

GRANT AGREEMENT

This Agreement is entered into by and between the **Alabama Department of Economic and Community Affairs (ADECA)**, hereinafter referred to as the "**Department**" and _____, hereinafter referred to as the "**Subrecipient**." This Agreement becomes effective the date first entered below and consists of five (5) printed pages, Attachment (A) Scope of Work, Attachment (B) Project Budget, Attachment (C) Certifications, and the Proposal incorporated by reference, as described below.

1. **PURPOSE:** The purpose of this Agreement is to implement the project described in the Alabama Broadband Accessibility Fund proposal entitled " _____," which is hereby incorporated by reference as part of this Agreement.
2. **FUNDING:** In no event shall the total amount to be paid by the Department to the Subrecipient under this Agreement exceed \$ _____ for full and complete satisfactory performance unless there is a signed Amendment to this Agreement, see 19. AMENDMENTS.
3. **DURATION:** The Subrecipient shall commence performance of this Agreement as soon as practicable to complete the project within the two-year time limit.
4. **TERMINATION:** The following provisions apply to termination under this Agreement, whether termination by the Department or by the Subrecipient. The performance of work under this Agreement may be terminated in whole or in part for the following circumstances:

Termination for Convenience. This Agreement may be terminated by either party with thirty (30) days written notice. Said notice shall specify the reasons for requesting such termination. If the Department determines that continuation of the work will serve no useful public purpose, this Agreement may be terminated by the Department and the Subrecipient shall be entitled to necessary expenses incurred through the date of termination or the date services are last provided, whichever occurs first.

Termination for Cause. If, through any cause, the Subrecipient shall fail to fulfill in a timely manner its obligations under this Agreement, or if the Subrecipient shall violate any of the covenants, agreements or stipulations of this Agreement, and such failure or violation is not corrected within fifteen (15) days after such notice is given by the Department to the Subrecipient, the Department shall thereupon have the right to immediately terminate or suspend this Agreement by giving written notice to the Subrecipient of such termination or suspension and specifying the effective date thereof.

5. DEBARMENT AND SUSPENSION: The Subrecipient certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed from debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of the State of Alabama. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Subrecipient.

Subrecipients shall immediately notify the Department if any sub-contractor becomes debarred or suspended, and shall, at the Department's request, take all steps required by the Department to terminate its contractual relationship with the sub-contractor for work to be performed under this Agreement.

6. NOT TO CONSTITUTE A DEBT OF THE STATE: It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment No. 26.
7. CONFLICTING PROVISION: If any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void.
8. IMMUNITY AND DISPUTE RESOLUTION: The parties to this Agreement recognize and acknowledge that the Department is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Article I, Section 14, Constitution of Alabama 1901. It is further acknowledged and agreed that none of the provisions and conditions of this Agreement shall be deemed to be or construed to be a waiver by the Department of such Constitutional Immunity. The Subrecipient's sole remedy for the settlement of any and all disputes arising under the terms of this Agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama pursuant to § 41-9-60 *et seq*, Code of Alabama 1975.

For any and all disputes arising under the terms of this Agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation.

9. DISCLAIMER: The Department specifically denies liability for any claim arising out of any act or omission by any person or agency receiving funds from the Department whether by contract, grant, loan, or by any other means.

No Subrecipient, Contractor, or agency performing services under any agreement, contract, grant or any other understanding, oral or written, other than an actual employee of the Department, shall be considered an agent or employee of the State of Alabama or the Department or any division thereof. The State of Alabama, the Department, and their agents and employees assume no liability to any Subrecipient, contractor or agency, or any third party, for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of any Subrecipient, contractor or agency, or any other person.

10. ACCESS TO RECORDS AND RETENTION: For the limited scope of this particular Agreement, the Director of the Department, the Chief Examiner of Public Accounts, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, and records of the Subrecipient for the purpose of making audits, financial reviews, examinations, excerpts and transcripts. This right also includes timely and reasonable access to Subrecipient personnel for the purpose of interview and discussion related to such agreement.

Records shall be kept for a period of three (3) years from the submittal of the final financial report or receipt of final payment with the exception of the following qualification, whichever is the latest: If any litigation, claim or audit is started before the expiration of the three-year (3) period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The Subrecipient will provide the Department or any authorized representatives access to any pertinent books, documents, papers or other records in order to make audits, examinations, excerpts and transcripts.

11. ASSIGNABILITY: The Subrecipient shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Department thereto. Provided, however, that claims for money due, or to become due to the Subrecipient from the Department under this Agreement may be assigned to a bank, a trust company, or other financial institution through a valid court order and without such approval. Notice of such assignment or transfer shall be furnished promptly to the Department.
12. CONTINGENCY CLAUSE: It is expressly understood and mutually agreed that any Department commitment of funds herein shall be contingent upon receipt and availability by the Department of funds under the program for which this Agreement is made.
13. CONFLICT OF INTEREST: A conflict of interest, real or apparent, will arise when any of the following has a financial or other interest in the firm or organization selected for award: (1) the individual, (2) any member of the individual's immediate family, (3) the individual's partner, or (4) an organization which employs or is about to employ any of the above. The Subrecipient certifies by signing this Agreement that no person under its employ or control who presently performs functions, duties, or responsibilities in connection with the Department of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this Agreement nor will the Subrecipient hire any person having such conflicting interest.

14. **AUDIT REQUIREMENTS:** Nothing contained in this Agreement shall be construed to mean that the Department cannot utilize its auditors regarding limited scope audits of various Department funds. Audits of this nature shall be planned and carried out in such a way as to avoid duplication or not to exceed the audit coverage limits as stated in the Uniform Administrative Requirements.
15. **AUDIT EXCEPTIONS/UNRESOLVED QUESTIONED COSTS/OUTSTANDING DEBTS:** The Subrecipient certifies by signing this Agreement that it does not have any unresolved audit exceptions, unresolved questioned costs, or finding of fiscal inadequacy as a result of project monitoring. It further certifies that no money is owed to any division of the Department or to the Federal government under any program where it has not arranged a repayment plan.
16. **SUSPENSION OF PAYMENTS:** Payments under this Agreement may be suspended in the event that there is an outstanding audit exception under any program administered by any division of the Department, or in the event there is an amount owing to any division of the Department, or an amount owing to the Federal government under any program administered by any division of the Department that is not received in a reasonable and timely manner.

Should the Subrecipient incur an unresolved audit exception or have unresolved questioned costs or finding of inadequacy as a result of any project monitoring by any division of the Department, then the Department shall not enter into any other contract, agreement, grant, etc., with said Subrecipient until the audit exception or questioned cost or finding of fiscal inadequacy has been resolved.

The Department shall not enter into another contract, agreement, grant, etc., with any individual, agency, company, or government under any program administered by any division of the Department that has not arranged a repayment schedule.

17. **DISCLOSURE STATEMENT:** Unless otherwise exempt under § 41-16-82, Code of Alabama 1975, a disclosure statement must be submitted to the Department for any and all proposals, bids, contracts or grant proposals in excess of \$5,000.
18. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** In addition to the provisions provided herein, the Subrecipient shall be responsible for complying with any and all other applicable laws, ordinances, codes and regulations of the Federal, State and local governments.

In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

By signing this Agreement, the parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party

found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

19. AMENDMENTS: The Subrecipient may request amendments and/or major modifications to various portions of this Agreement including amendments and/or modifications to the Scope of Work and Project Budget. All requests for amendments and/or modifications must be submitted in writing to the Department and be approved by the Department in writing prior to implementation. Some amendments and/or modifications may require an amendment to this Agreement. Any changes to the project award amount or nongrant contribution must be made in the form of an amendment to this Agreement.

The Subrecipient will receive one payment after required documentation has been submitted to and accepted by the Department and the service has been verified by the Department’s representative.

IN WITNESS WHEREOF, THE DEPARTMENT AND THE SUBRECIPIENT HAVE EXECUTED THIS AGREEMENT AS EVIDENCED BY THE SIGNATURES BELOW:

**Alabama Department of Economic
and Community Affairs**

(Subrecipient)

Kenneth W. Boswell, Director Date

Authorized Official Date

Title

This Agreement has been reviewed for content, legal form, and complies with all applicable laws, rules, and regulations of the State of Alabama governing these matters.

Claudia Kennedy Smith, General Counsel

Kay Ivey, Governor