ORS. In addition, ORS may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 1. Grantee, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 2. Grantee's officers, directors, employees, agents, subsidiaries, affiliates, contractors, subcontractors, or a Grantee Contractor has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 3. Grantee terminates or suspends its business; or
- 4. Grantee's authorization to engage in business either in South Carolina or where organized is suspended, terminated, revoked, or forfeited.

Grantee shall notify ORS in writing if any of the foregoing events occur that would authorize the ORS to immediately terminate this Agreement. The right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of other remedies available to the ORS or the State of South Carolina, and the ORS or the State of South Carolina shall be entitled to exercise any other rights and pursue any other remedies available under this Agreement, in law, at equity, or otherwise.

VIII. INDEMNIFICATION

Without limitation, and to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless ORS and the State of South Carolina, its officers and employees, from and against any and all losses suffered by ORS, its officers and employees, and any and all claims, liabilities or penalties asserted against ORS, its officers and employees, by or on behalf of any person or entity, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, other agent of the Grantee, their employees, workmen, servants, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable regardless of whether or not caused in part by the indemnitee, and whether or not such claims are made by a third party or an indemnitee. Indemnitee must notify Grantee in writing within a reasonable period of time after Indemnitee first receives written notice of any action. ORS shall allow Grantee to defend such claim so long as the

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defense is diligently and capably prosecuted. Grantee may not, without Indemnatee’s prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnatee from all liability related to such commenced or threatened action, (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnatee or otherwise adversely affect an Indemnatee, and (iii) all settlement payments are made by Grantee. Indemnatee’s consent is necessary for any settlement that requires Indemnatee to part with any right or make any payment or subjects Indemnatee to any injunction. As used in this clause “Indemnatee” means ORS, and all its respective officers, agents, and employees. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of ORS, which immunity is hereby reserved to ORS. This covenant shall survive the termination of this Agreement.

IX. WAIVER OF BREACH

No failure by ORS to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of ORS to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

X. CONSTRUCTION OF AGREEMENT AND TERMS

This Agreement shall be construed in accordance with the law of the State of South Carolina and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

XI. PUBLIC DISCLOSURE NOTIFICATION

The names and business addresses of Grantee and the names, business addresses and amount of any award actually made to Grantee will be public information, subject to disclosure and may be posted on the ORS website. Additionally, all records produced, created, maintained, etc. by ORS as a result of its relationship with Grantee may be subject to disclosure pursuant to the S.C Freedom of Information Act (S.C. Code Sections 30-4-10 *et seq*).

XII. CONFLICT OF INTEREST

No officer, member or employee of the Grantee, and no representative, officer or employee of the State of South Carolina or of the governing body of the locality or localities in which the Grant is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Grant, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Notwithstanding the above it is acknowledged and agreed that the Grant Officer is an employee of the ORS.

XIII. CONFIDENTIAL INFORMATION

All information designated or marked as confidential by Grantee in the performance of this Agreement will be considered confidential, unless such information is in the public domain or Grantee expressly, and in writing, agrees that such information may be made public. Grantee shall not release or disclose any such

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information or Work Product to persons or entities other than ORS without the prior written consent of ORS, except as otherwise required by law. Grantee shall promptly notify ORS should Grantee or its Representatives be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request or court order from any third party regarding this Agreement and the services performed under this Agreement.

Notwithstanding the above, it is understood and agreed by the Parties that upon completion of the Project(s), ORS reserves the right to publicize the completion of the Project(s), total Grant funds expended by the State, the number of households and businesses that benefit from the Project(s), the location of the Project(s), and other such related information meant to support the purpose of the Project(s) and advance broadband deployment in the State.

XIV. AMENDMENT

This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the South Carolina Department of Administration.

XV. COOPERATION

Grantee shall cooperate in the performance of work with ORS, the State of South Carolina, and all other agents.

XVI. ENTIRE AGREEMENT

This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

XVII. EXHIBITS

The provisions in Exhibits A through D are incorporated herein as though set out in full.

Grantee Signature: Designated Signing Authority

_____ Date:_____

Signature

Print Name:_____ Title:_____

State of South Carolina Signature:

_____ Date:_____

Signature

Print Name:_____ Title:_____

Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Agreement.

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**EXHIBIT A
PROJECT DESCRIPTION**

PROJECT DESCRIPTION: Pursuant to Act 142, the Project shall prioritize communities in the State where access to broadband has impeded the delivery of distance learning, telework, and telehealth for the most vulnerable population of South Carolinians impacted by COVID-19. Expansion of broadband infrastructure shall emphasize services to rural communities and communities with a high prevalence of COVID-19 or with demographic characteristics consistent with risk factors for COVID-19. Reimbursable expenditures for infrastructure expansion must be necessary for the COVID-19 public health emergency and must increase capacity for distance learning, telework, or telehealth.

PROJECT AREA(S): Grantee shall provide broadband infrastructure and connectivity to unserved South Carolina properties in the following project areas *(add additional pages if necessary)*:

Project ID	Project Name / Area	Total Project Cost	CRF Funds Awarded
Total			

SCOPE OF PROJECT: Grantee shall be responsible for the following:

*Please enter the detailed scope of the project per the grantee’s approved application
(add additional pages if necessary)*

EXHIBIT B

ELIGIBLE GRANT PURPOSES

Grantee shall expend the Grant in accordance with this Agreement. Grantee shall be responsible for Grant funds in order to enhance broadband infrastructure and access to individuals and families affected during the COVID-19 pandemic by the lack of broadband access in their area. All eligible expenditures must be for new, non-depreciated items and can include the construction of outside-plant deployment (including last mile and middle mile infrastructure), electronic equipment necessary to deliver service (including equipment shelters, wireless radio, and antenna), and other capital costs that are directly necessary to provide broadband service to the end user.

ELIGIBLE EXPENSES: Eligible costs may include, but are not limited to:

- Construction and Materials (e.g., fiber, conduit, photonics, electronics, etc.)
- New and rehabilitative construction contracts
- Architect and engineering services and legal and professional services, if required to complete a qualifying project by December 18, 2020
- Permitting fees
- Validation of Service expenses
- Equipment related to broadband infrastructure
- Equipment installation

INELIGIBLE EXPENSES: The following are ineligible and Grant funds will not be used to reimburse these expenses:

- General broadband planning not associated with the project
- Expenses related to providing broadband services
- Ongoing overhead, operating costs, or staff costs
- Political activities or lobbying
- Expenses related to administering the Grant

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EXHIBIT C

SCHEDULE OF COMPENSATION

Payments will be made according to the following “Schedule of Compensation” for the Total Project Cost:

- A. Milestone 1: XX% of Total Project Cost for installation such that service is available upon request to a portion of the Project Target or Priority Target area;
- B. Milestone 2: Additional XX% of Total Project Cost for installation such that service is available upon request to an additional portion of the Project Target or Priority Target area such that a total of 40% of the project is completed at this stage; and
- C. Milestone 3: XX% of Total Project Cost after completion of construction and acceptance of the projects by ORS such that service is available.

Percent completion of the Project(s) is determined by the number of homes or businesses as set forth in the Application. For example, if a Project was to serve 100 homes/businesses at a cost of \$10,000. The first 20% or 20 homes/businesses that have broadband available would allow a payment of \$2,000.

Alternatively, as locations identified in the approved Application are completed and broadband service is available, ORS in its discretion may establish a percent completion.

Invoices shall be submitted monthly by the 1st of the month, as applicable.

Grantee shall request payment by submitting the following documentation to the ORS:

- “Application for Payment” form (Template provided in Exhibit D). This form will be submitted to EBO.
- Invoice on Grantee letter head with line items included in “Application for Payment”
- All invoices must include a signed statement by a Principal Officer of the company certifying that all charges are true and accurate and in accordance with the agreement.
- Construction and financial reports must be provided in the format designated by ORS
- ORS reserves the right to conduct random field inspections at any point; ORS may require speed tests with verification signed by the customer or other forms of verification as determined by ORS prior to certification to the EBO to authorize payment

For those Project(s) that do not have milestones, no payment will be made until the Project is fully completed as described in its approved Application and incorporated as Exhibit E such that broadband service is available. If the Project is not completed on or before December 18, 2020, no Grant Award will be paid.

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EXHIBIT D
APPLICATION FOR PAYMENT

Grantee Name:

Date:

Application for Payment Request #:

Project ID	Total Project Cost	CRF Funds Awarded	Project Status (Not Started, In Progress, Complete)	Number of Locations to be Served as Listed in Application	Total Number of Locations with Service	Percent of Locations with Service	Amount Previously Invoiced	Amount this Invoice	Invoiced to Date (not to exceed total % of locations with service)	Balance Remaining
Total										

By submitting this Application for Payment, Grantee certifies that it has completed the necessary work and is entitled to the appropriate Milestone payment. All invoices must include a signed statement by a Principal Officer of the company certifying that all charges are true and accurate and in accordance with the agreement.

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EXHIBIT E – APPLICATION (INCLUDING ANY AMENDMENTS)

EXHIBIT F

CERTIFICATION OF COMPLETION AND AUTHORIZATION FOR PAYMENT TO GRANTEE

The South Carolina Office of Regulatory Staff (“ORS”) has entered into a Grant Agreement (“Agreement”) with [INSERT GRANTEE NAME], a [INSERT ENTITY’S LEGAL TYPE (E.G. CORPORATION, LIMITED LIABILITY COMPANY, ETC.)] organized under the laws of the state of _____ (“Grantee”).

The Agreement was entered into pursuant to and in accordance with Act 142 of 2020 which requires ORS to secure a vendor for the development of a broadband statewide county-by-county mapping plan and to secure a vendor for the development of a statewide broadband infrastructure plan.

The Agreement requires the Grantee to complete a project which is consistent with Act 142 of 2020 and the terms and conditions of the Agreement and its exhibits and attachments.

The Agreement provides for a total grant amount of \$_____ to fund the project and that payment to the Grantee will be made according to the “Schedule of Compensation” as set forth in Exhibit C for the Total Project Cost:

ORS hereby certifies that Grantee has met Milestone ____ and is therefore entitled to payment in the amount of ____% of the total grant amount or \$_____ based on the terms of the Agreement. Accordingly, ORS requests that the Department of Administration, Executive Budget Office provide payment directly to the Grantee in the amount of \$_____.

South Carolina Office of Regulatory Staff

_____ Date:_____

Signature

Print Name:_____ Title:_____

Grantee hereby certifies that Grantee has met Milestone ____and that broadband service is available and therefore is entitled to payment in the amount of ____% of the total grant amount or \$_____based on the terms of the Agreement.

Grantee

_____ Date:_____

Signature

Print Name:_____ Title:_____