

## **GRANT AGREEMENT**

This Agreement is entered into by and between the **Alabama Department of Economic and Community Affairs** (“Department”) and [INSERT] (“Recipient”). This Agreement is subject to the following terms and conditions as well as Attachment A (Scope of Work), Attachment B (Project Budget), Attachment C (Certifications), the Alabama Broadband Accessibility Fund 2023 Grant Application submitted by the Recipient (“Application”), the Alabama Broadband Accessibility Fund 2023 Grant Application Guide (“Application Guide”), and the Alabama Broadband Accessibility Fund 2023 Program Guide (“Program Guide”), each of which is hereby incorporated by reference as part of this Agreement.

1. **PURPOSE AND AUTHORITY:** The purpose of this Agreement is to implement the project proposal described in the Application entitled “[INSERT],” as set forth in summary detail in Attachment A (Scope of Work) and Attachment B (Project Budget) (together, the “Project”), in accordance with the Alabama Broadband Accessibility Act, Ala. Code §§ 41-23-210–41-23-214, and other applicable laws.
2. **FUNDING:** In no event shall the total amount to be paid by the Department to the Recipient under this Agreement exceed **\$(INSERT)** (“Grant Amount”) for full and complete performance of the terms and conditions of this Agreement, including but not limited to the Reporting and Project Closeout requirements described in the Program Guide, unless there is an amendment to this Agreement signed by the Department and the Recipient in accordance with Section 24 (Amendments).

Funding for the Project shall be in the form of reimbursement of eligible Recipient costs through a single payment, as specified in Section 18 (Payment). Recipient costs eligible for reimbursement generally shall be limited to construction and construction-related costs of broadband infrastructure. Recipient operating costs are not expenses eligible for reimbursement. Any Recipient costs incurred before or after the Term of this Agreement specified in Section 3 (Term) shall not be eligible for reimbursement. In the event the actual cost of completing the Project is less than the Total Project Cost specified in Attachment B (Project Budget), the Grant Amount shall be reduced proportionally to the extent the Match Amount specified in Attachment B is reduced. In accordance with the Alabama Broadband Accessibility Act, in no event shall the Grant Amount exceed eighty percent (80%) of the Total Project Cost specified in Attachment B or \$5,000,000, whichever is less.

3. **TERM:** This Agreement shall commence on [INSERT] and shall expire on [INSERT] (“Term”). If the Recipient demonstrates that the Project is progressing, it may request an extension of the Term for up to one year for Project delays beyond its control. Grant of any Term extension shall be at the Department’s sole discretion and shall only take effect upon an amendment to this Agreement signed by the Department and the Recipient in accordance with Section 24 (Amendments). The Recipient shall submit written certification of Project completion to the Department before this Agreement expires. The Recipient also shall submit all invoices and other required documentation demonstrating compliance with this Agreement

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as prescribed by the Department, including but not limited to the Reporting and Project Closeout requirements described in the Program Guide, within thirty (30) calendar days of the submission of the Project completion certification. If the Recipient fails to complete the Project within the Term, including any Term extension, the Department may revoke this Agreement in its entirety and rededicate the funds to a new recipient.

4. **TERMINATION:** The following provisions apply to termination under this Agreement, whether termination by the Department or by the Recipient. 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) calendar days written notice. Said notice shall specify the reasons for requesting such termination.

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

In the event of termination, for either convenience or cause, all property, finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, computer tapes, computer programs, and reports prepared by the Recipient under this Agreement shall, at the option of the Department, and if in accordance with applicable state and federal regulations, become the property of the Department. The Recipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Recipient shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any breach of the Agreement by the Recipient and the Department may withhold any payment to the Recipient for the purpose of setoff until such time as the exact amount of damages due to the Department from the Recipient is determined.

5. **DEBARMENT AND SUSPENSION:** The Recipient certifies, by entering into this Agreement, that neither it nor its principals nor any of its contractors, subcontractors, or affiliates are presently debarred, suspended, proposed for 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 Recipient.

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The Recipient certifies that it has verified the suspension and debarment status for all contractors and subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupsments or penalties that might arise from non-compliance. The Recipient shall immediately notify the Department if any contractor or subcontractor 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 contractor or subcontractor 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 Ala. Const. art. XI, § 213.
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 Ala. Const. art. I, § 14. 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.

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

9. MERIT SYSTEM EXCLUSION: The Recipient is not to be considered a merit system employee and is not entitled to any benefits of the Alabama State Merit System.
10. 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 recipient, contractor, subcontractor, 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 recipient, contractor, subcontractor, or agency, or

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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 the recipient, contractor, subcontractor, or agency, or any other person.

11. REPORTING: The Recipient shall report on the progressive completion of the Project on a quarterly basis in accordance with the Reporting obligations described in the Program Guide. Funding for a Project not showing progress may be rescinded by the Department in accordance with the Application Guide and Alabama Broadband Accessibility Act. Upon completion of the Project, the Recipient shall conduct testing and prepare a final report in accordance with the Project Closeout obligations described in the Program Guide, which shall be subject to Department review and approval.

12. ACCESS TO RECORDS AND RETENTION: For the limited scope of this 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 Recipient for the purpose of making audits, financial reviews, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to Recipient personnel for the purpose of interview and discussion related to this Agreement. This right of access is not limited to the required retention period but shall last as long as the records are retained.

Records shall be kept for a period of six (6) years from the Recipient's receipt of the Grant Amount described in Section 2 (Funding); provided, however, that if any litigation, claim, or audit is started before the expiration of the retention period herein, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. ASSIGNABILITY: The Recipient 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 Recipient 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.

14. 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.

Payment made by the Department under the terms of this Agreement shall not constitute final approval of documents submitted by the Recipient or of procedures used in formulating requests for payment to the Recipient. Funds appropriated and obligated to this award are available for reimbursement of eligible costs incurred until the end of the performance period set forth in this Agreement.

15. 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 an award:

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(a) the individual; (b) any member of the individual's immediate family; (c) the individual's partner; or (d) an organization which employs or is about to employ any of the above. The Recipient certifies by signing this Agreement that no person 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 Recipient hire any person having such conflicting interest. The Recipient further certifies that it will maintain a written code of standards governing the performance of persons engaged in the award and administration of contracts and subcontracts.

16. **AUDIT REQUIREMENTS:** To the extent applicable, if any recipient receives more than \$500,000, collectively, in State General Fund appropriations in its fiscal year, from the Department, it must have an audit in accordance with Government Auditing Standards (the Yellow Book) and Generally Accepted Auditing Standards established by the American Institute of Certified Public Accountants.

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 applicable audit coverage limits.

Copies of all required audits must be submitted to the Department and the Alabama Department of Examiners of Public Accounts. Copies may be transmitted by email or traditional mail, at the following addresses:

audit@adeca.alabama.gov

Alabama Department of Economic and  
Community Affairs  
ATTENTION: Chief Auditor  
401 Adams Avenue  
P.O. Box 5690  
Montgomery, AL 36103-5690

central.records@examiners.alabama.gov

Alabama Department of Examiners of  
Public Accounts  
ATTENTION: Audit Report Repository  
P.O. Box 302251  
Montgomery, AL 36130-2251

17. **AUDIT EXCEPTIONS/UNRESOLVED QUESTIONED COSTS/OUTSTANDING DEBTS:** The Recipient 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.
18. **PAYMENT:** The Recipient shall receive the Grant Amount specified in Section 2 (Funding) in a single payment only for full and complete performance of the terms and conditions of this Agreement. The Recipient shall receive payment within thirty (30) days upon the Department

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receiving written certification of the completion of the Project and sufficient evidence of compliance with the terms of this Agreement as prescribed by the Department, including but not limited to the Reporting and Project Closeout requirements described in the Program Guide. Such certification and evidence of compliance shall be subject to Department review and approval.

19. **SUSPENSION OF PAYMENT:** In addition to the provisions provided herein, payment 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 Recipient incur an unresolved audit exception or have unresolved questioned costs or finding of fiscal 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 the Recipient 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.

20. **DISCLOSURE STATEMENT:** Unless otherwise exempt under Ala. Code § 41-16-82, a disclosure statement must be submitted to the Department for any and all proposals, bids, contracts, or grant proposals in excess of \$5,000.

21. **PUBLICATION:** This Agreement and the Application are subject to public records requests in accordance with the Alabama Open Records Law, Ala. Code § 36-12-40. The Department reserves the right to publicly announce this Agreement and discuss the Project in any promotional material, statement, document, press release, or broadcast. The Recipient agrees to comply with any guidance or requirements issued by the State of Alabama or the Department regarding any signage or customer outreach materials related to the Project.

22. **NONDISCRIMINATION:** The Recipient shall be and is prohibited from discriminating based on race, color, religion, sex, age, handicap, or national origin.

23. **COMPLIANCE WITH OTHER FEDERAL, STATE, AND LOCAL LAWS:** In addition to the provisions provided herein, the Recipient shall be responsible for complying with any and all other applicable laws, ordinances, codes, executive orders, and regulations of the federal, state, and local governments. Such compliance includes but is not limited to any federal, state, and local permitting, procurement, competitive bidding, public works, public meeting, environmental, historic preservation, land use, or reporting requirements. It is the responsibility of the Recipient to become familiar with these requirements, and the Department assumes no liability to the Recipient for any damages arising out of or in any way connected with the Recipient's non-compliance with laws, ordinances, codes, executive orders, and regulations of the federal, state, and local governments.

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In compliance with Ala. Act No. 2016-312, the Recipient 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.

In compliance with Ala. Act No. 2023-409, by signing this Agreement, Recipient provides written verification that Recipient, without violating controlling law or regulation, does not and will not, during the term of the Agreement engage in economic boycotts as the term “economic boycott” is defined in Section 1 of the Act.

By signing this Agreement, the contracting 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.

24. AMENDMENTS: The Recipient may request amendments to various portions of this Agreement, including amendments to Attachment A (Scope of Work) and Attachment B (Project Budget). All requests for amendments must be submitted in writing to the Department and be approved by the Department in writing prior to implementation. Any changes to the Grant Amount or Match Amount set forth in Attachment B must be made in the form of an amendment to this Agreement.

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

**Alabama Department of Economic  
and Community Affairs**

**[INSERT]**

\_\_\_\_\_  
Kenneth W. Boswell, Director      Date

\_\_\_\_\_  
Authorized Official      Date

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Federal Identification No. (if applicable)

\_\_\_\_\_  
Contact Person / Phone Number

\_\_\_\_\_  
J. Bradford Currier, Legal Counsel

\_\_\_\_\_  
Mailing Address